THE SEVENTH NLU ANTITRUST LAW MOOT COURT COMPETITION, 2016

National Law University, Jodhpur

In association with

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And

The Competition Commission of India

KNOWLEDGE & RESEARCH PARTNER

PROPOSITION
1. Bohemia is a republic in South Asia. The laws of Bohemia are in *pari materia* with the laws of India, with the limited exceptions created in this Proposition. Bohemian courts often refer to decisions of courts, tribunals, and commissions in India, and these have high persuasive value in Bohemia.

2. Bohemia enacted its competition law, the Bohemian Competition Act (the *Competition Act*), in 2002. However, due to resistance from business and industrial houses in Bohemia, the Competition Act was only brought into force in a phased manner, with the last provisions coming into force in June, 2011.

3. The Competition Commission of Bohemia (the *CCB*) treats decisions of the Competition Commission of India as well as other decisions of Indian courts on the Indian Competition Act, 2002, as having high persuasive value. The CCB also regards the competition regulators of the European Union and the United States highly, and relies on precedent from these jurisdictions as well.

4. In May 2014 after the change in the Government in Bohemia, the Ministry of Youth and Sports Affairs (*MoYSA*) took a keen interest in the revival of conventional sports in Bohemia. A number of defunct sports federations including those for kabaddi and wrestling, were revived and several incentive schemes were floated to encourage the youth to participate in these sports and also to invigorate the interest of the general public. The MoYSA also reduced governmental regulation of these sporting federations and granted more autonomy to them, with minimal interference in the administration, finance and regulation of these sports.

5. The South Asian Kabaddi Federation (*SAKF*) is the apex body in South Asia responsible for the promotion and regulation of Kabaddi in South Asia. One of the main objectives of the SAKF is to lobby and make efforts to get Kabaddi inducted as an Olympic sport. The Kabaddi Federation of Bohemia (*KFB*) is the National Federation of Bohemia for Kabaddi and is affiliated to Bohemian Olympic Association (*BOA*) and the SAKF. All Kabaddi players in Bohemia have contracts with various state associations, and the KFB is the apex body of these associations. KFB also selects the national team for various events, and hands out central contracts to a few players who are regulars on the national team.

6. X Television Network, a leading media house in Bohemia, announced the launch of its sports channel ‘X Sports’ with the launch of the ‘Kabaddi Super League’ (*KSL*), a professional sporting league based on the franchise model, with a KSL Governing Council at the helm of affairs. In August 2014, it was announced at an extravagant public
ceremony that KSL was to be organised in Bohemia with six city teams competing for the title. The teams were to be formed from a pool of KSL affiliated players selected through a bidding process among the teams. The event was attended by a number of former and current Kabaddi players.

7. The opening season of KSL organised in the end of November 2014 was a huge success because of efficient marketing and promotion as well as because of the participation of a large number of international players. The KSL opening season also saw participation from some of the popular national players. Following on from this, the second season was announced to take place in November 2015.

8. In August 2015, KFB also announced its own ‘Bohemian Kabaddi League (BKL)’ in association with the SAKF and support from MoYSA. BKL was projected as the biggest professional tournament in the world for Kabaddi, with players from 30 countries participating in the player auction. The opening season of the league was proposed to be composed of 90 matches with each of the ten teams to play 18 matches each. BKL was to be run by the BKL Governing Council, which would report in to the KFB.

9. At the same time, KFB announced a 15-day training and fitness camp to be organised in Riverdale (the capital of Bohemia) from 15 – 30 November 2015. The training camp was being organised for national level players for selection in the national team for a month long tour to China for the Asian Kabaddi Championship to be held in January 2016. The dates for this training program were coinciding with the dates of the 2nd edition of the KSL, but the KFB refused to changes these dates, despite multiple representations from players.

10. In September 2015, the KFB issued a notification under which it published a list of sanctioned and unsanctioned events (this list was approved by the SAKF). KFB also sent fresh agreements to all its member associations for them to sign with players. These agreements had clauses regarding disciplinary action to be taken against the players for participating in unsanctioned events, as well as for failure to make themselves available for compulsory training events (including all national camps). The new agreement also contained a termination clause for the players in case of multiple instances of participation in unsanctioned events. The new regulations were to be effected from 1 November 2015. The KSL was not on the list of sanctioned events.

11. After these announcements, three national players who had entered into agreements with KSL terminated their contracts and did not participate in the second season of KSL. Following suit, five players from the Bohemian junior Kabaddi team also terminated
their agreements with KSL. KSL has filed a suit for damages against each of these players in the Bohemian civil courts which are pending adjudication.

12. The second season of KSL was not as much of a success as the first. Various commentators and kabaddi enthusiasts attributed this to the announcement of a second league, the missing players, as well as a general reduction of enthusiasm as the novelty of the KSL had worn off.

13. BKL sold franchises for ten teams to play in the opening season and also managed to get about one hundred and fifty players from different countries to participate in the player auction and sign contracts with these franchises. BKL also invited global tenders for live telecast of the matches in different countries. Three companies, Luminous Sports, Media Bohemia and X Sports entered bids in response to the tender for exclusive broadcasting rights of all the Kabaddi matches to be played in the opening season.

14. Based on the technical qualifications of and commercial considerations offered by the three contenders, the exclusive broadcasting rights were awarded to Luminous Sports. Aggrieved by this decision, Media Bohemia filed a petition before the Bohemian Supreme Court stating that it should be granted the broadcasting rights for BKL as it was the national broadcaster in Bohemia and had the widest reach and maximum viewership across Bohemia. Further, since it was a free-to-air channel, it had a greater reach to spectators and, given that the purported aim behind conducting BKL was to increase the popularity of the sport, it should have been given the broadcasting rights. Media Bohemia made MoYSA a party to its petition.

15. While the decision of the Supreme Court was still pending, BKL awarded the broadcasting rights to Media Bohemia in addition to Luminous Sports. BKL also issued a press statement regarding its decision, which read:

“BKL, the biggest and grandest sporting event in Kabaddi, is being organised to encourage and promote the interest of the sport. Media Bohemia that reaches every home in this country should be the channel to televise the league.”

16. Aggrieved by the actions of BKL, Luminous Sports filed a suit against BKL for breach of contract and for deviating from the exclusivity promised to it under its broadcasting contract. At the same time, Luminous Sports filed an Information under Section 19 of the Competition Act before the CCB, alleging abuse of dominance by BKL in unilaterally modifying the agreement with Luminous Sports and granting preferential treatment to Media Bohemia in awarding television rights.
17. BooTube, an online video streaming website, approached BKL for internet broadcasting rights of BKL matches. BKL replied stating that its agreement with Luminous Sports permitted Luminous Sports to further license the media rights to anyone on any medium.

18. BooTube approached Luminous Sports for the internet broadcasting rights of the BKL matches. Luminous Sports accepted BooTube's request subject to following terms:
   - BooTube would pay Luminous Sports a non-refundable security of 50 lakh Bohemian Rupees for one season;
   - BooTube would pay Luminous Sports 40% of the revenue proceeds from telecasting the matches on its online channel;
   - BooTube would telecast the matches with a time lag of 15 minutes from the TV broadcast; and
   - Luminous Sports reserved a right to award internet broadcast to any other operator.

19. BooTube refused to accept these conditions.

20. Luminous Sports advertised that BKL will also be telecasted on its online platform Luminous.com and its mobile application and viewers will not have to pay any charge for either downloading the mobile application or for viewing the matches online. The matches on Luminous.com and the mobile application were to be televised with a 5-minute delay from the TV broadcast.

21. BooTube filed an Information against Luminous Sports for abusing its dominance in the market for broadcasting the BKL matches and leveraging its position in the market for TV broadcast of Kabaddi matches to enter into the market for internet broadcasting of Kabaddi.

22. BKL also entered into an agreement with each of its franchisees to award a single exclusive merchandise sponsor on behalf of each of the teams. Accordingly, Cougar, an international manufacturer of T-Shirts and caps that was also the international sponsor of SAKF (on a 7-year contract), was awarded the exclusive merchandise rights for each of the ten teams for the opening season. The exclusive merchandising agreement contained an automatic renewal clause for one year at a premium payment of 20% over the current seasons’ negotiated price.

23. Rodidas, a Bohemian manufacturer of T-shirts and caps also filed an Information before the CCB alleging that the exclusive supply agreement between BKL and Cougar with the
automatic renewal clause is anti-competitive and detrimental to the interest of other suppliers. It alleged that the agreement resulted in a denial of market access to Cougar’s competitors.

24. The CCB, after having formed a *prima facie* opinion in all the three cases, clubbed the matters and directed the Director General (the DG) to conduct an investigation in the three cases.

25. The DG sought information and explanations from the BKL Governing Council, the BKL franchisees and KSL regarding the conduct of KFB to assess the merits in the allegations. The DG discovered that in the agreement between Media Bohemia and BKL, the consideration amount was almost one third of the amount that was paid by Luminous Sports. Inspection of documents also revealed that the exclusive broadcasting agreement signed between Luminous and BKL contained a Clause 87. II.A, that stated:

   “BKL reserves the right to alter any of the terms and conditions contained in this agreement in order to further the motive of promotion of the sport of Kabaddi in Bohemia and/or in the furtherance of public interest.”

26. While the investigation was ongoing, Talbot Rangers, a BKL franchise, produced evidence that demonstrated that it had protested against BKL’s exclusive right to award merchandising rights and particularly against the auto-renewal clause, but these protests had been ignored. During his oral statement under oath before the DG, Mr. Sher Singh, the manager of Talbot Rangers also revealed the ‘forfeiture of security clause’ in the Franchisee Agreement that entitles BKL to expel any franchisee on grounds of misconduct and acts against fairplay.

27. In his oral statement under oath before the DG, Mr. Tulsian, Vice President of BKL, defended the decision to award broadcasting rights to Media Bohemia by stating that the motive was to maintain competition among the broadcasters.

28. During the pendency of the investigation, X Sports (as the promoter on behalf of KSL) also filed an Information before the CCB alleging abuse of dominance by BKL, as BKL denied market access and caused market foreclosure by entering into exclusive agreements with players and by imposing conditions on them to not participate in KSL. It also alleged that BKL was engaged in exclusionary conduct as a consequence of its new contractual restrictions imposed on players.
29. The CCB clubbed the Information with the ongoing investigation and directed the DG to furnish a consolidated report on all the allegations relating to BKL.

30. The DG recorded in its report that KFB had been given the exclusive privilege of regulating the conduct of the sport of Kabaddi in Bohemia. While it was not government controlled (as this would violate the International Olympic Committee rules), it enjoyed a monopoly status as the selector of the national team. This made KFB dominant in the market for conducting and governing national and international Kabaddi in Bohemia. The DG also recorded that BKL has abused its dominant position in the market by adopting exclusionary practices harming the interests of its competitors that has resulted in violation of Section 4 of the Competition Act.

31. On the issue of granting broadcasting rights to Media Bohemia, the DG’s report recommended that BKL had abused its dominant position by imposing unfair conditions on Luminous Sports.

32. The DG further noted that the exclusive supply agreement entered between BKL and Cougar violated Section 3(4) and Section 4 of the Competition Act.

33. In the information filed by BooTube, the DG found Luminous Sports to not be dominant in the market for broadcasting sporting events. Therefore, it arrived at no conclusion on the allegations of abuse.

34. The CCB after having heard all the Parties and perusing the written submissions filed by them, agreed with the recommendations of the DG and noted that the conduct of BKL was abusive in nature and in violation of the provisions of the Competition Act. It also agreed with the DG that Luminous Sports had not violated the Competition Act.

35. The CCB after recording its findings passed the following orders under Section 27:
   - BKL is directed to eliminate the automatic extension clause from its merchandise agreement and award merchandise contracts in a fair and equitable manner, as its existing contract violated Section 3(4) and Section 4 of the Competition Act;
   - BKL is directed to modify its contract with Media Bohemia to the extent that live streaming of the event as televised by it will run with a time lag of 15 minutes behind the actual events as televised on Luminous Sports, as its conduct violated Section 4 of the Competition Act;
   - KFB and BKL are directed to cease and desist from continuing with the restrictive clauses contained in the contract entered between the players and
various member associations of KFB, as these had the consequence of excluding X Sports from the market, and violated Section 4 of the Competition Act;

- BKL and KFB are directed to pay a penalty of 3% of their average annual revenue for the last three years; and
- KFB is ordered to create an independent body to administer BKL, to avoid any conflict of interest between KFB and BKL. All revenues from BKL are to flow directly to the MoYSA, and not to KFB.

36. Aggrieved by the decision of the CCB, KFB and BKL filed an Appeal before the COMPAT arguing among other things that their commercial and efficiency justifications for awarding a collective contract to Cougar were not appreciated by the CCB. Further, the direction of the CCB recommending disintegration of the KFB and BKL was alleged to be disproportionate and impractical in the regulation of any sporting activity.

37. BooTube also approached the COMPAT against the order of the CCB regarding Luminous Sports. In its appeal, BooTube argued that the CCB had come to the incorrect conclusion on market definition, as the markets for broadcast of Kabaddi on the internet and on television were separate markets.

38. The COMPAT decided to hear all the Appeals together and heard the parties on their grievances. By way of a common Order in the matter, the COMPAT returned with following findings:

- The decision of the CCB holding that KFB and BKL had abused their dominant position is well founded in relation to the agreements with players as well as the broadcasting agreement; The conduct of BKL has resulted in denial of market access and foreclosure for its competitors;
- Accordingly, the orders of the CCB in relation to modification of these agreements were affirmed
- The decision of the CCB recommending disintegration of the KFB and BKL is excessive and unwarranted and is set aside;
- The merchandising contract awarded to Cougar is an exclusive supply agreement but the pro-competitive effects arising out of the agreement outweigh the anti-competitive effects of the agreement;
- Keeping in mind the mitigating factors, the penalty at the rate of 3% of average turnover of BKL and KFB is reduced to 1% of the average turnover; and
- BooTube’s appeal is dismissed as Luminous Sports is not dominant in the market for broadcasting sports on television or the internet.
39. Aggrieved by the decision of the COMPAT, KFB and BKL filed an appeal with the Supreme Court on the issue of violation of Section 4 of the Competition Act and have raised all the grounds raised at the CCB and the COMPAT.

40. Rodidas also appealed the decision before the Supreme Court of Bohemia challenging the findings of the COMPAT on the issue of violation of Section 3(4).

41. BooTube filed an appeal against the COMPAT’s finding on Luminous Sports’ dominance.

42. During the pendency of the Appeals, X Sports (for and on behalf of KSL) filed an Application under Section 53N of the Competition Act before the COMPAT claiming compensation. The COMPAT passed an order stating that the compensation claims would be heard after the Supreme Court passed a final order in the appeals against its order.

43. X Sports challenged the Order of the COMPAT to put the compensation application under abeyance before the Supreme Court, saying that the conditions under Section 53N had been met and, therefore, the COMPAT was bound to initiate compensation proceedings.

44. The Supreme Court admitted the civil appeals, and directed that all the related matters be listed for final hearings together.

45. The Supreme Court will now listen to all the arguments including relating to the issue of the Section 53N Application, along with the substantive issues involved in the case.

NOTE:
1. Lawyers representing both sides are required to address the arguments that are specifically mentioned in the Proposition. They are, however, free to make any other arguments that they deem fit. Lawyers for both sides are encouraged to explore additional arguments related to jurisdiction as well as merits. However, no arguments regarding the jurisdiction of the Supreme Court shall be entertained.

2. BKL, KFB, Cougar, BooTube and Media Bohemia will be represented by the lawyers for ‘A’. X Sports, Luminous Sports, Rodidas, and the CCB will be represented by the lawyers for ‘R’.
3. All civil suits mentioned in the Proposition relating to these matters are pending adjudication.