



COMPETITION COMMISSION OF INDIA

Case No. 03 of 2021

In Re:

**Confederation of Professional Baseball Softball Clubs
A-119, 1st Floor, Krishe Emerald
Wework, Kondapur Main Road
Laxmi Cyber City, Whitefields Kondapur
Hyderabad
Telangana -500081**

Informant

And

**Amateur Baseball Federation of India
B - 19, 1st Floor, Sushant Lok, Phase 2
Sector - 56
Gurugram
Haryana--122011**

Opposite Party

CORAM

**Mr. Ashok Kumar Gupta
Chairperson**

Ms. Sangeeta Verma

Member

**Mr. Bhagwant Singh Bishnoi
Member**

Order under Section 26(1) of the Competition Act, 2002

1. The present Information has been filed by Confederation of Professional Baseball Softball Clubs (CPBSC/ 'the Informant') on 02.03.2021 under Section 19(1)(a) of the Competition Act, 2002 ('the Act') against Amateur Baseball Federation of India (ABFI/ 'Opposite Party'/ 'OP') alleging *inter alia* contravention of the provisions of Section 4 of the Act.



Brief Facts

2. As per the averments made in the Information, the Informant is a not-for-profit organisation registered and incorporated under Section 8 of the Companies Act, 2013 on 23.06.2020. The Informant avers to work with the sole objective of promotion and development of sports of baseball and softball in India. The Informant, as a member of the baseball ecosystem, engages with players, coaches, clubs, and other partners in India and abroad. OP is a society registered under the Haryana Registration and Regulation of Societies Act, 2012 and it has been recognized as National Sports Federation by Ministry of Youth Affairs and Sports, Government of India and is primarily working for the general promotion of baseball and players. It is the responsibility of ABFI to conduct Zonal, National and International Baseball Tournaments in India. ABFI is affiliated to Baseball Federation of Asia (BFA) and also to World Baseball and Softball Confederation (WBSC).

3. The Informant has scheduled to organise 'Club National 2021' Championship in Hyderabad, India during 16.02.2021-21.02.2021 with an objective to provide a platform for the best baseball clubs to compete with each other and also intended to encourage players to enhance their skill in their respective playing careers in order to play in the major baseball leagues.

4. The Informant further states that it has received 14 (fourteen) club registration requests to participate in the aforesaid event and it shortlisted 8 (eight) clubs in the final pool for the event. Subsequently, it has come to the knowledge of the Informant, that a letter dated 07.01.2021 was sent by ABFI to the Presidents/ Secretaries of State Baseball Associations throughout the country prohibiting the State Associations from dealing with bodies and leagues not recognised by it and threatening with disciplinary action if any of the players took part in the leagues and tournaments not recognised by it.



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5. As a consequence of the OP letter, the clubs who had paid their registration fees and expressed their interest to participate in the event started withdrawing their participation due to the fear of getting banned and threats by the OP. Resultantly, the Informant had to cancel the ground, transportation, accommodation bookings made for the event leading to severe financial distress for the organisation. The Informant rescheduled the event to 30.03.2021-04.04.2021 and announced the revised schedule to all the members of the event.
6. Subsequent to the filing of the Information, the Informant brought to the attention of the Commission, another communication dated 01.03.2021 issued by ABFI to its State Associations whereby OP announced to conduct the 34th Senior National Baseball Championship from 29.03.2021-03.04.2021 at Nandyal, Kurnool in Andhra Pradesh. The Informant alleges that the motive of OP in organising this event was to sabotage the event of the Informant by scheduling it during 29.03.2021-03.04.2021 *i.e.* starting it just one day prior to the beginning of the Club Nationals 2021 and closing one day prior to the closing of the same. In the said letter, OP has directed that that no team will be allowed to leave the station before the closing ceremony of the championship and also informed that men and women players will be selected during the said championship by Selection Committee for participation in forthcoming International events.
7. The Informant has delineated the relevant market as market of organising, conducting baseball tournaments, leagues and alleges that it has been denied access to utilise the services of players and caused obstructions in its engagements with the State Baseball Associations, which is a blatant misuse of the regulatory power of OP and a clear contravention of the provisions of Section 4(2)(c) of the Act. The Informant also alleges that OP has abused its dominance as it is placing restrictions on players participating in tournaments/private professional leagues not recognised by ABFI and the same is a violation of Sections 4(2)(a)(i) and 4(2)(b)(i) of the Act.



8. The Commission considered the Information in the ordinary meeting held on 23.03.2021 and directed to forward a copy thereof to OP with a direction to file its para-wise reply thereto, with an advance copy to the Informant. The Informant was thereafter allowed to file its rejoinder thereto, if so desired. The reply and rejoinder of the parties have since been received.

OP's Reply

9. OP in its reply submitted that it may be a person as defined under Section 2(i)(v) of the Act, however, it is not involved in any commercial activities and as such not an 'enterprise' in terms of the definition thereof as provided under Section 2(h) of the Act. It is also submitted by OP that it is not in a dominant position in the market and so has no occasion to abuse the same.
10. OP further submitted that it is not aware of the functioning of the Informant, as it is not an affiliated body to ABFI. It was reported to ABFI that some un-affiliated organizations were planning to conduct Baseball Tournaments, only with a profit motive, without the permission or approval of ABFI and since it is not in the best interest of the Baseball Game as such or the players, ABFI with a view to restrict such illegal and unauthorized events, sent letter dated 07.01.2021 to the office bearers of the affiliated State Baseball Associations requesting them not to entertain such unrecognized bodies to conduct such events.
11. OP further submitted that letter was issued without any *malafide* intention or ill-motive to any particular organization but to apply generally, all over India in the best interest of the game and its players. The restrictions are only to the players who come under the purview of the affiliated State Associations and not to the general public. OP is not aware as to how the aforesaid letter affected the Informant or its activities, since OP has never dealt with any club who paid registration fee and expressed interest to participate in their event. OP is not having any control over such Baseball Clubs or their players. ABFI is having control only over the players attached to the Affiliated State Associations or the District Associations



and so ABFI is not causing any obstructions to the functioning of the CPBSC or its players. Therefore, there is no violation of the provisions of Section 4 of the Act.

Rejoinder of the Informant

12. The Informant submitted that OP conducts tournaments and participates in international events and generates revenue through such activities which are economic in nature hence they fall within the purview of the term 'enterprise' as defined under Section 2(h) of the Act.
13. The Informant emphasised that OP has failed to understand and acknowledge that the Informant being an independent body working with the sole objective of promotion and development duly incorporated under the Companies Act, 2013 as specified in the Memorandum of Association ("MOA") and Articles of Association ("AOA"), is not obligated or by any other means to seek the approval, permission or seek recognition of ABFI to conduct an independent and private baseball competition.
14. It is further submitted by the Informant that for conducting a national level tournament or competition by an NSF, it should be participated by at least 2/3rd teams from the affiliated bodies whereas the 34th Senior National Championship has seen participation only from 12 men teams and 9 women teams. The impugned acts of ABFI were carried out with the sole motive to conduct the competition during the same dates of Club Nationals 2021 of the Informant, with an intent to disrupt and sabotage the event by refraining the players from participating in the Club Nationals 2021.
15. The Informant submitted that the announcement to conduct the 34th Senior National Baseball Championship from 29.03.2021 to 03.04.2021, starting one day prior to the beginning of the Club Nationals 2021 and closing one day prior to the closing of the Club Nationals 2021 so that no player considers appearing or making himself available for the event in Hyderabad was to only sabotage the Informant event.



Therefore, CPBSC had to reschedule Club Nationals 2021 to June, 2021 by suffering financial loss and mental trauma.

Analysis

16. The Commission has considered the Information and other material available on record and based on the allegations levelled in the Information, it is observed that the Informant is primarily aggrieved of the communications sent by ABFI to its affiliated State Baseball Associations whereby and whereunder they have been requested not to entertain unrecognized bodies and not to allow State level players to participate in any of the tournaments organized by them. The communication also threatens that strict action will be taken against the players who participate in such tournaments. This is alleged to be an abusive conduct by ABFI in contravention of the provisions of Section 4 of the Act.
17. Before examining the issues projected in the Information, the Commission deems it appropriate to deal with the preliminary objection raised by ABFI that since it is not involved in any commercial activity, it is not an 'enterprise' within the meaning of the term as defined in Section 2(h) of the Act and as such it cannot be proceeded against under the Act.
18. In this backdrop, it is apposite to note that Section 2(h) of the Act defines 'enterprise' *inter alia* as a person or a Department of the Government, which is engaged in *any* activity, relating to the production, storage, supply, distribution, acquisition or control of articles or goods, or the provision of services, *of any kind*. The definition is very wide in its amplitude and covers all activities of specified nature of any kind. Further, as per Section 2(u) of the Act, 'service' means service of any description which is made available to potential users and includes the provision of services in connection with business of any industrial or commercial matters such as banking, communication, education, financing, insurance, chit funds, real estate, transport, storage, material treatment, processing, supply of electrical or other energy, boarding, lodging, entertainment, amusement, construction, repair, conveying of news or information and advertising.



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19. The thrust of the definition of the term 'enterprise' is on the economic nature of the activities discharged by the entities concerned. It is immaterial whether such economic activities were undertaken for profit making/ commercial purpose or for philanthropic purpose. Thus, even non-commercial economic activities would be subject to the discipline of the Act as the Act does not distinguish economic activities based on commercial or non-commercial nature thereof. In ascertaining as to whether an entity qualifies to be an 'enterprise', the Commission examines this aspect from a functional than a formal approach.
20. Viewed in the above statutory scheme, from the allegations made in the Information, it cannot be gainsaid that ABFI *inter alia* is involved in controlling the provision of services which is manifested from its communication dated 07.01.2021 whereby the players affiliated to its State Baseball Associations have been warned not to participate in the tournaments organized by the bodies which are not recognized by it. Accordingly, the plea is misdirected and is rejected. It is held that ABFI is an 'enterprise' within the meaning of the term as defined in Section 2(h) of the Act and is therefore subjected to the discipline of Section 4 of the Act which prohibits abuse of dominant position. Moreover, it is also pertinent to point out that Section 3 of the Act prohibits anti-competitive agreements and *inter alia* mandates that no enterprise or association of enterprises or person or association of persons shall enter into any agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition within India. This provision does not confine the entities, which are subject to this prohibition, to be an 'enterprise' as even the 'person' and 'association of persons' have been included within its purview. Further, the specified conduct of such entities in Section 3(3) of the Act, is presumed to have an appreciable adverse effect on competition. As pointed out previously, ABFI is stated to be registered under the Haryana Registration and Regulation of Societies Act, 2012 and as such qualifies to be a 'person' as defined in Section 2(1) of the Act being an association of persons.



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21. Having held ABFI to be an 'enterprise', the Commission now proceeds to assess the impugned conduct of ABFI within the parameters of Section 4 of the Act which prohibits abuse of dominant position.
22. In this regard, first the relevant market needs to be defined and thereafter the dominance of the enterprise or group concerned has to be ascertained therein before proceeding any further to examine the alleged abusive conduct.
23. As per Section 2(r) of the Act, 'relevant market' means the market which may be determined by the Commission with reference to the relevant product market or the relevant geographic market or both. Further, the term 'relevant product market' has been defined in Section 2(t) of the Act as a market comprising all those products or services which are regarded as interchangeable or substitutable by the consumer, by reason of their characteristics, prices or intended use. The term 'relevant geographic market' has been defined in Section 2(s) of the Act to mean a market comprising the area in which the conditions of competition for supply of goods or provision of services or demand of goods or services are distinctly homogenous and can be distinguished from the conditions prevailing in the neighbouring areas.
24. For determining whether a market constitutes a 'relevant market' for the purposes of the Act, the Commission is required to have due regard to the 'relevant geographic market' and the 'relevant product market' by virtue of the provisions contained on Section 19(5) of the Act.
25. To determine the 'relevant geographic market', the Commission, in terms of the factors contained in Section 19(6) of the Act, is to have due regard to all or any of the following factors viz., regulatory trade barriers, local specification requirements, national procurement policies, adequate distribution facilities, transport costs, language, consumer preferences and need for secure or regular supplies or rapid after-sales services.



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26. Further, to determine the ‘relevant product market’, the Commission, in terms of the factors contained in Section 19(7) of the Act, is to have due regard to all or any of the following factors *viz.*, physical characteristics or end-use of goods, price of goods or service, consumer preferences, exclusion of in-house production, existence of specialized producers and classification of industrial products.
27. Thus, in any case of alleged abuse of dominant position, delineation of relevant market is important as it sets out the boundaries of competition analysis. Proper delineation of relevant market is necessary to identify in a systematic manner, the competing alternatives available to the consumers and accordingly the competitive constraints faced by the enterprise under scrutiny. The process of defining the relevant market is in essence a process of determining the substitutable goods or services as also to delineate the geographic scope within which such goods or services compete.
28. In light of the aforesaid statutory landscape, the Commission proceeds to determine the relevant market in the instant case.
29. The Informant has proposed the relevant market as “*the market of organising, conducting baseball tournaments, leagues, competitions in India for both men and women*”. In the instant case, looking at the nature of allegations and the issues arising therefrom in light of the statutory scheme, the Commission *prima facie* assesses the relevant product market as organization of domestic baseball leagues/events. Further, in the proposed event, baseball club from any part of India may participate, the relevant geographic market may be taken as whole of India.
30. Accordingly, *prima facie*, the relevant market appears to be ‘*market for organization of baseball leagues/events/ tournaments in India*’.
31. On the issue of dominance of OP in the afore-delineated relevant market, the Commission notes from the submissions of OP itself that it is recognised as a National Sports Federation by the Ministry of Youth Affairs and Sports,



Government of India and is primarily working for the general promotion of baseball and the players. It is also stated by OP in its reply that ABFI is affiliated to Baseball Federation of Asia, which is a continental level body and also to World Baseball and Softball Confederation, which is an International organization. ABFI is stated to have 26 affiliated State Associations across the country in 6 different zones. is an apex body in the country for promotion and development of baseball game recognized by Ministry of Youth Affairs & Sports, Government of India and Indian Olympic Association. Apart from conducting zonal, national and international baseball tournaments in India, ABFI is admittedly entrusted with the task of selecting Indian Baseball Team to participate in the international events.

32. In view of such admitted apex position of ABFI in the baseball ecosystem coupled with linkages/ affiliations with continental and international organizations, it is axiomatic that ABFI plays a decisive role in the governance of this sport discipline in the country. Accordingly, the Commission is of *prima facie* opinion that ABFI is in a dominant position in the '*market for organization of baseball leagues/events/ tournaments in India*'.
33. As regards the alleged abusive conduct, the Commission notes that ABFI by issuing communication dated 07.01.2021 to its affiliated State Baseball Associations requesting them not to entertain the unrecognised bodies and further by requesting them not to allow their respective State players to participate in any of the tournaments organised by such unrecognised bodies, has violated the provisions of Section 4(2)(c) of the Act as it results in denial of market access to other federations. Also, such conduct results in limiting and restricting the provision of services and market therefor, in contravention of the provisions of Section 4(2)(b)(i) of the Act. It is pertinent to mention that ABFI has acknowledged in its response that it has sent the communication dated 07.02.2021 to its affiliated State Associations.



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34. The Commission also notes that the communication dated 07.02.2021 has further warned of strict action against the players who participate in the tournaments organised by bodies which are not 'recognised' by ABFI. Such conduct imposes an unfair condition upon the players and thereby falls foul of the provisions of Section 4(2)(a)(i) of the Act besides stultifying the very objective of promoting the cause of baseball in India, which a National Sports Federation is obligated to discharge.
35. In view of the foregoing, the Commission is of the *prima facie* opinion that ABFI has violated the provisions of Section 4 of the Act through its impugned conduct and the matter warrants investigation. Further, though the Informant has alleged contravention of the provisions of Section 4 of the Act only, yet looking at the decisions taken and communicated by ABFI, the Commission is of the opinion that the impugned conduct may also be examined by the DG within the framework of Section 3 of the Act, as highlighted previously in this order, as the impugned acts of ABFI in communicating its decision *vide* letter dated 07.01.2021 *prima facie* seem to limit or control provision of services, and thereby stand captured within the framework of Section 3(1) read with Section 3(3) of the Act.
36. Resultantly, the Commission directs the DG to cause an investigation to be made into the matter under the provisions of Section 26(1) of the Act. The Commission also directs the DG to complete the investigation and submit the investigation report within a period of 60 days from the receipt of this order.
37. It is also made clear that nothing stated in this order shall tantamount to a final expression of opinion on the merits of the case and the DG shall conduct the investigation without being swayed in any manner whatsoever by the observations made herein.



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38. The Secretary is directed to send a copy of this order along with the material available on record to the DG forthwith.

Sd/-

**Ashok Kumar Gupta
(Chairperson)**

Sd/-

**Sangeeta Verma
(Member)**

Sd/-

**Bhagwant Singh Bishnoi
(Member)**

New Delhi

Date: 03/06/2021