

Competition Commission of India

Case No. 73/2011

Dated 28.02.2013

Informant : (i) Mr. Dhanraj Pillay, Pune
(ii) Mr. Gundeep Kumar, Jalandhar, Punjab
(iii) Mr. Gurbax Singh Grewal, Mumbai
(iv) Mr. Balbir Singh Grewal, Ludhiana, Punjab
(v) Mr. Alloysius Edwards, Hyderabad.
(vi) Mr. V. Bhaskaran, Chennai

Opposite Parties : Hockey India, New Delhi – 110 016.
FIH Rue du Valentin 61, CH – 1004, Suisse

Order under Section 27 of the Competition Act

Six Olympians, who had represented Indian Hockey in various tournaments world over and who had brought laurels to the country have submitted information against Hockey India on 15.11.2011 for abusing its dominance in the field of hockey.

2. Hockey India (H.I.) is a society registered under Societies Registration Act with headquarters at Delhi. It is responsible for conducting, governing international hockey in which the Indian team participates all over the world and India. Hockey India is affiliated to the international hockey federation (FIH). HI selects the Indian team for international competitions. HI is a part of a pyramidal structure. In accordance with the Olympic Charter, all sports is governed and regulated throughout the world by a structure at the apex of which there is an international body. In hockey the international body is FIH. FIH is an association of different national hockey federations and the officials of the FIH are elected by the representatives of the national federations.

According to the Olympic charter, there has to be only one national body to represent a particular sport in every country. The National federation is required to be endorsed by the authority governing sports in the country.

3. International Hockey Federation (FIH) was formed in the mid 1920s. The national body governing hockey in India also came into existence around the same time. It was known as the Indian Hockey Federation (IHF). IHF had the mandate to run the domestic hockey in India and select the team for international events in India and abroad. IHF was recognised by the Sports Ministry of the Govt. of India as well as by the FIH. In the year 2000, FIH withdrew the recognition granted to IHF. The main reason was that IHF ran men's hockey only whereas FIH wanted one body to run both men's and women's hockey. Subsequently in 2008, an official of IHF was caught in a sting operation while negotiating a bribe from a player who wanted to play in an international event. Keeping into account the mandate that one body should regulate hockey in a country, IHF and women's hockey federation formed Indian Hockey Confederation (IHC) but men's hockey and women's hockey more or less were run separately and the administration of hockey remained as it was before the formation of IHC. FIH was aware of it and after the sting operation FIH decided that hockey should be run by another association. FIH therefore helped the formation of Hockey India which was to be the body to run hockey in India. HI was registered in 2009. It was recognised by the Sports Ministry as well as the Indian Olympic Association. IHF as well as HI have as their affiliates different state associations in India. Thus, hockey like sports is regulated from the grassroots level to international level. In hockey between the national federations and FIH, there are also continental federations. In the year 2010, IHF challenged the jurisdiction of FIH and HI in the Delhi High Court. On the other hand around the same time Ministry of Sports derecognised HI and recognised IHF. The Delhi High Court in its judgement held IHF to be the correct body to administer sports of hockey

in India. Further against its derecognition by the Sports Ministry HI filed a writ in the Supreme Court. Both the writ and the SLP filed in the Supreme Court are pending disposal by the apex court. Meanwhile the Supreme Court finding that as FIH was not willing to recognise IHF concluded that if permission was not allowed to HI, no team from India would be able to participate in International tournaments. Therefore by interim orders it permitted HI to select teams for participation in international events.

4. In the year 2010, Indian Hockey Federation and Nimbus Communications Ltd. proposed to start a hockey league in India. In this league, 8 city based teams were to participate and that the players who participated in the league were entitled to fees. The reason for Nimbus Communications Ltd. to take the permission and partner with IHF was the fact that IHF was regarded as the national federation representing hockey in India. The basis for this was the decision of the Delhi High Court. IHF was also in a position to supply stadiums and officials as infrastructure to the said league. The league was to be known as World Series Hockey (WSH).

5. Most of the Indian international players signed up legally binding contracts with the organisers of WSH. The organisers also wanted to bring famous international players from other hockey playing countries as this would have increased the value of WSH league and would have led to higher returns. But this was not possible without the approval of the league by FIH. Therefore the organisers of WSH entered into correspondence with the officials of FIH and also met the officials of FIH around 2nd March 2011. But FIH did not approve of the WSH league. In the very first week of March 2011, FIH convened a meeting and came out with Byelaws 5.4 to the FIH statute on 11.03.2011. As FIH was the apex international body for hockey, the byelaws were binding on all the continental and national associations.

6. By the bye laws FIH introduced a concept of sanctioned and unsanctioned events. In the said bye laws it has been stated that hockey was organised in a pyramid structure with FIH being the sole and international executive body. It was stated that only one national body can be recognised and admitted into the membership of FIH. In fact in the byelaws it has been stated that only Hockey India is recognised as the national association for hockey in India.

7. The purpose of introducing sanctioned/unsanctioned events has also been mentioned in the bye laws. It has been stated in the bye laws that having a pyramid governance structure is mandatory under the Olympic movement and that it was also necessary for the promotion and protection of sports. The reasons for having sanctioned/unsanctioned events have been stated to be (i) uniform application of rules protecting the sport and stakeholders (ii) to hold all participants accountable under the rules (iii) enforcing anti doping rules (iv) enforcing other rules for the benefit of the participants (v) to prevent the integrity of sports in a fair and transparent manner (vi) to organise and conduct the sporting calendar in order to promote sports (vii) further to ensure that the national bodies have their best players available for national duty and that the national bodies were in a position to have players for a preparatory period for international events (viii) players were required to give precedence to national competitions over other events.

8. Regarding unsanctioned events, the bye laws state that they are not developed as an integrated and coordinated part of the sporting calendar and that they may cut across the sporting calendar. The unsanctioned events are stated to undermine the primacy of the national hockey sports body and are not in the interest of hockey as sports. It was stated that unsanctioned events can be damaging to sports and that as they fall outside the jurisdiction of FIH, the organisers were not

accountable to the rules and regulations of sports. It has been stated in the byelaws that public cannot distinguish between sanctioned and unsanctioned events and that if any problem occurs, public confidence in sports would suffer and the integrity of the sports would be undermined.

9. The byelaws state that a national association cannot participate in any unsanctioned event. Further the athletes, individuals and other organisations under the jurisdiction of national association are prohibited from participating in unsanctioned events. The national associations were also required to not permit any athlete from participating in an unsanctioned event in another country without obtaining a no objection certificate from the said association.

10. The byelaws came into force immediately and each national association was directed to implement them w.e.f. 31st March 2011 (Effective date). The prohibitions were to apply after the effective date and that they would have no retrospective effect but they were to apply to all events taking place after the effective date. It has also been stipulated in the byelaws that no action would be taken against a national association, organisations or individuals who had entered into legally binding commitments prior to the effective date. It has also been stated that the regulations existing prior to 31.03.2011 would apply to such commitments. The byelaws define domestic events, international event and home national association. In the byelaws vide an explanatory note it is envisaged that if there are more than one national association, and if a player has not yet played for any one of them, then the player has got to opt for one association and if he wants to play for an association for which he has not opted then he would have to obtain a no objection certificate from the association for which he had opted.

11. A sanctioned event has been defined as an international event organised/sanctioned by the Continental Federation or FIH and a domestic

event needs to be organised or sanctioned by the relevant Continental Federation or the National Association or the FIH. An unsanctioned event was an event which was not sanctioned. The procedure for sanctioning a particular event has been laid down in the byelaws. It has also been stated that the sanction of the domestic events would be open only to the teams affiliated to the national association and it had to be staged entirely within the national association's territory. The event had to be organised or sanctioned by a national association i.e. in the case of India, Hockey India. If the participants in the domestic event are from other countries then the participants had to take permission of the Continental Federation or the national association of the country where the person resides. It has been stated in the byelaws that they are to be followed by all the national associations or they can be penalised.

12. The informants have submitted a copy of the letter of FIH dated 1st June, 2011. In the said letter it is stated that FIH and Hockey India are in the process of organising a professional hockey league in India in 2013. It has also been stated in the said letter that a World Series Hockey was being organised by a private promoter namely Nimbus Sports in collaboration with the Indian Hockey Federation which was not a member of recognised by FIH. It was also stated that World Series Hockey did not have the support of FIH or Hockey India and therefore it was an unsanctioned event. It was stated that if a participant participated in an unsanctioned event then he cannot participate in a sanctioned event. It was also stated in the said letter that any official who participated in World Series Hockey would be excluded by his/her national federation from participation in sanctioned events for a period up to 12 months or more. FIH further stated that such officials cannot participate in future FIH events for at least a similar period. This letter was addressed to umpires managers and technical officials in the sport of hockey. On this 17th October, 2011 Hockey India issued a press release stating that World Series Hockey promoted by Indian Hockey Federation was not sanctioned

by FIH and those who participate would have to suffer serious implications.

13. After the issue of the byelaws on 11th March, 2011 Hockey India came out with a Code of Conduct (COC) for all the players who participate in domestic and international competitions. According to this code of players in India from the age under 16 to Masters could participate only in sanctioned events of Hockey India. It has been stated in the code that disciplinary action would be taken against a player who participates in an event not sanctioned by Hockey India. The players were also required to obtain no objection certificate from Hockey India before playing for any foreign team/club. A violation of the terms of code of conduct would disqualify a player from representing India again.

14. The information providers have also submitted a copy of letter written by the legal counsels of FIH to the legal counsels of Nimbus. This letter is dated 8th February, 2011. In this letter FIH has stated that Nimbus should have discussed this issue with the national association so that the event could be successfully integrated into the hockey calendar for the mutual benefit of all. It has also been stated that before announcing the league members should have contacted FIH as well as Hockey India and that members should not have collaborated with the Indian Hockey Federation. It has been stated in the said letter that FIH had the right to decide as to who would become a member of FIH and that a court cannot decide as to who could be a member of the FIH. Otherwise it would violate the fundamental principle of autonomy of sports movement in accordance with the Olympic Charter. Incidentally in this letter, FIH has mentioned the facts which are mentioned as the objects of the byelaws. It has also been mentioned that unsanctioned events were not subject to the jurisdiction of International Federation and its national members. In a sense by this letter dated 8th February, 2011, the World Series Hockey was an unsanctioned event even though till 11th

March, 2011 there was no mention of unsanctioned events in the byelaws of FIH. It is therefore clear that in February 2011 FIH had decided not to approve the World Series Hockey though the byelaws were framed subsequently. Information providers also submitted a copy of FIH statutes.

15. In the backdrop of the material submitted, the information providers stated that Hockey India and FIH wanted to suppress competition for other organisers of hockey in India including WSH and that they were using their monopoly of conducting international events in India to ensure that hockey players were forced to participate in the league that it planned to conduct in 2013. The complaint was submitted before the start of the WSH hockey league. The information providers have stated that the behaviour of Hockey India was anticompetitive and that Hockey India had entered into anticompetitive agreements with hockey players and abused its position of strength in a monopoly market to foreclose the market for conducting domestic events in India.

16. It has been stated that the relevant market for hockey in India was the "market for conducting in governing international hockey activities for both men and women in India". It was argued that this service provided in the market could not be regarded as substitutable or interchangeable with any other service either from the demand or the supply side. It was stated that the relevant market had to be decided on the basis of supply side substitution.

17. It was stated that the functions of a sporting Association are as follows:

- (i) selecting teams at the national level for various age-groups
- (ii) arranging for training facilities for players.
- (iii) Talent hunt for new players.
- (iv) Formulating sporting rules for the game.

- (v) Issuing code of conduct for the players.
- (vi) Organizing competitions
- (vii) Organizing and coordinating international events like the Olympics, the Commonwealth Games and the Hockey World Cup.
- (viii) Some other functions include assigning a range of rights including television, pay-TV and radio broadcast rights
- (ix) Sponsorship and merchandising rights for hockey events.

It was stated that the regulation or an organization in sports events constituted a service market. Reliance was also placed on the decision in the case of *David Meca-Medina and Igor Majcean v. Commission of the European Communities [Case c-519/04]*. In this case European Court had stated that economic activity may take place at various levels in the sport sector including individual sports clubs and sports associations. It was argued that governing international hockey activities in India also constituted a separate and unique service market and the supply of such service cannot be considered substitutable or interchangeable with any other service. It also argued that the market for conducting international hockey events was different from the market of domestic hockey activity. The reasons given are that for conducting and governing international events, recognition was required by the service provider from international sporting associations like IOC, FIH etc. It was stated that the market for international hockey and domestic hockey are different markets and are not interchangeable. Reliance was also placed on the decision in Europe in the case of professional snooker tournaments i.e. *Hendry v. The World Professional Billiards & Snooker Association Ltd. (WPBSA), [2001 EWCA Civ 1127]*. It was stated that a player was dependent on the tournament organizers because without tournaments a player would have no opportunity to show his skills for profit. It was again stated that the players who constituted consumers do not consider

domestic activities in sports as interchangeable and substitutable international sport activities. As far as the geographical market was concerned it was argued that it was a pan India market.

18. It was argued that in the market for conducting of hockey activities the players were consumers. Hockey activities also decide the remuneration of the players as well as the expenditure involved on the training and equipments for the training of players. It was stated that different countries would constitute different relevant geographic markets. Further it was argued that the competitions for supply and demand of conducting all activities in India are homogeneous in the whole of India.

19. The information providers then took into account the Code of Conduct agreements entered into by Hockey India with the players. It was argued that the agreements entered into by the players and Hockey India were vertical agreements which led to an exclusive supply agreement and therefore it falls under Section 3(4) of the Competition Act. It was stated that the Code of Conduct was an agreement which prevented a player from participating in unsanctioned events. If this Code of Conduct was read with the intention of starting a rival hockey tournament by that FIH it was clear that the Code of Conduct agreements were an anticompetitive as they led to exclusive supply agreements under section 3(4) of the Competition Act. It was stated that such unsanctioned event participation creates a barrier for existing and potential entrants to conduct events in India such as the league of World Series Hockey and it causes an appreciable adverse effect on competition in India.

20. It was stated that Hockey India was an enterprise under section 2(h) of the Competition Act. The IPs have stated that the conduct of hockey team and tournaments within India as the sole prerogative of HI as mentioned in its memorandum of association (MoU) makes it a

monopolist in the service of hockey in India. It was stated that Hockey India was not only a regulator but also an operator in the field of hockey. To support this contention the information providers have relied on a decision of the European Court in case Greek Automobile and Touring Club. It was also stated that the Code of Conduct agreements made the players totally dependent on Hockey India. It was argued that the COC agreement was a complete and unreasonable restriction on the ability of hockey players to participate in the tournaments that were not conducted by HI or FIH. It was therefore stated that HI was the only body in India which could approve tournaments and the players were required to sign COC agreement as a precondition of being part of the Indian national hockey team. It was therefore argued that each COC agreement represents an exclusive supply agreement within the provisions section 3(4)(b) of the Act. According to the COC agreement disciplinary action could be taken against a player who participated in an unsanctioned event. If a player has been selected for the national team but if he participates in an unsanctioned event, he can then be disqualified from the national team. It was stated that HI was the only body in India to sanction domestic events in India. According to FIH's guidelines the factors required to be examined before sanctioning a tournament are (i) capacity of an organizer to make a binding, unqualified, unconditional and legally enforceable commitment to stage a particular event (ii) the maintenance and promotion of health (iii) safety and welfare of players (iv) prevention of calendar clashes with existing events and (v) a meaningful role in the in the promotion and development of the sport. It was thus stated that the COC agreement was an exclusive supply agreement for playing hockey by both men and women in India.

21. It has also been mentioned in the complaint that each COC agreement causes AAEC in India in violation of section 3(4) of the Competition Act. To strengthen the arguments the informants have led stress on the conditions laid down in section 19(3) of the Competition Act.

It was stated that an exclusive supply agreement which restricts the choices for the end consumers contravene Section 3(4) of the Competition Act.

22. It was stated that according to the COC agreement entry barrier is created for new players into the relevant market for conducting hockey events. According to the COC agreement each time a player wishes to participate in a foreign team or a club he has to take NOC from HI. This results in the following three barriers to entry namely (i) it has the effect of imposing a blanket prohibition on players from participating in any event which has been not sanctioned by HI. (ii) staging the tournament becomes commercially unviable because it becomes difficult for an adequate number of players to participate. (iii) as fewer top-class players are able to participate in the tournaments, the organizers are unable to amass adequate resources to stage these events and therefore the level of investment as well as the earnings of hockey players suffer. It was stated that these clauses constitute regulatory barriers for conducting independent tournaments in India. In support of these contentions reliance was placed on the ruling of the European Court of Justice in the *Motorcycle Case*. Relying on this decision, it was stated that such agreements denied access to other operators in the relevant market.

23. It was also stated by the information providers that HI and FIH were planning to launch a hockey league in India in 2013 and the format was to be like that of Indian Premier League (IPL), a popular Indian domestic cricket league. The format of the league proposed by HI was comparable to the WSH. It was argued that this hockey league proposed by FIH and HI was announced with the objective of wiping out the only existing competitors i.e. WSH. It was further argued that HI had not sanctioned the WSH tournament in India and had not given any reason for the same. It has been stated that FIH/HI not only banned players but also officials for participation in unsanctioned events. It was argued that

the HI decision whether to sanction or not sanction an event is not made in the best interest of the sport or for safeguarding the interests of hockey players and the public. It was stated that the HI decision not to sanction the WSH was with the intention of protecting and increasing the commercial viability of its own promoted tournament, scheduled to be held in 2013. The information providers further stated that the non-sanctioning of the event would result in big losses for the sponsors, members, sports fraternity as well as other persons. It was therefore stated that the impact of the COC agreement would be felt in all kinds of hockey activities such as organization, sponsorship, broadcasting etc. Thus the COC agreement implemented by HI would result in driving the existing competitors out of the market for conducting hockey activities in India.

24. It was also argued that as a result of the restrictions imposed under the COC agreement if a hockey player played in unsanctioned events he was likely to suffer severe disciplinary actions including being barred from representing the Indian team in any international event. It was stated that in economic terms imposing restrictions on players would cause severe adverse affects in the market for providing hockey playing services. By the COC agreement HI had denied the following benefits for players (i) important source of remuneration (ii) important source of additional support for players (iii) important source of practice and training and (iv) development of infrastructure such as stadiums etc. Thus the COC agreement would adversely affect the players who play hockey in India.

25. It has also been stated in the information that HI was a dominant player in the market for conducting and governing international hockey activities for men and women in India. It was stated that the monopoly power was obtained due to its regulatory powers especially as HI was the national association for running hockey in India. It was also stated that HI

was affiliated to FIH and became the sole body for the conduct and governance of all hockey activities in India. This affiliation to FIH also conferred upon HI certain regulatory powers which enabled it to influence hockey players in its favour. As no hockey player could play in an unsanctioned event which are not approved by HI, it enabled HI to have the position of strength which enabled it to affect its consumers in its favour. It was therefore stated that section 4 was clearly applicable in this case. In the same connection reliance was placed on the decision in the case of *Minnesota Made Hockey, Inc. v. Minnesota Hockey, Inc* {F-Supp.2d-, 2011 WL 1833102 (D.Minn.)}. Reliance was also placed on the motorcycle case. It was therefore stated that the action of HI and its dominant position denied entry to the other operators.

26. It was stated that the barriers to entry in the market provide incumbent firms with significant market power and such a situation can arise through technological know-how, high capital cost regulatory barriers etc. It was stated that the service market for conducting and governing international hockey activities in India required special expertise of ex-player and ex-Olympians in the sport, public relations and publicity skills, ability to organize mega events etc. These requirements acted as a significant barrier to entry for new entrants in the market. Secondly recognition of international events by IOC and FIH was necessary to conduct and govern international events. It was further stated that there were a number of the regulatory barriers which deter entry of new players in the market. It was also stated that due to the high investment with significant barriers of entry in the market, there was a denial of market access to other entities.

27. The informants then considered consumer dependence and countervailing market power. It was stated that the hockey players constitute the demand-side in the service market for conducting and governing all international hockey events in India. It was stated that

hockey players could not force any countervailing pressure on the service providers i.e. HI because they were totally dependent on HI. It was stated that playing hockey constitutes an economic activity and that playing professional hockey at national level was the only source of livelihood for many players. It was therefore stated that without being selected for the national team or without obtaining permission to play hockey events, a hockey player would have no opportunity to exercise his skills for profit as well as pride. In this connection reliance was placed on the decision in the Snooker Case (supra).

28. It was then argued that HI was abusing its dominant position in the market of regulating international hockey activities for men and women in India and that this abuse was hit by the provisions of Section 4(2)(e) of the Competition Act. Section 4(2)(e) is applicable only if an enterprise is dominant in one market and tries to enter into, or protect, other relevant markets. It was argued that international hockey activities in India were separate from the market for conducting and governing domestic hockey activities in India. It was argued that if the power conferred upon HI was used to promote its own hockey event, it amounts to an abuse of dominance as under Section 4(2)(e) of the Competition Act. It was stated that the HI had abused its dominant position in the relevant market of regulating international hockey in order to conduct and govern domestic hockey activities. The power to take action against players participating in unsanctioned event along with the power to participate in international events allowed HI to have a monopolistic position in the domestic events of hockey in India. It was argued that the sequence of events shows that HI acting under the umbrella of the FIH had abused its power in the relevant market in the domestic hockey activities in India. It has been stated that HI was using its regulatory powers to promoting the exclusion of others. To support this view the informants relied on the decision of the Competition Commission of India in the *NSE case* as well as the decision of the European Union in the case of *Tetrapak International SA v.*

Commission, [1996] ecr i-5951. It was argued that HI can restrain the market for conduct of domestic hockey in India as it was the sole body which exercises this power. This gives HI significant advantage over other organizers such as IHF and enables it to leverage its dominant position in one market to protect its position in the other market. It was also argued that according to the Constitution of the FIH, FIH was precluded from organizing any domestic events in a particular country and this issue was to be examined with reference to the fact that in its 87 year old history FIH had not conducted any domestic event in any country. It was stated that even HI which was in the field of international hockey was barred by its own constitution from organizing or conducting such events. It was therefore stated that HI was abusing its dominant position and its conduct was a violation of section 4(2)(e) of the Competition Act.

29. The next issue raised was that HI's conduct constituted a denial of market access under Section 4(2)(c) of the Competition Act. It was stated that though denial of market access had not been defined in the Act but it can be understood that if a dominant enterprise engages in any conduct by which it forecloses the market or defers entry of new players in the market then it would constitute a denial of market access and would fall foul of the provisions of the Competition Act. It was further argued that HI had regulatory powers which allowed it to sanction or not sanction hockey tournaments in India. HI also had powers to take disciplinary action against players and officials who participated in unsanctioned events. It was again stated that HI had not sanctioned WSH in order to secure a market for a league which it proposed to launch in 2013. It was stated that by sanctioning tournaments in order to protect its rights, HI made it virtually impossible for competing tournament organisers to stage an event. Such action by HI also denied many hockey players to participate and show their skills. They acted as a barrier for the entry of many players in the field of hockey. The informants have stated that this had foreclosed the market for the

conduct of domestic hockey tournaments in India. In this manner market access was not allowed to (i) Indian hockey players for not competing in other tournaments (ii) for other tournament organisers for conducting world class hockey tournaments and (iii) to sponsors and broadcasting from other platforms on which they could advertise their products. This in effect constituted a denial of market access under Section 4(2)(c) of the Act.

30. To support these arguments the informants have relied on the case involving Federation International de 1' Automobile (FIA) which was the regulator for motor racing the world over. FIA was also engaged in commercial promotion activities of motor racing. This case came up before the European Commission and the Commission held that FIA had used its regulatory powers to force a competing series out of the market. In this particular case, the European Commission ordered a complete separation of the commercial and regulatory functions in relation to the FIA formula One World Championship and FIA World Rally Championship. Reliance was also placed on the decision in the case of the snooker case where the World Professional Billiards and Snooker Association (WPBSA) was the sole authority for snooker tournaments and was using its dominant position to ban players from participating in other snooker competitions. The Chancery Division in the U.K. held that such a rule was an abuse of dominant position by a governing body and declared the rule to be void. To support its case the informants have relied on a decision of the European Court in the Motorcycling case where a similar view had been held by the Court i.e. a conflict of interest as a regulator and an organiser of tournaments. Reliance was also placed on a decision of Australian Competition and Consumer Commission (ACCC) in case of Ice hockey dated 02.03.2010 in case No. C-2009/1391. In this case, Ice Hockey Australia had held that it had the power to suspend or expel any member of the IHA who had or was going to participate in any non sanctioned Australian or international hockey game or league. The ACCC

found these provisions to be in breach of competition laws for imposing a barrier to the establishment of rival hockey leagues reducing their competitive ability and reducing overall consumer choice. While coming to this conclusion ACCC was of the view that not only competition was effected but it also effected the ability of the rival leagues to attract new players. It also restricted the ability of players and officials to switch between sanctioned and non sanctioned competitions.

31. The informant providers therefore argued that by not sanctioning WSH, HI made the organization of tournaments not commercially viable and it also made hockey players and officials lose money. HI by creating restrictions has not allowed participation of players in domestic tournaments organised by other organisers. It was stated that such tournaments gave a platform to the players to show their skills. Participation in such tournaments would bring more players in the field of hockey and would lead to competitiveness in sports. It is the ultimate aim of hockey players to don the national colours in the international arena. But by introducing the concept of sanctioned/unsanctioned events, HI had barred players from participating in such tournaments.

32. The information providers have stated that with the economic development in India, sports industry was growing fast and having larger exposure to broadcast media, television and internet. Hockey is the national sports of India but there has not been much investment in hockey especially in training, infrastructure and equipments. It was stated that HI would be causing a loss to the promotion and development of sports in the country. If such anticompetitive practices were to be allowed, no event organiser not affiliated with HI or FIH would be able to conduct hockey activities.

33. It was further stated in the information that the revenue generated from broadcasting and sponsorship can be significant and is vital for the

sports and players. Sponsors/broadcasters were interested in wider public viewership. It was stated that by restricting the market, the sponsorship and broadcasting would suffer and less money would be ploughed in hockey. Such restrictions not only cause loss to the players but it also restricts choices for broadcasters and sponsors. It was therefore stated that by restricting the market and denying market access, HI had abused its dominant position under Section 4(2)(c) of the Companies Act.

34. The information providers thus asked for investigation to be carried out in the case. They also asked for the following actions to be taken by the Commission: -

- (i) In light of the above submissions, the information providers requests the Hon'ble Commission to pass an interim order in its favour under Section 33 of the Competition Act restraining HI from abusing its dominant position and entering into anti competitive agreements under Section 4 and Section 3(4) of the Competition Act and grant the following immediate reliefs:
- (ii) Restrain HI and FIH acting through HI, from acting in any manner which may adversely affect the conduct of the WSH tournament, including but no limited to preventing hockey players-who have entered into Players Contracts, as well as those who intend to participate in the WSH, as well as other match officials and other parties from taking part in the WS:H tournament and limiting their selection to the Indiana national hockey team;
- (iii) Restrain HI and FIH acting through HI, from doing any act or threatening to do any act that would interfere in any manner with the obligations of a hockey player under any existing or proposed players contract;

- (iv) Restrain HI and FIH acting through HI, from changing or amending the existing calendar of international hockey tournaments and training camps already set out by HI in their communication according to which the training camps for the Olympics were scheduled to start from 24th January 2012; and further direct that any changes to this calendar of events should not be made without providing at least 90 days notice, this is duly published; and
- (v) Any other order that the CCI may consider necessary in the present case.

B. Relief sought:

- (i) The information Providers further request this Hon'ble Commission to pass the following orders under Section 27 of the Competition Act:
- (ii) Direct that the COC Agreement be modified to the extent that it is in contravention of Section 3(1) read with Section 3(4) of the Competition Act;
- (iii) Direct that HI discontinue their practice of abusing their dominant position in the market for 'governing and conducting international hockey events in India' in contravention of Section 4(1) read with Section 4(2)(c) and (e) of the competition Act, by engaging in conduct which includes:
 - a. Warning hockey players with non-selection into the Indian national team if they participate in the WSH and/or if they sign the Players Contract;
 - b. Warning hockey players with disciplinary action if they participate in the WSH and/or if they sign the Players Contract;

- (iv) Direct HI and FIH acting through HI to public a scheduled calendar of international events including training in preparatory camps thereof, one year in advance and having published the same, direct that they do not amend it without giving at least a minimum of 180 days notice that is duly published.
- (v) Impose the highest penalty on HI for contravening Sections 3 and 4 of the Competition Act; and
- (vi) Any other order that the CCI deems fit.

35. The Commission took up the issue and came to the conclusion that there existed a prima facie case. The Commission therefore by its order dated 9.2.2012 directed the Director General (DG) to investigate the case.

36. Regarding interim orders under Section 33 of the Competition Act, the Commission gave a hearing to the information providers and HI but did not grant any interim relief. In the said proceedings the representative of HI stated that HI was acting at the behest of FIH.

37. The D.G. took up the investigation in this case by issuing letters and summons to FIH, HI, IHF, the informants and the Ministry of Youth Affairs and Sports, Hockey India (HI) explained the pyramidal structure in sports body and also explained the Olympic Charter. It was stated that FIH was the international body governing hockey all over the world. It was also stated that if HI did not accept the directives of FIH, it could face suspension or expulsion.

38. Investigation by the DG showed that both HI and IHF had applied for recognition to the Ministry of Youth Affairs in 2011 and both the applications were pending with the Ministry. Further as per the directions

in the Supreme Court the Ministry had to work out a compromise between IHF and HI. According to one of the methods 20% of the executive committee of HI were to become members of the IHF but this formula was not acceptable to FIH. FIH does not want to have anything to do with IHF. For this reason, there was no progress on this issue and HI is the only body which is recognized by FIH as the national association for hockey in India.

39. HI also admitted that it had a Code of Conduct (COC) for the players. HI also admitted that a player had to take NOC for playing in other tournaments. It was stated that the tournament WSH was to have players from other continents and therefore it had to have approval of FIH but that FIH had not sanctioned the event. HI admitted that no warning had been issued by it or FIH to the players for playing in an unsanctioned event like WSH. HI was not aware that it was going to organize a league in 2013. HI also stated that the system of sanctioned and unsanctioned events existed in various sports such as cricket, soccer and rugby.

40. On the other hand, FIH's representative stated that FIH does not fall within the jurisdiction of CCI and that CCI cannot compel FIH to submit information. FIH also stated that FIH was not an enterprise under the Competition Act. It was stated that FIH was a non-governmental, not for profit organization recognized by IOC as the sole international federation of hockey. It was stated that HI and FIH were performing public functions for public good so that hockey as sports could flourish all over the world. FIH was stated to be not a commercial body and its activities were not economic. For this proposition reliance was placed on the decision of the Supreme Court in the case of Cricket Association of Bengal 2 SCC 161.

41. The representative of FIH also argued that as the Indian Competition Law was based on European Competition Law and therefore the guidelines laid down by the European Commission would apply. In this connection, reliance was placed on 2007 White Paper of EC on sport. In this white paper, the European Commission had accepted that sports organizations were arranged in the form of a pyramid and that it was a monopoly because for one game there can be only one regulatory body. Further the sports body required freedom of internal organization. As a consequence the sports bodies were entitled to issue regulations which may have significant restrictions on economic freedom. Such regulations could be integrity requirements, restriction on clubs to buy players and broadcasting rights. To support these arguments, reliance was placed on European case laws. It was stated that regulations can be made for the proper conduct and organization of sports even if they were anticompetitive. But it was conceded that if the regulations were for ulterior purposes such as stifling competition for official events or for restriction on players freedom, then there are competition concerns. But it was stated that the regulations framed by FIH were for the efficient running of sports and were not anticompetitive.

42. It was also argued on behalf of FIH that FIH was interested in developing hockey in India and for this purpose it was discussing with Hockey India the establishment of a professional league. It was also stated that FIH would not recognize World Series Hockey because it was organized by a commercial organization Nimbus without the approval of HI. In fact Nimbus never asked HI for sanctioning the event. It was stated that Nimbus functioned outside the jurisdiction of HI and FIH and therefore the integrity of sports of hockey was compromised.

43. It was stated on behalf of FIH that IHF had submitted a petition before the Judicial Commission of FIH that it should be recognized as the national body for hockey in India in place of HI. It was stated that

various law suits were pending in different courts in India between HI and IHF. It was the view of FIH that the WSH Hockey League cuts across various national hockey bodies as they have been asked by the WSH organizers to participate in the WSH Hockey league. It was stated that even if the league was organized in between international events, it was contrary to players' interests and national associations as the players needed time to recuperate. It was stated that the WSH league undermined the ability of FIH and its member associations to carry out their public service role. It was stated that rules requiring participants not to play in unsanctioned event was inherent and indispensable to the proper organisation and conduct of competitive sports. But the reason for this statement was not submitted.

44. It was argued that FIH was not a commercial enterprise and generates no profit from its activities. Its job was the development of sports which was in public interest. The money which sports of hockey generated was used to improve infrastructure and develop hockey. In order to develop sports, FIH granted priorities to international events giving national associations full access to their players and complete freedom for national representative competition.

45. Speaking again of the pyramid structure it was stated that such a structure was necessary for the uniform application of rules and comparable playing conditions. It was stated that having a system of sanctioned and non sanctioned events was necessary for the objectives of the game. It was stated that the concept of sanctioned / unsanctioned event arose from the concept of pyramid structure. It was stated that a governing body would be simply unable to exercise authority and oversight over those events which were essential for the proper running of sports. It was stated that a regulator has to protect the integrity of sports which it regulates. To illustrate the point further it was stated that antidope code had to be enforced which a private operator would not do.

46. It was stated that in many countries including India national sports associations do not have the exclusive right to organize events in sports. The national associations thus do not have a right to protect the integrity of sports. It was therefore considered necessary by FIH to have a system of sanctioned and unsanctioned events. This in turn means that FIH was trying to discipline sports run by private operators by having a system of sanction of the game to be played. By allowing players to play in only sanctioned events with the added threat of banning them from donning national colours, FIH wanted to see that the private organizers exit the sphere of hockey. In order to justify its action, FIH talked of integrity and protecting the international calendar.

47. FIH also argued that FIH and national associations help in the development of hockey players and if a player plays in an unsanctioned events then it amounts to free riding. Further a private operator can give more money to the players as they have to spend no money on the development of sports. It was stated with this view in mind, cricket also has a system of sanctioned and unsanctioned events. It was also stated that by playing in a private tournament, the player and the organizer gain but sports was a loser because the investment in the grassroots decreases. This argument shows that in sports it is the player who is at the centre of revenue stream. Further if the argument is accepted then IHF which was the national association which was responsible for the development of hockey in India had produced the current crop of international hockey players in India rather than HI which came into existence only in 2010.

48. FIH argued that it was the duty of every player to prioritise the interests of the national team rather than one's personal interests in the field of sports. It was therefore argued that the system of sanctioned/unsanctioned events was introduced with this idea in mind. To support

this issue, reliance was placed on the case of *Greig vs. Insole* [1978] 1 WLR 302 (Ch D 1977) (Slade J.). In this particular case the English High Court held that the game should be properly organised and administered. The High Court approved the prospective disqualification of the cricket players who would thereafter contract to play with World Series Cricket or other unapproved private promoters. It was therefore stated that the system of sanctioned/unsanctioned events have been borrowed from the field of cricket.

49. Regarding the reliance of the IPs on the case of *Hendry* (Supra) it was stated that it was not a proper precedent. It was therefore argued that it would be proper for a sport governing body to restrict player freedom to play in unsanctioned events. It was stated that it was necessary to protect an investment in the training of players, to protect the commercial terms which financed that investment and to ensure that those revenues were distributed in a manner that benefitted not only professional players but sports as a whole. Reliance was also placed on another decision rendered by the High Court in England, the case *Hall vs. English Cricket Board*. It was stated that in this case the High Court held that for a country player playing for Indian Cricket League in India was detrimental to the integrity of the game of cricket. Incidentally the Indian Cricket League was organised by a private body. Reliance was also placed in the case of *Asian Tower, Pilkadaris vs. Asian Tour* [2010] SGHC 294 (*choo han teckj*) where also the issue of unsanctioned tournaments came up. In this case some golfers had played in an unsanctioned tournament for which the Golfers' Association fined them \$5000 before they were allowed to play in a sanctioned event. The players challenged issue in the Singapore High Court but the Singapore High Court confirmed the fines levied on the golfers.

50. It was further argued that some restriction on the players was actually necessary for running sports. The structure was also necessary to

protect the sanctity of the game. It was also stated that national associations were required to give precedence to international competition compared to other events and that there was no distinction between national associations and private operators as far as the application of the regulations were concerned. The only issue was the integrity of the sport and the primacy of international competition and the regulators had to ensure that they were not undermined either by unsanctioned events or by sanctioned events. It was stated that the event organiser had to be transparent and accountable to the national association as well as FIH. It was stated that a player can play either in sanctioned events or unsanctioned events but a player cannot play in both. No reason was given as to why a player cannot play in both types of tournaments.

51. It was stated that Hockey India was a member of FIH and FIH would not recognise the claim of any other body to administer and regulate hockey in India. Further it was stated that FIH admits into its membership associations which meet the objective criteria set out in Article 6 of the FIH statutes. FIH stated that the Government of India had agreed that there should be a single regulator of hockey in India and had also confirmed to the FIH that its support to the HI for organising national championships, the selection of Indian team for international championships and the conduct of international tournaments in India.

52. The DG made a request to FIH as to whether FIH had given any direction to HI for prescribing a Code of Conduct for the hockey players in India and whether it was mandatory for the players to sign the Code of Conduct and if any player failed to sign the Code of Conduct, would it result in disciplinary action from HI. FIH stated that the regulation on this aspect was mentioned in Article D1 of the regulations. It was left to the national association to implement the mandate of the regulation. Regarding running of a league in India it was stated that FIH and HI had

been discussing running a professional league of hockey in India. Ultimately HI and FIH agreed to start a professional hockey league in partnership w.e.f. January 2013. All the players who would play would have to meet the regulatory requirements for playing in the league. FIH also stated that Hockey India was taking permission for organizing various events in India.

53. The DG also examined Indian Hockey Federation (IHF). It was stated on behalf of IHF that it was original national association which was running hockey in India and that various associations and institutions were affiliated with it. It was stated that in 2008 FIH disaffiliated IHF though IHF was still recognised by IOA. It was stated that the domestic tournaments were sanctioned by IHF whereas the international tournaments were sanctioned by HI and FIH. It was also stated that IHF does not have a Code of Conduct for its players. The tournaments run by IHF requires no permission as IHF organized and sanctioned only domestic tournaments. It was also stated that the WSH league was not sanctioned by FIH, and that the tournament was not an international one but was domestic one in which some international players participated. It was stated that no sanction from FIH was necessary for the conduct of WSH because the running of WSH was a domestic tournament which led to better exposure for the Indian players.

54. The DG also sent a questionnaire to Ministry of Youth Affairs & Sports. The Ministry informed the DG about the various litigation proceedings pending between HI and FIH. The Ministry was not aware of the regulation issued by FIH in respect of sanctioned and unsanctioned events. The Ministry also informed the DG that no player who participated in World Series hockey was selected as a probable player for India in the camp held at Bangalore. Similarly the Indian team which went to London to play an international hockey tournament did not include any player who played in World Series Hockey. It was stated on behalf of the

Ministry of that in effect a ban of 12 months had already been implemented by HI.

55. The DG also examined Sports Authority of India (SAI) which stated that it does not deal with hockey and that all the details would be available with the Ministry of Youth Affairs and Sports. As far as Nimbus Communications was concerned, it submitted details in respect of Code of Conduct safety of players, anti-doping regulations and selection process and submitted a copy of the regulations adopted for conducting the WSH series which was held between February and April 2012.

56. After getting the submissions from the different persons the DG took up the investigation on the following points:

- a) Whether the Hockey India (HI) is an enterprise within the meaning of Section 2(h) of the Act.
- b) Whether the Competition Act 2002 is applicable on FIH being an enterprise registered in Europe.
- c) What is Relevant Market under the provisions of Competition Act in this case.
- d) Whether the OP is in the dominant position as per the provisions of Act.
- e) Whether the OP has abused its dominant position under the provisions of Section 4(2) of the Act.
- f) Whether the OP has violated provisions of Section 3(4) of the Act.
- g) Whether the decision of FIH and HI attracts provisions of Section 3 of the Act.

57. Regarding the issue as to whether HI and FIH were enterprises under the Competition Act, the DG held that the activities carried out by HI as well as FIH in respect of grant of franchise rights, media rights, TV

rights, sponsorship rights and various other rights yielded revenue which are different from a charitable non-profit activity because the revenues were in the commercial field. Further HI and FIH fall within the meaning of person defined under section 2(l) of the Act. Thus the economic activities carried out by HI and FIH bring it within the ambit of the definition of enterprise as defined in the Act. To further support his findings the DG relied on the decision of the Delhi High Court in the case of *Hemant Sharma & Ors. vs. Union of India & Ors.* Therefore the DG held that both HI and FIH were enterprises. As far as FIH is concerned it was a society registered outside India but it was a person under the Competition Act and the DG held that in view of the provisions of Section 32 of the Competition Act. The Commission had the authority under the Act to examine the conduct of FIH, if it had an effect in India. Therefore the DG was of the view that it could be examined whether the acts of FIH were anti-competitive within the provisions of the Competition Act 2002.

58. The DG then took into account as to what would be the relevant market. In his view the market for conducting international hockey activities for men and women in India was different from the market for conducting domestic hockey. After considering all the aspects of the case, the DG came to the conclusion that the relevant market in this case would be the market for conducting governing and domestic hockey activities for both men and women in India and that this would be the relevant product market. In the analysis as far as the geographic market was concerned the DG took India as the pan Indian market. This view was the same as propounded by the Information Providers.

59. The DG then took up the assessment in respect of dominant position of the opposite party. The DG held that HI enjoys a monopoly position as it was in a position to be unfair to the players by not allowing them participation in unsanctioned tournaments. HI had the authority to select the Indian team for international events and it enjoyed the sole

regulatory power in respect of hockey and was thus in a position to create entry barriers to players and officials. Thus according to the DG, HI was dominant in the market for conducting and governing domestic and international hockey activities. The DG then examined the factors mentioned in section 19(4) of the Act. The DG held that HI had acquired monopoly power because it was in a position to select players for international competitions. It also had the authority to conduct domestic tournaments. As HI was affiliated to FIH it had total monopoly over the sports of hockey in India. Because of regulatory powers it could affect the market and the players and officials in its favour. Thus it was dominant with reference to explanation to Section 4 of the Competition Act. To support his contention the DG relied on the ratio laid down in the case of *Minnesota Made Hockey, Inc. v. Minnesota Hockey Inc (supra)*. The DG also relied on the *Motor-cycle* case (Supra) for coming to this conclusion. On the basis of the Olympic Charter and the pyramidal structure of the game the DG held that FIH also had a monopoly power at international level for the promotion of hockey worldwide.

60. The DG then examined whether HI could create barriers to entry to other participants. In his view as HI was the sole regulator of hockey in India and as hockey required high investment, it constituted a significant barrier to entry. Further as HI was a member of FIH and was recognized by FIH and as the FIH did not recognise the claim of any other body to govern hockey in India, according to the DG, HI was in a position to create barriers of entry to other players.

61. The DG then took up the issue of market structure for the pyramid structure of sports and because FIH had granted recognition to HI. Thus HI was in a position to make itself a dominant player in the field of hockey mainly because of the pyramidal structure.

62. The DG then took up the role of FIH. According to the materials available with the DG, FIH was a non-profit association in Switzerland and its main aim was to encourage, promote and develop and control hockey at all levels throughout the world. In accordance with Olympic Charter, as national governments did not have any role to play in the regulatory process in sports, FIH had a total monopoly over the field of hockey. It framed the rules and regulations of the game and enforced them through the national associations who were members of FIH. Though the rules were framed by FIH for the sports of hockey, it was the sole and exclusive national association which controlled hockey in India. The rights relating to media, television etc. vest with the national associations. The DG held that the rules in respect of sanctioned/ unsanctioned events had led to a situation where no event in hockey can be organised by any other enterprise. No player or technical staff could play in unsanctioned events and if they wanted to represent their country. Thus the monopoly enjoyed by FIH had been transferred to HI and HI operated independently of any competitive force in the relevant market and all the stakeholders in the relevant market were fully dependent on HI.

63. The DG then took up the examination of the abuse of dominance by the OP under the provision of Section 4 of the Competition Act. In December 2010 Nimbus announced a hockey league in partnership with IHF known as WSH. Almost the entire Indian hockey team players entered into an agreement with WSH to play in the league. After that HI and FIH started threatening the players that they should not participate in the World Series hockey and if they do so then they would be ineligible to play international hockey. FIH did not recognise World Series hockey and stated that the World Series Hockey was in conflict with FIH major events. As World Series Hockey had approached players from other countries to play in the league, FIH advised the national associations of those countries not to release the players for World Series Hockey. After that negotiation started between Nimbus and FIH and FIH informed

Nimbus that if it wanted to conduct a league it should approach FIH through Hockey India. But as Nimbus had already entered into a long-term agreement with FIH there was no question on the part of the Nimbus to approach through HI. FIH also stated that permission should have been taken from HI and FIH before entering into an agreement with IHF. But the meetings between Nimbus and FIH were not very fruitful and on 11.03.2011 FIH came out with its byelaws in respect of sanctioned/ unsanctioned events. In pursuance of a Supreme Court interim order, the Government of India was required to sort out the disputes between HI and IHF so that only one national body existed to run hockey in India.

64. A settlement was arrived between the Secretary General of HI who had no objection to the organisation of the WSH tournament by IHF. But FIH rejected the Sports Ministry brokered peace agreement between Hockey India and Indian Hockey Federation (IHF). A media report states that FIH threatened the Indian government that the Indian team would not be able to participate in the Olympics if the agreement between HI and IHF was implemented. The objections of FIH were that there should be no agreement between HI and IHF and Government of India should recognise Hockey India and allow it exclusive authority to govern men's and women's hockey in India in respect of both national and international competitions. FIH also dictated to the Indian Government that it should not fund or support any hockey event which was not sanctioned by FIH or Hockey India. It also wanted the Government for the withdrawal of all the lawsuits and ensure HI was the only national body to run hockey in India

65. Though in July 2011 the Secretary General of Hockey India had no difficulty in allowing staging of the WSH hockey tournament, Hockey India subsequently warned the Indian players that they should not participate in the tournament run by WSH. Some of the leading players of Indian hockey were not selected for the Olympic trials because they had entered

into agreements with WSH. WSH postponed the running of the league from 17.12.2011 to 29.02.2012. The matter went to the Delhi High Court and the Delhi High Court directed that the WSH series should be held. On 04.05.2012 FIH issued a warning to the 13 different national associations stating that if their players participated in the WSH tournament they would forfeit their eligibility to participate in international events.

66. The DG then started the analysis of the abuse of dominance. The information providers have stated that Hockey India being the national association had the exclusive mandate to select the team for international hockey. It was stated that HI had regulatory powers and was recognised as a national association by FIH, Asian Hockey Federation and the Indian Olympic Association. The DG observed that prior to the announcement of the WSH tournament, there was no category of sanctioned/unsanctioned tournaments. It was only after 11.03.2011 that the regulations issued by FIH brought about the concept of sanctioned tournaments. On the other hand Hockey India imposed a Code of Conduct for the players at the instance of FIH directing them not to play in any unsanctioned tournament. The WSH series was announced in December 2010 as a domestic Indian hockey league involving some international players. According to the DG, FIH and Hockey India perceived the same to be a danger of breaking up their monopoly and control over the game of hockey. For this reason it started threatening the players that they should not play in WSH league. When the league was announced in December 2010, it was a legitimate hockey tournament. But after the announcement, Hockey India and FIH pressurized Nimbus to either join them or face the consequences of non-participation by the current National Team players. When Nimbus realized this, it approached FIH for an amicable settlement. The correspondence shows that FIH asked Nimbus to organize the tournament under Hockey India only. At the same time FIH and Hockey India started to plan and organize a similar tournament. The DG found from the media reports that the WSH series

tournament was a popular tournament and 150 hockey players were inclined to join the same. Even the hockey players and technical staff were eager to join the league as they would make some money. Further the hockey nations did not have a system of annual contracts and for this reason the career of hockey players was never secure. For this reason the WSH league gave a hope not only to the officials but also to the players of hockey for earning money.

67. The DG did not accept the claim of FIH that it was trying to popularise hockey world over and especially Indian hockey. Further he observed that the hockey fans were deprived of regular competitive hockey tournaments. Therefore in the opinion of the DG, FIH and Hockey India restricted the development of hockey by not allowing a league like WSH. He found that efforts were made by FIH and Hockey India to stall the league. This was done by not allowing the players to participate in the WSH league. The DG also found that in other sports like football or cricket players from different countries participate in the domestic leagues organised at national level but in the case of WSH league, FIH did not permit such a procedure.

68. The Code of Conduct (COC) was issued in September 2011. It is the view of the DG that the concept of sanctioned and unsanctioned event was made with the primary aim to prevent IHF from organising a domestic hockey league in India. According to the DG the action of FIH and Hockey India resulted in preventing national hockey players from playing WSH series. In his view if a player played in WSH league he forfeited the right to play for his country and he could also be banned from international hockey for 12 months. This according to the DG was an anticompetitive action by HI & FIH. In fact many players who played in the league were not selected for representing India at the international level. The DG then relied on a statement of one of the informants who stated that both IHF and HI had done nothing for the development of

hockey in India and that hockey players hardly earned any money from playing hockey in India. For this reason, WSH series was important for the hockey players. The DG also relied on the fact that most of the Indian hockey players had signed a contract with IHF and WSH but because of the directions of FIH and HI they did not play in the WSH league. Considering all the facts the DG came to the conclusion that HI and FIH in order to maintain their dominance over hockey in India had restricted the players from participating in any event which was not sanctioned by them. According to the DG this resulted in foreclosing the market for the players and also other enterprises who wanted to organise hockey tournaments. The conduct of FIH and Hockey India had not resulted in any benefit to hockey and hockey players and the hockey lovers. This according to the DG resulted in contravention of Sections 4(2)(a)(i) and 4(2)(c) of the Competition Act.

69. The DG then took up the issue that as FIH and Hockey India wanted to have their own hockey tournament a restraint was placed on the players and debarred them from playing the WSH series. In his view HI was using its monopoly of conducting international events by issuing threats to the players and it had also entered into an exclusive agreement known as COC with the hockey players. This according to the DG was an abuse of dominant position to foreclose the market for others of running a hockey league. This was also done to gain commercial advantage as FIH and HI announced their own league after the launch of the WSH series. In view of the DG this amounted to foreclosing the market for others and controlling the market for itself. According to the DG this amounted to a contravention of Section 4(2)(c) of the Act.

70. The DG then examined Article D.1 of the FIH regulation.

- (i) Not participate in any way in any unsanctioned event

- (ii) Prohibit the participation by organization, athletes, technical official, umpires, coaching or management staff, and other individuals under its jurisdiction in any unsanctioned events.
- (iii) Take disciplinary action against any organization, athletes, technical official, umpires, coaching or management staff, and other individuals under its jurisdiction who fails to comply with the prohibition,
- (iv) Recognized and give effect within its own jurisdiction to any restriction, exclusion or ineligibility imposed on an organization or individual by another national association for failure to comply with that prohibition, and
- (v) Make it a condition of eligibility to participate in events played under its jurisdiction that the organization or individual in question has not participate in any unsanctioned events in the previous 12 months.

According to this regulation, the national associations were barred from permitting their players from participation in any unsanctioned event on the threat of banning the players from international competitions. In view of the regulation, the Pakistan Hockey Federation issued show cause notices to 8 players who had participated in World Series hockey. Further according to the COC entered into by HI with the players and officials they were required to obtain a no objection certificate from Hockey India before playing for any foreign team or a club. For issue of the no objection certificate from Hockey India no timeframe had been fixed in the COC. FIH argued that such a system of sanctioned/unsanctioned events and obtaining NOC existed in other sports like cricket, basketball, football and rugby. FIH was also concerned with the fact that if a private body organizes and enters the field of sports it would be concerned with generating revenues as quickly as possible rather than following the rules of the game and for this reason it would have destroyed the competitiveness of sports as a whole. The DG was of the view that the

code of conduct created a barrier to new entrants as players were unable to participate in unsanctioned events without the permission of HI. In his view the powers gained from the COC agreement were used to drive existing competitors out of the market. This was done by warning players that they would be deprived of an opportunity to participate in a world-class league which would have given them good remuneration and an opportunity to enhance their skills. The DG was also of the view that by restraining the market for conducting domestic and hockey activities Hockey India was able to protect its monopoly. This also gave it a significant advantage over other organizers of the game and therefore it enabled it to leverage its dominant position in one market to protect its position in another market. By participation in leagues such as WSH the players would have got an opportunity to show their talents and achieve the aim of representing their country. But by restricting such leagues, HI hoped to restrict the number of players playing hockey. The DG then relied on a decision of the Australian Commission (ACCC) in the case of Ice hockey where the issues were similar to what existed in the case of hockey in India. The DG therefore concluded that HI had contravened sections 4(2)(a)(i) and 4(2)(c) of the Competition Act.

71. The DG found that not only the hockey players were denied an opportunity to compete but was also denied the opportunity to make a career out of sports. This action of HI and FIH led to a denial of market access to hockey players. According to the DG that by making it virtually impossible for competing organizers, sponsors and broadcasters, it amounted to a foreclosure of market for them. Thus in the opinion of the DG this also constituted a denial of market access under Section 4(2)(c) of the Competition Act.

72. The DG then placed reliance on a decision of the European Competition Commission. In this case the issue was of FIA Formula One World Championship. In the Commission press release IP/99/434 dated

30.06.1999 it was stated the Commission had ordered that there should be a complete separation of commercial and regulatory functions in relation to FIA Formula One World championship. Incidentally in this case also FIH and Hockey India being the regulators had a conflict of interest because they proposed to have their own league by banning other leagues. The DG also relied on the Snooker case (supra) and he has also reproduced an extract of the report from the order of Australian Commission in the Ice Hockey case (supra). The DG therefore concluded that it amounted to a denial of market access to other enterprises and this was therefore a violation of Section 4(2)(c) of the Competition Act.

73. The DG was a view that the decision of Hockey India not to sanction an event was not in the interest of sport but was mainly to protect its own event and its commercial viability. To sum up the DG was of the view that Hockey India had contravened Sections 4(2)(a)(i) and 4(2)(c) of the Competition Act.

74. The DG then examined the applicability of Section 3 of the Act especially with reference to the code of conduct agreements entered into by the players and Hockey India. According to DG the COC agreement operated as complete and unreasonable restriction on the ability of the hockey players to participate in tournaments. In the view of the DG this amounted to an exclusive supply agreement within the meaning of section 3(4)(b) of the Act. The DG also found that there was no professional or business relationship between Hockey India and the players which attracted the provisions of section 3(4) of the Act. In his view hockey in India cannot be compared with cricket because the Board of Cricket Control of India engages players on a contractual basis and match fees were paid to them according to their grading. But according to the DG as there was no such relationship between HI and the players, Hockey India had not violated the provisions of section 3(4) of the Act.

75. The DG then examined as to whether the decision of FIH and HI to impose ban on WSH attracted the provisions of Section 3(3) of the Act. The DG considered these facts and his findings reproduced in his report are as follows:

During the course of Investigation it is found that the FIH being the supreme body having exclusive right to control the game of Hockey in entire world through its member national associations. It was found that the decision regarding Sanctioned and Unsanctioned events were also taken during the meeting of its executive body meeting during 4-6 March 2011. Article 18 of the FIH statute provides the method of amendment or modification in the byelaws. The article 18 of statues and byelaws of FIH says that these Statutes may be amended added to or rescinded by a resolution of the Congress passed by a Special Majority. No such resolution shall be submitted to the Congress unless the prior notice prescribed by the Byelaws has been given to all NAs. Any modification of the Statutes must be proposed by a Member or by the Executive Board. The proposal must reach the CEO not later than three (3) months before the date fixed for the ordinary meeting of the Congress. In this case it appears that the amendment made by FIH regarding sanctioned and unsanctioned events were not done in accordance with the provisions of article 18 as it was done in haste to counter the forth coming WSH series only. The executive body comprises of the representatives of various national associations. Thus the FIH is basically the Association of different national associations/ federations who are engaged in the activity of governing and controlling the sports of Hockey in their respective country.

76. The DG also examined the Olympic Charter and found that the Olympic Charter did not suggest that the control of the domestic league should be with the national association. According to the DG, FIH had

assumed the role of a single body controlling all the aspects of governing hockey such as control over domestic and international hockey.

77. The DG then examined the applicability of section 3(3) of the Act. FIH is an Association having 127 members who represent the different national associations of different countries governing hockey. The executive body of FIH was elected from its members. According to the DG the regulations and the decisions of FIH governing its members has to be treated as horizontal agreement under section 3(3) of the Act. The decision taken by FIH on 11.03.2011 were made binding on all the national associations. The DG was of the view that the issue of the byelaws that no sanctioned tournament whether domestic or international could be organized at any level by any enterprise who was not a member of FIH, the members of FIH had entered into an agreement. The rules laid down by FIH for the national associations have been reproduced by the DG in his report

- (i) Not participate in anyway in any Unsanctioned Event;*
- (ii) Prohibit the participation by organizations, Athletes, technical officials, umpires, coaching or management staff, and other individual under its jurisdiction in any Unsanctioned Event;*
- (iii) Take disciplinary action against any organization, Athlete, technical official, umpire coaching or management staff, or other individual under its jurisdiction who fails to comply with the prohibition;*
- (iv) Recognize and give effect within its own jurisdiction to any restriction, exclusion or ineligibility imposed on an organization or individual by another national association for failure to comply with that prohibition and;*
- (v) Make it a condition of eligibility to participate in Events played under its jurisdiction that the organization or individual in question has not participated in any Unsanctioned Event in the previous twelve months.*

While considering these facts the DG held that the decision taken by HI and FIH contravenes the provisions of Section 3(3) of the Act. According to the DG the activities of any association should not be intended to restrain competition and harm consumers. The DG's finding is that the decision of FIH in consultation with his members was a concerted action and was therefore violative of section 3(3) of the Competition Act. For these reasons the DG held that there was also violation of the Competition Act by Hockey India.

78. After the receipt of DG's report, the Commission took the view that though the information was only against the anticompetitive behaviour of Hockey India, to consider the anticompetitive behaviour in the field of hockey it was necessary to make FIH also a party. Therefore copies of DG's report were sent to Hockey India and FIH and their submissions were obtained. The Commission took oral hearings of HI, FIH and the informants.

79. On behalf of HI it was argued that HI was involved in purely sporting activity and therefore an economic law like the Competition Act does not apply to it. It was stated that HI operates through the international Olympic body (IOC). It was argued that FIH was recognised as the international body governing hockey world over and is recognised by the IOC under the pyramidal structure which exists in all sports. It was stated HI works within the regulations framed by FIH and that it was the only association which was recognised for hockey in India. Its main function was selecting teams for international events and selection of teams cannot fall within the ambit of competition law. It was argued that HI was not an enterprise under section 2(h) of the Competition Act and sports is not a service under Section 2(u) of the Act. It was also stated Delhi High Court's order in the case Chess Federation does not lay down a precedence. It was also stated that in view of Supreme Court's decision in the case of Bangalore Sewage Board sports cannot be regarded as an

industry. It was argued that Section 3 of the Competition Act had no application because HI had not entered into an agreement with anyone. It was further argued that WSH was a commercial venture for the benefit of a private body and that the informants in this case were put up at the behest of Nimbus Communications and were the alter ego of WSH. It was stated that the code of conduct entered into by HI and the players was not anticompetitive under the Competition Act as it had nothing to do with production, service, storage etc. as mentioned under the Competition Act. Further such code of conducts governed sports in the cases of cricket, basketball, soccer and rugby. Further it was the choice of players to play in sanctioned or unsanctioned events but once they had opted for one of the events, they could not play in the other event. It was therefore argued that the DG's report was without any basis and should be rejected.

80. Arguments were also advanced on behalf of FIH. It was argued that FIH was not a party in the original information and therefore it cannot be made a party subsequently. It was argued that the arguments are restricted only to the findings of the DG wherein has held that FIH had contravened Section 3(3)(b) of the Act. It was stated that findings under Section 3(3)(b) of the Act by the DG does not recognise the pyramid structure of sports bodies. It was stated that all over the world the pyramid structure has been accepted by the competition authorities. It was stated that the regulations of FIH allows players to choose between a sanctioned or an unsanctioned tournament. Therefore it amounts to a certain restriction on individual freedom. But it was stated that it was necessary to do so, so that unsanctioned events do not undermine the collective efforts of FIH. It was stated that the regulations were neither anticompetitive nor unlawful. The regulations were stated to be legitimate as they were for lawful purpose. It was stated that in any competition analysis this fact needed to be examined.

81. It was stated that the DG had not stated that the regulations were framed by FIH with unlawful objectives. The restrictions in the regulation were with the object of the achievement of such objectives. It was argued that the objectives, as held by the DG, were for the purpose of promoting HI's economic interests by finishing off all competition for HI's league. It was stated that this finding was erroneous as the regulations were not framed for the purpose of HI's league but for proper running of sports. It was stated that just because regulations impinge on player's freedom it does not mean that they violated competition law. It was stated that a regulation would fall foul of the competition law if it was for illegitimate purposes or were not proportionate to the pursuit of the objectives. To support this proposition reliance was placed on the decision of the European Court of Justice in the Mecca Medina case (supra). It was stated that the European Court had accepted that restrictions on athletes were necessary in the regulations for sporting events. It was stated agreements and decisions taken which restrict freedom has to be seen with reference to law laid down in the Act.

82. It was argued that it was due to the pyramid regulatory structure that rules of the game were applied to whenever and wherever it is played. This was stated to be in the interest of sports lovers and sportsmen as it leads to proper regulation of sports. These rules also lead to proper organisation and prioritisation of international competition. This objective was stated to be legitimate as competition between nations is an essential feature of each sport. The regulations also protect the integrity of the game and maintain public confidence in sports. Regulations help in the maintenance of uniform rules. It was stated that pyramid structure helps in the organisation and conduct of the sporting calendar which was absolutely necessary for the development of the sport. FIH also recognised the right of each national federation to give primacy to the national and international events because the reputation of the country depends on it.

83. It was argued that the unsanctioned events threaten to undermine the fundamental sporting imperatives because they do not figure in the sporting calendar. They may cut across the sanctioned events and may undermine the national representative competition. The unsanctioned events also do not fall within the jurisdiction of the national associations and therefore the rules and regulations of sports may not be followed. It was further stated that FIH and the national associations were not interested in private profit and their only aim was to further the interests of the game. It was further stated that FIH was dependent on IOC for the development of sports and that the pyramid structure was necessary because only one team can represent a country in international sports. It was argued that regulation was necessary to prevent match fixing, application of doping rules and other misconducts. It was stated that in unsanctioned events it was not possible to do so.

84. It was also stated that sanctioned/unsanctioned events are imperative in the pyramid system of sports governance. It was stated if there was no system of sanctioned/unsanctioned event then the anti-doping rules could not be applied as unsanctioned events were outside the control of FIH and the national associations. It was stated that in many countries like India the national sports associations did not have the exclusive right to hold sports events. It was stated that in such a case the integrity of sports may be compromised as the national associations did not have the right to oversee the tournaments. It was therefore the view of FIH that in order to maintain the integrity of sports, it was necessary that a player should play only in sanctioned events. It was therefore stated that for these reasons players were not allowed to play in unsanctioned events.

85. The arguments regarding WSH being a private entrepreneur and free riding were again advanced. It was also argued that players reached

the elite class because of the investments made on them by FIH and the national associations and therefore players owe something to sports in turn. It was stated that no player/athlete could participate in sanctioned tournaments if he had played in unsanctioned events. It was also stated that no competition regulator had held the regulations framed by FIH to be anticompetitive. It was also argued that IHF had exactly the same rules in its agreements with the players. In the said agreements IHF had contended that during the course of the agreement, the players would not participate in any tournament not organised by IHF.

86. Regarding the findings of the D.G. that FIH had assumed the role of single body to all the spheres of governance of sports of hockey, it was argued on behalf of FIH that different facts and levels of sport are inextricably linked and interdependent. It was stated that the different aspects cannot be compartelised and the development of the sports has to start from the grassroot level. Further uniformity in the rules and regulations have to be maintained at all levels and therefore FIH has to do what it has done.

87. Regarding the findings of the D.G. that there was no need to restrict the players from participation in the WSH league when it did clash with the international team obligations, it was stated that DG could not arrive at a conclusion that there could not be a conflict. It was stated the organisers of WSH may agree at a particular time and there may not be a conflict but there was no guarantee that there would not be a clash in future. It was therefore considered necessary by FIH to have regulations and control in respect of sanctioned tournaments.

88. It was further argued that keeping anti-doping rules in the tournament rules did not protect the integrity of sports and the erosion of public confidence in the game. It was stated that it was absolutely necessary to make the organiser responsible and to have transparency.

This could be mandated by having a system of sanctioned tournaments and keeping a tournament like WSH either under the control of FIH or HI. It was stated that an organiser like Nimbus would only be interested in making money rather than enforcing doping rules.

89. It was also argued that the DG had failed to demonstrate that the restrictions in the regulations of FIH were disproportionate to the objectives sought to be achieved. It was stated that the regulations treated the private associations and national associations on par. It was stated that the main purpose of having the regulations were for the purpose of maintaining the integrity of hockey and the primacy of the international competitions. It was stated that FIH had demonstrated as to how the regulations were made with objectives. It was therefore stated that the DG had erred in holding that the regulations violated the provisions of the Competition Act.

90. Regarding the findings of the DG, FIH stated that no ban on WSH league was imposed and therefore the provisions of Section 3(3) of the Act were not attracted. It was argued on behalf of FIH that FIH regulated only those athletes who submitted themselves to the regulations adopted by FIH. It was also stated that FIH had not prevented any player from joining the WSH league.

91. It was further argued that there was no material with the DG to conclude that the regulations dated 11.03.2011 was brought about with the idea of preventing WSH from running its league. It was argued that it was only a presumption and that there was no material with the DG to come to such a conclusion. It was stated that the regulations were made with the intention of the preservation of the sanctity of the game of hockey. It was further stated that the regulations did not have retrospective applications and they were to apply to events happening after 31st March 2011. It was conceded that the regulations applied to

both sanctioned and unsanctioned events as far as the restrictions were concerned. It was also argued that events were organised in one country with the sanction of the said national association. It was stated that FIH wanted the organisers to work with HI and not any other association primarily because HI was the national association which was recognised by FIH.

92. It was also argued that the DG had erred in holding that the regulations were issued without going through Article 18 of the FIH statutes which required that the statutes can be amended by the Congress by a resolution of the Congress passed by a simple majority. It was stated that the regulations issued on 11.03.2011 were not part of the regulations but were byelaws. It was stated that the FIH Executive Board was competent to issue such byelaws in accordance with Article 9.3(b) of the statutes.

93. Regarding the findings of the DG that FIH had rejected the settlement between IHF and HI because it amounted to the joint administration of hockey in India by FIH and HI and this went against the Olympic Charter. It was therefore stated that this finding of the DG was erroneous.

94. Arguments were also raised against the findings of the DG that FIH and HI foreclosed the market for the IPs and other hockey players and also shut out the market for other organisers of hockey in India. It was stated that FIH had not prevented the hockey players from participating in the WSH league. It was stated that the regulations were made effective after 31.03.2011 and that commitments made by the players prior to that date were to be honoured by FIH. It was argued that over 160 players had entered into contract with WSH prior to 31.03.2011 and that FIH had not penalised any player who played in the WSH league. It was argued that no direction was given to the 13 national associations

that players should be banned 12 months if they participated in a sanctioned event. To support this argument an extract of the letter issued to the associations was submitted which is reproduced as under: -

"2. The FIH Executive Board therefore expects each member NA to take appropriate action against players and/or officials under its jurisdiction who took part in the 'World Series Hockey' event referenced above, as required under Article D.1 of the FIH Regulations. Such action should follow the procedures set out in the member's own statutes and disciplinary regulations, respecting the requirements of due process and any appeal rights provided for in those statutes and/or regulations. And as part of that process the member needs to determine whether the player or official in issue committed to participate in the 'World Series Event' before or after the date on which the national association's regulations implementing the FIH Regulations came into force. (That date should be 31 March 2011 – see Article A.4 of the FIH Regulations – but some associations may have implemented the FIH Regulations after that date). If the player's/official's commitment to the 'World Series Hockey' event was made before the date the member's regulations implementing the FIH Regulations came into force, then no action should be taken against the player or official under those regulations. (Instead, the member should determine whether any action can be taken against him under any other regulations that it did have in effect at the time).

It was stated that if a player participated in WSH league he was ineligible to represent his country in international events but was eligible to play in domestic events. It was argued that no action was taken against any player who participated in WSH and but had signed the contract with WSH prior to 31.03.2011.

95. It was also argued that the DG had erred in his analysis by not considering the provisions of Section 19(3) of the Competition Act. It was further stated that by the issue of the byelaws some freedom of the hockey players was curbed, there was nothing to hold that the byelaws were anticompetitive.

96. It was also argued that FIH had jurisdiction over national tournaments and a person aggrieved against the decision of FIH can go in appeal to the Judicial Committee and ultimately to an arbitrator at Lausanne. It was further stated that private investments in sports was not banned and that byelaws promote competition in sports. It was also stated that FIH being a regulator also needs money for the development of sports. It was thus stated as FIH was not an enterprise under the Competition Act and as the Competition Act did not apply to it, the findings of the DG were erroneous and for this reason, the case should be closed.

97. On behalf of the information providers it was argued that the DG had correctly treated HI to be an enterprise within the meaning of the Competition Act. It was also argued that the DG had correctly treated HI to be in a dominant position and that it was abusing its dominance and under the provisions of Section 4(2)(a)(i) and 4(2)(c) of the Act. It was also stated that the DG had held as no commercial relations existed between HI and hockey players, there was no application of Section 3(4) of the Act. It was also stated that both FIH and HI have been found to be in violation of the provisions of sections 3(3)(b) of the Act. The information providers argued that the relevant market in which HI operated was the market for conducting and governing international hockey activities for both men and women in India. It was further stated that the DG had defined the relevant market. In his analysis the DG held that the relevant market was for conducting and governing domestic and international hockey activities for both men and women and the

underlying connected economic activities with it. It was stated that HI was abusing its monopolistic position as it debarred the hockey players who participated in the WSH from representing India in various international hockey tournaments. It was also stated that the HI had forced most of the Indian hockey players from participating in WSH organised by the IHF in collaboration with Nimbus. It was stated that at the instance of FIH, HI had been effective in debarring hockey players from participating in any tournament not sanctioned by it or the FIH. It was stated that such a condition had a significant impact on the sport of hockey at the domestic level and it also tinkers with the freedom of trade and right to earn a living. It was stated that the HI had issued a statement debarring players from representing the Indian national team if they played in the WSH league. It was therefore stated that HI which was operating at international level and had full control of the domestic hockey which falls in the ambit of IHF. HI therefore interferes with the smooth functioning of the sport of hockey at the domestic level in India.

98. Regarding the underlying economic activities to the definition of the relevant market by the DG it was stated that the commercial activities involved in this sport of hockey had been appreciated by the DG and that it forms an indispensable part of any sporting activity including but not limited to hockey.

99. Regarding the application of Section 3(4) of the Act it was held by the DG that as no commercial relationship existed between HI and the players, Section 3(4) was not applicable to the facts of the case. The information providers did not agree with these finding of the DG and it was stated by them that the terms of COC agreement were in contravention of the provisions of Section 3(4) of the Act. It was stated that HI was an enterprise and in such a position anti-competitive exclusive supply agreement was thrust upon the hockey players as understood in Section 3(4) of the Act. It was stated that such an

agreement between two unequal hockey parties results in AAEC in the market while conducting the hockey activities in India. It was also stated that the provisions mentioned in Section 19(3) of the Act were applicable in this case.

100. Regarding the fact that HI was an enterprise, it was stated that HI qualified as a person under Section 2(l) of the Act and was also an enterprise for the purposes of Section 2(h) of the Act. It was stated that HI was engaged in the conduct of international hockey tournaments in India, facilitating sponsorship for the team, obtaining training facilities and equipment for players in collaboration with Sports Authority of India. Thus HI was engaged in the activity of providing hockey services for mens and womens hockey in India and that this service rendered by HI could be classified as an activity leading to services in India. It was also stated that these activities involved considerable commercial gains for HI. It was stated that in other jurisdictions such activities had been treated as economic activities such as in the case of Greek Automobile and Touring Club (supra). Even in India the Delhi High Court in the case of Hemant Sharma vs. Union of India (Supra) had opined the same. It was therefore stated that the DG had correctly held HI to be an enterprise under the Competition Act.

101. Regarding the COC agreement, it was argued that it was an exclusive supply agreement and that once a hockey player signed the COC agreement he/she was totally dependent on HI's approval to play in any event irrespective of whether such a hockey event was a world-class event in collaboration with other national hockey bodies. It was therefore stated that the COC agreement operated as a complete ban and total restriction on the ability of hockey players to participate in the tournaments conducted other organizers. It was therefore stated that the exclusive supply agreement falls within the mischief of Section 3(4)(b) of the Act. It was further stated that under the COC agreements the power

to ban players from international tournaments arose if players participated in unsanctioned events. It was submitted that such restrictions were contrary to Olympic Charter, unreasonable, arbitrary and interfere with the right to earn a living. It was stated therefore that the COC agreements were an exclusive supply agreement and that they were of vertical nature. The COC agreements created barriers to entry of new players. This works in two manner i.e. it has the effect of imposing a blanket prohibition on players from participating in any unsanctioned event and secondly staging the tournament becomes commercially unviable since it becomes difficult for an adequate number of players to participate as multiple levels of permissions were required even for the domestic tournament. It was further stated that this COC agreements drive existing competitors out of the market. It was again stated that the hockey league organised by FIH and HI proposed to wipe out the existing competition. It was stated that HI had not provided any valid reason for not sanctioning the league of WSH in India. It was also argued that the whole system of sanctioned tournaments was made in order to target WSH.

102. The information providers then argued regarding the structure under the Olympic Charter. It was stated that both HI and FIH had gone beyond all rationality and proportionality and had lost sight of the cornerstone of the Olympic Charter which is:

The practice of sport is a human right. Every individual must have the possibility of practicing sport, without discrimination of any kind an in the Olympic spirit, which requires mutual understanding with the a spirit of friendship, solidarity and fair play.

In addition to its three main constituents, the Olympic Movement also encompasses the Organizing Committees of the Olympic Games ("OCOGs"), the national associations, clubs and persons

belonging to the IFs and NOCs, particularly the athletes, whose interest constitute a fundamental element of the Olympic Movement's actions, as well as the judges, referees, coaches and the other sports officials and technicians. It also includes other organisations and institutions as recognized by the IOC.

*To oppose any political or commercial abuse of sport and athletes;
To encourage and support the efforts of sports organisations and public authorities to provide for the social and professional future of athletes;*

To encourage and support the development of sport for all

It was also argued that the intention of the informant was not to interpret the role of FIH within the Olympic Charter. It was also stated that the draconian system put in place as interpretation of the Olympic Charter formed the basis of denial to the informants and others from participating freely in the game of hockey. It was argued that the Olympic Charter does not mandate exclusivity to international federations and does not support the position of FIH. It was stated that the other international federations operating under the Olympic Charter do not penalise the players or impede the right to earn a living. Therefore the decision of FIH and HI to sanction or not to sanction events was not in the best interests of sport and it also did not safeguard the interests of the hockey players and the public. It was argued that the changes in rules of FIH were designed to protect the commercial interests of FIH and HI were against the Olympic spirit enshrined in the Olympic Charter.

103. It was further stated that clauses 2 and 3 of this COC agreement prevent players from participating in any unsanctioned event. In economic terms imposing restrictions on players who participated in unsanctioned events cause severe adverse effects in the area of hockey

playing services. By having a system of sanctioned tournaments the following benefits were denied to the hockey players.

- *Important source of remuneration*
- *Important source of additional support for players*
- *Important source of practice and training by training with world class coaches and playing alongside the best players in the world*
- *Development of infrastructure*

It was also stated that lesser participation by players thus reduced competition in sports. To support their contentions reliance was placed on the decision of the Australian Commission the case of Ice Hockey (supra).

104. Regarding the finding of the DG that FIH and HI had entered into an agreement in violation of Section 3(3)(b) of the Act, it was stated that the findings of the DG were correct. Similarly restriction imposed on the technical staff by FIH was also stated to be anti-competitive. It was stated that the draconian rules and regulations framed by FIH interfered with the right of players to carry on their profession and trade. It was stated that the hockey players offer their skills in the field of hockey whereas FIH and HI only provided the right infrastructure and facilities. It was argued that it was the duty of the organisers to support the hockey players. It was therefore stated that the aim of the regulators cannot be creation of hurdles and restrictions in the development of the sports of hockey in the name of the preservation of the Olympic Charter. Regarding the regulation and the rules of play as well as anti-doping, it was stated that WSH league organisers followed the rules laid by FIH and were also had anti-doping controls as mandated. It was therefore stated that the system of sanctioned/unsanctioned events created anticompetitive concerns and restricted the freedom of trade in the market. Further the

decisions of boycotts or non-cooperation cannot be justified in the garb of maintaining the integrity of the sports of hockey. It was therefore for stated that the DG was correct in holding that FIH and HI had violated section 3(3)(b) of the Act.

105. The information providers agreed with the finding of the DG that Sections 4(2)(a)(i) and 4(2)(c) were violated. It was stated that there was also a violation of section 4(2)(e) of the Competition Act. It was argued that a pyramid structure with FIH at the top was for the governance of hockey was according to the Olympic Charter but HI as the national association could not justify disproportionate and unreasonable regulations. It was further argued that the Hon. Supreme Court had only sanctioned the conduct of international hockey tournaments by HI in India and abroad. But the facts of the case are that FIH was not willing to recognise the claim of any organisation other than Hockey India of governing hockey in India. It was further stated that FIH does not control the Indian hockey market as the persons/officials engaged in the sport of hockey were bound by the rules of HI and not bound by FIH. The relevant market in the case had to be determined with reference to the fact that HI was responsible for the every activity in relation to hockey in India. It was stated that HI was in a dominant position and operated independently of competitive forces in the market. It was also argued that a similar tournament like WSH known as Premier Hockey League was organized in India during the period 2005 to 2008. This tournament was organised by ESPN in collaboration with IHF and that no permission from FIH was sought. It was argued that HI with the active support of FIH had abused its dominant position in the relevant market in India and gained the control of the entire sports in India. It was argued that the actions of HI in targeting a player who played in the WSH for selection in the national team substantiates the allegations of the information providers. It was stated that FIH had claimed that the regulations were only recommended to the national associations was not established by facts. It

was stated that as HI was dominant in international hockey activities, it used this dominance to obtain dominance in the field of domestic hockey activities in India and for this reason the provisions of Section 4(2)(e) were applicable. This was done in order to ensure that the league promoted by FIH and HI was successful from the commercial angle. It was argued that HI was using its powers with the object of promoting its league in collaboration with FIH. It was therefore stated that the action of HI was totally abusive.

106. It was therefore requested that the COC agreement be directed to be modified and that HI should discontinue the practice of abusing its dominant position. It was also stated that hockey players should not be warned with disciplinary action if they participated in a non-sanctioned tournament. It was therefore argued that HI should be penalised for contravening the provisions of Section 3 and 4 of the Competition Act.

107. No analysis in this case would be possible without considering the duties and functions of FIH in the field of hockey. According to the FIH statutes, the object of FIH was to encourage, promote, develop and control hockey at all levels throughout the world. The statute also gave power to the FIH in all matters concerning hockey without the intervention of any outside authority. It was also stated that anti-doping regulations and procedures for the implementation had to be enforced by FIH and that the statutes were binding on the members. Subject to the byelaws the continental federations would be responsible for the administration, promotion and development of hockey for men and women as well as the organisation of tournaments, events and matches. The statute mentions that the congress of the 127 national associations as members of FIH was the ultimate authority governing the conduct of FIH. The statute also mentions that the ideal and objects of the Olympic movement have to be supported and maintained. The statute states that

all officials, umpires and organisers who participate in hockey have to acknowledge that FIH had full authority concerning hockey and that the playing of hockey was governed by the statutes, byelaws, rules and regulations which were legal and binding on them. In pursuance of the statutes, byelaws have been issued by the Executive Board of FIH. In accordance with the general principles and spirits laid down in these byelaws all the athletes were required to respect the spirit of fair play. The byelaws refer to sanctioned and unsanctioned events and also mention the pyramid structure of the game. The byelaws also state that the unsanctioned events lead the sport to disrepute. The byelaws also mention that there could be two national associations. But an athlete can play for the other association if he obtains no objection certificate from the association for which he was playing. The other issues mentioned in the byelaws have already been discussed above and there is no need to discuss them again. Under clause 4.5 of the byelaws it has been mentioned that the interests of the commercial partners of FIH, continental federations and national associations have to be protected. In fact these commercial partners may require assurances that competing events would neither be organised nor sanctioned without their approval. It has been stated that this was necessary for the generation of commercial income for the development of the sport. In the byelaws, it has also been mentioned that the national associations shall act in accordance with the obligation as custodian of sport and shall comply with all applicable laws relating to proper exercise of the regulatory powers by a sports governing body. Procedure has been laid down in the byelaws for the issue of a no objection certificate. If the national association has taken a stand on some issue then FIH could overrule the national association. The byelaws also prescribe that the national associations should not participate in any unsanctioned event and it should also prohibit participation by organisations athletes, technical officials, umpires, coaching staff etc. in such events. The national association was also required to take the disciplinary action against any organisation,

athlete, technical official, umpire, or other individual under its jurisdiction who did not comply with the prohibition laid down under the byelaws. A person who played in an unsanctioned tournament was directed not to be selected for the National representative team. If the national association did not comply with the regulations then the national association could be reprimanded, fined, suspended or expelled by FIH.

108. A perusal of the statutes and bylaws shows that FIH had taken the control of hockey at all levels in each country from grassroots to international hockey. A player or an organisation which does not toe the line of FIH would not be allowed to participate in an international event. As far as an organiser whose event was an unsanctioned event, majority of the players would not be playing in such a league or tournament. Even if a national association wants to run its own tournament in violation of the FIH statutes and bylaws, it can be fined, suspended and expelled from the FIH. Thus the national association does not have proper powers even within its own jurisdiction and is guided by the statutes and bylaws of FIH. All this was done on the strength of the Olympic Charter.

109. It is therefore necessary to consider the Olympic Charter itself. The fundamental principle mentioned in the charter talks about the following aspects of each sporting activity. They are mentioned as under

- *Establishing and controlling the rules of sport*
- *Determining the structure and governance of their organisations*
- *Enjoying the right of elections free from any outside influence and*
- *The responsibility for ensuring that principles of good governance be applied.*

The Charter also mentions that a discrimination to a country or a person on grounds of race, religion, politics, gender or otherwise was totally incompatible with the Olympic movement. The Olympic Charter also mentions that there would be one international sports federation for each sport. Some of the salient features are the mission and role of the Olympic movement such as promotion of ethics and good governance, encouragement to organisations, development and coordination of sport and sport competition and to cooperate with competent public or private organisations and authorities. The Olympic movement also opposes any political or commercial abuse of sport and athletes. The Olympic movement also encourages and supports the efforts of sports organisations and public authorities to provide for the social and professional future of athletes along with the encouragement and support to the development of sport and the promotion of environmental issues. It has also been mentioned in the charter that international federations within the Olympic movement should be in conformity with the Olympic Charter including the implementation of the anti-doping code. The Charter gives a duty to the International Federation for the development of sports throughout the world and to provide technical assistance in the implementation of Olympic Solidarity program. There is also a concept of National Olympic Committees who could recognise only one national federation for each sport in their jurisdiction. Thus the Olympic Charter has laid down the guideline as to how the sports entities should run sports all over the world and how the interests of the athletes were to be protected.

110. It is also necessary to examine hockey as a game before proceeding with the competition analysis. Hockey has been played in different countries for centuries but modern hockey started in the U.K. in the 19th century and the first rules were framed in 1874. The British Army popularised the sport in the British Empire and an organisation known as International Rules Board was formed in 1895. Hockey became an

Olympic sport in 1908 but it became a permanent Olympic fixture in 1928. Though FIH was formed in 1924 in Paris but men's hockey united in 1970 after the International Rules Board became a part of FIH. Women's hockey also started in England in the late 19th century and was run by various associations. These associations merged together in FIH only in 1982 but women's hockey became an Olympic Sport in 1980.

111. In the beginning hockey like other sports did not have much money. But with the advent of television, live coverage of hockey came to households and with the advance in communications the viewership of hockey went worldwide. Hockey therefore like other sports became a source of entertainment. This brought advertisers and money to hockey in the form advertisements, sponsorships, broadcasting rights through radio, T.V. and internet. Further with rising incomes, even the gate money increased. In the earlier days, the players used to play the game as a pastime but with money coming into the game, playing sports of hockey became a source of livelihood for many players. Playing hockey became a profession for many players. Even the FIH statutes mentions the business partners of FIH and states that the calendar can be postponed for the purpose of the commercial interests of the business partners of FIH. Thus, a regulator like FIH got interested in the cash which was generated through sports.

112. Prior to 1970, FIH did not have a stranglehold over the sports of hockey from grassroot level to the international hockey as there were other associations laying down rules of the sport. Though the Olympic Charter was issued in 1896, one International association for hockey came into being only in 1970 for men's hockey whereas for women's hockey the international association came into effect with effect from 1982. FIH is a federation of national hockey associations but by the byelaws of 11.03.2011 it appears to control the domestic hockey in the territory of each national association through a system of

sanctioned/unsanctioned event. If a national association did not accept the byelaws of FIH they could be penalised or expelled from the FIH.

113. The idea of sanctioned/unsanctioned events for hockey were probably borrowed from cricket. The system of sanctioned/unsanctioned events was introduced in cricket by the International Cricket Committee after the Packer episode in the late 1970s. The Packer episode brought money for the players in the game of cricket. Subsequently, the Indian Premier League in India was started in India in 2008 and the league was a money spinner. The Board of Cricket Control of India had started the IPL but prior to IPL, TV broadcaster Zee Telefilms had started a similar league known as the Indian Cricket League. BCCI had seen to it that ICL as a league flopped so that its league IPL was a success.

114. In the sport of hockey, Nimbus another T.V. broadcaster with the blessings of IHF which is also a national association of hockey in India but not recognised by FIH thought of starting a league known as WSH. The announcement was made in December 2010. Nimbus signed 160 players for its league but found that many of the international hockey players would not come if FIH did not approve of their participation through their national association. But when Nimbus approached FIH, it asked Nimbus that it should have gone through the process through HI and not IHF. FIH refused to approve of the WSH tournament and came out the byelaws dated 11.03.2011. Nimbus is of the view that FIH did not approve of WSH because FIH and HI wanted to start their own tournament with HI in January 2013. There is no conclusive element to come to this conclusion but there is a possibility of the allegations made by Nimbus. But as FIH and Nimbus were going to earn their revenues from India, it was necessary for FIH to remove the competitor from the scene.

115. This could be done only by having a system of sanctioned and unsanctioned tournaments. Though the byelaws of such tournaments

were issued on 11.03.2011, FIH had already decided on 08.02.2011 that WSH was going to be an unsanctioned tournament. There is no doubt that WSH had not applied to HI for the sanction of the tournament. But Nimbus had already entered into an agreement with IHF and agreed to pay nearly Rs. 30 crores to IHF. If Nimbus had walked out of the contract and joined with HI, IHF would have sued Nimbus for breach of contract. Nimbus also knew that as it had proposed to start WSH with IHF, WSH would never have been sanctioned by HI and FIH.

116. The other facts which are clear are that FIH had directed that players should not participate in unsanctioned tournaments. If they participated they had to be denied the opportunity to playing for their national team. FIH also directed that the officials, coaches and umpires etc. should also not participate in the unsanctioned event. If they participated then action was to be taken against the officials. FIH also directed the national associations to come out with the code of conduct which HI issued in September 2011 and every player who wanted to play for India had to sign. HI initially was probably willing to allow WSH league to run but probably at the instance of FIH put impediments to the running of the league. The WSH league was held in early 2012 after the intervention of the Delhi High Court.

117. It is clear from the above discussion that HI was acting at the behest of FIH for the simple reason that its recognition and existence depended on FIH. This was confirmed by the submissions of HI before the Commission where it stated that its actions were in accordance with the directions of FIH. Thus it is the behaviour of FIH which requires scrutiny under the Competition Act. And as HI was acting together with FIH its actions also require to be inquired into.

118. But before proceeding further it is necessary to consider as to who were the affected parties. The ultimate consumers are the hockey loving

fans who enjoy the game of hockey. The intermediate consumers are the athletes without whom no game can be held. The other persons involved are the regulators who lay down the rules of the game and enforce the anti-doping code and the organisers who provide the arena and the officials for the organisation of the game. The ultimate consumers, the intermediate consumers, the regulators and the organisers are necessary for running a league. The other persons involved are the radio/TV broadcasters, sponsors, advertisers etc. without whom the league cannot be successful.

119. For the ultimate consumers, it is entertainment which is necessary and the entertainment increases when famous national and international stars perform. If such stars play in the hockey league, the gate money can increase. If more matches are held, then due to availability of matches, there is an enhancement of their satisfaction level.

120. The intermediate consumers are the athletes and players. Without them no tournament or league can be held. They have a very short life in sports where they can show their skills. In majority of sports, playing the game and earning money has become their profession. The more they play in their short professional life increases their earning and increases their welfare. This is one of the aims of the Olympic Charter. Further freedom to carry out their profession is a freedom guaranteed under Article 19(1)(g) of the Constitution of India. The level of the satisfaction of the players increase when they play for their country. In fact it is the aim of each player to play for their country. This gives them a sense of achievement and accomplishment. But a system of sanctioned/unsanctioned events as propounded by FIH effects the freedom to carry their profession. It has to be examined whether the restrictions placed on the players were reasonable or not because restrictions work as a dampener in regard to earnings of the athletes.

121. As far as the regulators like FIH and HI are concerned their role is mainly to apply the rules of the game and the anti-doping code. The regulators organise international tournaments and they decide the calendar of events so that the events do not clash with each other. But if they start using these powers for the purpose of furthering their economic interest then there is a cause of concern. Further the analysis shows that HI was merely acting at the behest of FIH.

122. FIH by having a system of sanctioned/unsanctioned events also effects the number of games played. It has also stipulated that though there may be more than one national association in a country they would recognise only one. But that does not mean that they would impose a complete ban on the other association in the manner that if one plays for the unrecognised association they would not be able to play for the other recognised association without a NOC from the unrecognised association. Further if the games of the unrecognised association is not sanctioned by HI or FIH then the player cannot play in the sanctioned events. It is also a fact that if a player plays in as non sanctioned event then he would not be eligible for the national team.

123. As far as the organisers, broadcasters, advertisers etc. are concerned, by reducing the number of games played FIH and HI cause economic harm to them. By not allowing international level players from playing in unsanctioned events as the value of the tournament decreases, economic harm is caused to the organisers, broadcasters, advertisers etc.

124. In the same manner by debarring officials, umpires etc. from unsanctioned tournaments, economic harm is caused to them in the form of earnings. It has been conceded on behalf of FIH that a private organiser would give more money to the players, umpires etc. because it would not invest any amount in the development of hockey. But the question is whether FIH/HI have invested amounts in the development of

the game. The players say that they have not got proper remuneration and there is no evidence that any amount was spent by FIH, IHF or HI in the development of the game. In fact, Govt. of India is funding the development of hockey.

125. There is nothing wrong in having a system of sanctioned/unsanctioned events. But what has to be seen whether it causes any economic harm to the others in the game of hockey. There is no doubt that the hockey calendar as proposed by FIH was required to be followed. Primacy has to be allowed to international events and the athletes should be mandated to play for the national team and not for private tournaments. But for following the hockey calendar, it is not necessary to have a system of sanctioned/unsanctioned events which denies market access to others.

126. In the background of these facts, a proper analysis has to be carried out. Hockey provides entertainment to the persons who watch the sports. It is thus a service by the regulators, organisers and the players to the person who had to be entered. Thus, it is a service under the provisions of Section 2(u) of the Act.

127. The next question is whether FIH and HI are enterprises within the meaning of Section 2(h) of the Act. There is no denying the fact that both FIH and HI which are the international and national authorities running the sport of hockey are societies registered under the Swiss and Indian laws respectively. They are also no profit organisations. The two entities are persons in accordance with the provisions of Section 2(l) of the Act. But to qualify as an enterprise under the provisions of Section 2(h) of the Act, a person should be engaged in any activity relating to the provision of services. It is not necessary for the person to carry any business. Even the regulation of sports or any other arena would qualify a person to be an enterprise if its activities effect the provision of

services. In this case, both FIH and HI regulate hockey in the international sphere and India respectively. Therefore they qualify as an enterprise. But even if the arguments of the two OPs are accepted, as they carry out commercial functions in the way that they grant sponsorship, radio and television rights, they have to be treated as enterprises under the provisions of Section 2(h) of the Act.

128. FIH has argued that it does not fall within the jurisdiction of the Commission because it is located outside India. Section 32 of the Act reads as under:

“32. The Commission shall, notwithstanding that, -

- (a) an agreement referred to in section 3 has been entered into outside India; or*
- (b) any party to such agreement is outside India; or*
- (c) any enterprise abusing the dominant position is outside India; or*
- (d) a combination has taken place outside India; or*
- (e) any party to combination is outside India; or*
- (f) any other matter or practice or action arising out of such agreement or dominant position or combination is outside India,*

Have power to inquire [in accordance with the provisions contained in sections 19, 20, 26, 29 and 30 of the Act] into such agreement or dominant position or combination has, or is likely to have, an appreciable adverse effect on competition in the relevant market in India [and pass such orders as it may deem fit in accordance with the provision of this Act.]”

In view of this provision under the Competition Act if the activity of an enterprise located outside India has effect on competition in India, it falls within the jurisdiction of the Commission and the Commission has full

authority to take action against an enterprise located outside India. Thus the arguments of FIH on this issue is without any basis.

129. No analysis would be complete without reference to Section 18 of the Act which read as follows-

"18. Subject to the provisions of this Act, it shall be the duty of the Commission to eliminate practices having adverse effect on competition, promote and sustain competition, protect the interests of consumers and ensure freedom of trade carried on by other participants, in markets in India:

Provided that the Commission may, for the purpose of discharging its duties or performing its functions under this Act, enter into any memorandum or arrangement with the prior approval of the Central Government, with any agency of any foreign country."

Thus, it is the duty of the Commission to eliminate practices which have adverse effect on competition (the expression used is not appreciable adverse effect on competition) and to promote and sustain competition. Thus it is the duty of the Commission not only to eliminate anti-competitive practices but by its action to promote and sustain competition. In this particular case or any other case, the Commission has got to identify the anticompetitive practices and then eliminate them. The Commission has not only to promote competition but also sustain it. The Commission also has to protect the interest of consumers and ensure freedom of trade carried out by the participants.

130. Freedom of trade is also a constitutional guarantee under the Indian Constitution. There can be restrictions on freedom of trade but such restrictions should be only for protecting the sovereignty of the State or if they are opposed to public policy. In the case of Brojonath Ganguly 1986 AIR 1571, the Supreme Court has stated that any contract which infringes on Parts III and IV of the Constitution is not a valid contract. Following

that reasoning, the contracts of the Code of Conduct between HI and the players infringes on the profession carried out by the players. If a player plays in an unsanctioned tournament, he is debarred from representing his country and gets reduced remuneration. This not only goes against the concept of the best player playing for the country but also is an unreasonable restriction on the freedom of trade carried out by the players. Further a barrier to entry in the market of hockey or foreclosure of competition by hindering entry into the market or driving existing competitors out of the market results in an infringement of the concept of freedom of trade. Such practices bring no benefit to the consumers and do not lead to an improvement in the provision of services.

131. Such activities either of HI or FIH would be anticompetitive practices and it is the duty of the Commission to eliminate them and also to ensure that a competitive environment exists in the market of hockey services. The Commission has to ensure that the interests of the consumers have got to be protected. The end consumers in this case are spectators whereas the players are also consumers but are in the nature of intermediate consumers. It has already been held that by having a system of sanctioned and unsanctioned events leads to erosion in the number of matches and thus reduced viewership. It affects the players as it reduces their remuneration and their right to play for their country. It also leads to lower earnings for the organisers, broadcasters, officials, umpires etc. Thus the system of having a system of sanctioned/unsanctioned events leads to anticompetitive effects in the market of hockey.

132. In view of Section 18 of the Act it has to be seen whether the agreements entered into by HI with the players as code of conduct amounted to a violation of Section 3 or Section 4 of the Act. The DG has held that it amounts to a denial of market access under Section 4(2)(c) of the Act as it results in the denial of the market access. There is no doubt

that the Code of Conduct (COC) agreements entered into by HI and the players were agreements. There is also no doubt that these agreements the players had to sign or they would have been barred from playing hockey. It has been held that the COC agreements cause appreciable adverse effect on competition in India. Even the factors mentioned in Section 19(3) are applicable as discussed above. The market in this case is that of hockey services and in this market, the regulator HI and the players both operate. Section 3(4) would not be applicable because under Section 3(4), the parties to an agreement should operate in different markets. As the players and HI operate in the market in the same market, the provisions of Section 3(1) would be applicable to this case. It has already been held that the agreements cause appreciable adverse effect on competition in India. These agreements have an effect on the other participants in the market such as the spectators, organisers, broadcasters etc. As the COC agreements cause AAEC, they are void under the provisions of Section 3(2) of the Act. Thus, the code of conduct would not come in the way of the players in playing any type of tournament whether sanctioned or unsanctioned.

133. The DG has stated that the byelaws issued by FIH amounted to a violation of Section 3(3)(b) of the Act. The byelaws dated 11.03.2011 were issued by the executive committee of FIH and not by an association of 127 national associations of FIH. The DG has already held that FIH was an enterprise. For Section 3(3)(b) to be operative there should be agreement, or a decision or a practice taken by a group of enterprises. In this case there was no group of enterprises and therefore Section 3(3)(b) would not apply. It has to be considered as to whether the byelaws dated 11.03.2011 was an abuse of dominance.

134. As far as the applicability of Section 4 of the Act is concerned, it is necessary to examine as to how FIH and HI operate in the different markets. FIH is the international federation which is at the top of the

pyramidal structure for the administration of hockey world over. The rules for hockey and the enforcement of anti-doping code are framed by FIH. Being the apex regulatory body for running the sports of hockey it has no competition and it can act independent of competitive forces. In India, it acts through the national association HI and the relevant market for it is running of services in hockey in the entire territory of India. Hockey India acted at the behest of FIH and is bound by the directives of FIH. HI's activities would be suspended if the directives of FIH are not followed by it. FIH also has the ability to act in a manner so as to affect the consumers and the entire market in its favour. The factors mentioned in Section 19(4) of the Act such as the dominant position as mentioned in Section 19(4)(g) is applicable. Further the factor in Section 19(4)(f) is applicable. Thus FIH is dominant in the relevant market of hockey services in India.

135. As far as HI is concerned, by the order of the Supreme Court and the recognition granted by FIH, it has got the right to run hockey events in the international events in India and abroad. There is no other player in this market. As a consequence HI was able to act independently of the market forces and affect the consumers in its favour. Thus HI was able to enforce the code of conduct for the players. It made HI dominant in the field of international hockey market in India. The dominance is also established by considering the factors (f) and (g) of Section 19(4) of the Act.

136. The opposite parties have taken the plea that the Olympic Charter and the sanctity of sports of hockey required the opposite parties to frame a system of sanctioned/unsanctioned events. But this is only an explanation for acquiring monopoly and achieve total control of the sports of hockey. There is nothing in the Olympic Charter which supports this view. In fact the Olympic Charter specifically mentions that welfare of the athletes have to be enhanced. In this case on the contrary by having

guidelines and issues of the code of conduct there is an infringement of freedom to carry out trade and unfair conditions have been created in which there is infringement of the freedom of trade and denial of access of the market. Therefore the DG's action in holding that FIH and HI had contravened the provisions of Section 4(2)(a)(i) and Section 4(2)(c) of the Act, as discussed in Para 68 above is in order. Similarly, the action FIH and HI as discussed in Para 69 also establishes contravention under Section 4(2)(c) of the Act. Similarly the DG has found contravention under Section 4(2)(a)(i) and Section 4(2)(c) of the Act as discussed in Paras 70, 71, 72 and 73 of this order by FIH and HI. The abuses by HI and FIH have been clearly established by DG and on these issues the findings of the DG are correct and accordingly confirmed.

137. The informant has also argued that though HI was dominant in international hockey market services in India, it was trying to enter into and protect the market of domestic hockey services in India. This allegation is correct as with help from FIH, with the introduction of the concept of sanctioned and unsanctioned events and the act of penalising the players, HI has tried to achieve a dominant position in the domestic hockey services in India. Thus there is a contravention of Section 4(2)(e) of the Act.

138. Under the provisions of Section 27 found in the case, orders are required to be passed under the provisions of Section 27(e) of the Act, directions have to be issued to the enterprises involved for correcting their behaviour. It is seen that there is nothing wrong with the system of sanctioned/unsanctioned events. The directions are as follows: -

- (i) The Code of Conduct between Hockey India and FIH should be modified and issue concerning sanctioned/unsanctioned events should be deleted. There should be no restriction on players to play sanctioned/unsanctioned events.

- (ii) There should be no penalty on the players for playing unsanctioned events.
- (iii) There should be no question of having no objection certificate from any tournament organiser for playing in some other tournament in the case of players.
- (iv) FIH should not have a stipulation that if a national association participates in unsanctioned events, it could be penalised. This works against the concept of the independence of the national association and is abusive in nature. FIH should therefore modify its byelaws accordingly.
- (v) FIH should also modify the guidelines and remove the penalty clause for players who participate in unsanctioned events.

139. As far as monetary penalty is concerned, a penalty at the rate of 10% cannot be levied because the contravention is not excessive or repetitive. Considering this fact and the fact that the provision was introduced by HI and FIH for the first time penalty at the rate of 5% of the average turnover for the last three years would be sufficient. The turnover for the three financial years of Hockey India are as under:

Year Ending	Income
31.03.2010	33783937
31.03.2011	43083134
31.03.2012	83348672

The average turnover comes to Rs.5.34Cr. A penalty of Rs. 25 Lacs is imposed on Hockey India for the contravention of the Act.

As far as FIH is concerned the turnover figures are not available but a penalty of 5% of its turnover is therefore levied.

140. The Secretary is directed to issue copy of the order to the concerned parties and ensure that the directions given are followed by Hockey India and FIH within 60 days of issue of this order.

Sd/-
(R. Prasad)
Member