



COMPETITION COMMISSION OF INDIA

Case No. 79 of 2011

In Re:

Hemant Sharma

240, Bashiratganj
Lucknow, Uttar Pradesh

Informant No. 1

Devendra Bajpai

5/588, Vikas Nagar
Lucknow, Uttar Pradesh

Informant No. 2

Gurpreet Pal Singh

6E, Matasundari Place
DDU Marg, New Delhi

Informant No. 3

Karun Duggal

30-A, Kewal Park Extension
Opposite Metro Pillar 72, Azadpur
Delhi

Informant No. 4

And

All India Chess Federation (AICF)

Through its Secretary
Hall No.82, Jawahar Lal Nehru Stadium
Chennai, Tamil Nadu

Opposite Party



CORAM

Mr. Devender Kumar Sikri
Chairperson

Mr. Sudhir Mital
Member

Mr. Augustine Peter
Member

Mr. U. C. Nahta
Member

Mr. Justice G.P. Mittal
Member

Appearances during the final hearing held on 21st February, 2018

For the Informant : Ms. Shivani Lakhanpal, Advocate
Informant-in-person

For the Opposite Party : Mr. J. Sivanandaraaj, Advocate
Ms. Shalini Kaul, Advocate
Ms. Ridhima Sharma, Advocate

Order under Section 27 of the Competition Act, 2002

A. Background

1. The present information has been filed under Section 19(1)(a) of the Competition Act, 2002 (the 'Act') by Mr. Hemant Sharma ('**Informant No.1**'), Mr. Devendra Bajpai ('**Informant No.2**'), Mr. Gurpreet Pal Singh ('**Informant No.3**') and Mr. Karun Duggal ('**Informant No.4**') (All collectively referred to as the '**Informants**') against All India Chess Federation (the '**OP**'/'**AICF**'), alleging, *inter-alia*, contravention of the provisions of Sections 3 and 4 of the Act.



2. The information was filed by the Informants pursuant to the directions of the Hon'ble Delhi High Court in Writ Petition (Civil) No.5770 of 2011, contesting certain conduct and practices of AICF. Looking into the nature of allegations and the issues involved, the Hon'ble Delhi High Court disposed of the Writ Petition with the direction to file an information before the Commission under Section 19 (1)(a) of the Act.
3. AICF is a society registered under the Tamil Nadu Societies Registration Act, 1975 as the National Sports Federation ('NSF') for the sport of chess. AICF is also recognised by and affiliated to, Federation Internationale des Echecs ('FIDE'), which is the apex International body governing the sport of chess.
4. The Informants are chess players registered with AICF on an annual basis. The Informants have contended that the registration form, *inter-alia*, contains a declaration which states that the player will not participate in any tournament / championship that is not authorised by AICF. It has been further contended that such registration is necessary if the players want to be selected for National or International events. The Informants have alleged that if any player participates in any tournament not authorised by AICF, he/she will be banned for a period of one (1) year from participating in the National Chess Championships and other events. Further, such player would have to surrender fifty (50) percent of the prize money to AICF, if any, from such unauthorised events and tender an unconditional apology along with an undertaking that he/she will not participate in any unauthorised tournament in future.
5. The Informants submitted that chess players all over the world are given International ELO ratings by FIDE according to their playing strength in various tournaments, ELO rating is an important benchmark for all chess players. Being the benchmark, this rating is essential for any professional chess player. It has been alleged that the ELO rating points of the Informants were removed by AICF without giving any prior



notice due to their participation in the chess tournament sponsored by the Chess Association of India (“CAI”), which was not authorised by AICF. In addition to Informants, AICF also removed ratings of 151 chess players on the ground.

6. According to the Informants, the above conduct and practices of AICF are in contravention of the provisions of the Sections 3 and 4 of the Act.

B. Prima-facie consideration of Commission

7. Upon consideration of information, the Commission was of a view that there existed a *prima-facie* case of contravention of the provisions of the Act by AICF. Accordingly, the Commission passed an order dated 9th February, 2012 under Section 26(1) of the Act directing the Director General (“DG”) to cause an investigation into the matter. After a detailed investigation, the DG submitted its investigation report on 12th October, 2012.

C. Findings of investigation

8. Findings of the DG are summarised as under:

8.1 *AICF is an enterprise:* DG found AICF to be an enterprise under Section 2(h) of the Act, which defines the term ‘enterprise’ as a person or Department of Government engaged in any of the economic activity specified in the Section. Reliance was placed upon the decision of the Hon’ble Delhi High Court in Writ Petition (C) No. 5770/2011 (*Hemant Sharma and Others vs. Union of India and Others*), to hold AICF to be an enterprise. AICF admittedly collects a registration fee from its players on an annual basis. Additionally, the charter documents of AICF allow it to organise chess tournaments and collect charges from the players participating in such tournaments. AICF also provides technical support for conduct of chess tournaments. This clearly brings out



सत्यमेव जयते



the fact that AICF provides services to the Informants, other chess players and those who are interested in conducting chess tournaments/events. All these economic activities fall within the ambit of Section 2(h) of the Act and thus, AICF has been found to be an enterprise.

- 8.2 *Relevant market:* From the demand side, chess players cannot shift to any other sports body conducting any other sport in response to a change in the supply conditions of the sport of chess. From the supply side, conducting and governing chess events in India constitute a separate and unique service market as the supply of such service cannot be considered substitutable or interchangeable with any other sport like hockey, *etc.* Accordingly, the relevant market has been found to be the market for “*conducting and governing domestic and international chess activities for both men and women and the underlying economic activities in India*”.
- 8.3 *Dominance:* Ministry of Youth Affairs and Sports (‘MYAS’) has granted status of NSF to AICF. Further, AICF is the only national level chess federation affiliated to FIDE. As a result, AICF happens to be the sole and exclusive authority to govern the game of chess in India, which includes selection of Indian chess players, conducting national, open and international tournaments in India, approving the tournaments, placing restrictions on participation of players in tournaments not approved by it, *etc.*, thereby allowing it to enjoy a position of strength to act independently of the market forces.
- 8.4 *Abuse of Dominance:* AICF has contravened the provisions of Sections 4(2)(a)(i), 4(2)(b)(i) and 4(2)(c) of the Act. The brief details of contravention found are as under:



- (a) *Restrictions on participating in Authorised/ Un-authorised Tournaments/ Championships of AICF:* In terms of the registration form submitted by chess players to AICF, they are required to give a declaration to the effect that they will not participate in any tournament/ championship not authorised by it. AICF Rules and Regulations as well as its Code of Conduct provide that players participating in unauthorised chess events may be subjected to disciplinary action. Based on these, they were banned for a period of one (1) year due to their participation in a tournament organised by CAI, which was not authorised by AICF. It has also been noticed that AICF has displayed a caution on its website, which is against the tournaments organised by CAI. In view of the above, it has been concluded that AICF restricts chess players and organisations like CAI in providing their services for promotion and development of the sport of chess and enhancing the talent of players. Such stipulation limits and/or restricts the services of players and organisations and was found to be in contravention of the provisions of Section 4(2)(b)(i) and Section 4(2)(c) of the Act.
- (b) *Making organization of events commercially unviable for competing organizers:* The above discussed restrictions imposed by AICF, on organizations such as CAI and the players, including the Informants, have a deterrent effect whereby chess players would not prefer to participate in chess tournaments being organised by other associations like CAI. AICF thus, indulges in practices which result in denial of market access. By imposing ban on players like the Informants and removing their ELO/FIDE rating, AICF makes organisation of chess events difficult for other competitors, by not allowing them to get the best resources and players for organising/participating in their events.



This was found to be in contravention of the provisions of Section 4(2)(c) of the Act.

- (c) *Removal of ELO/FIDE rating of players by AICF:* ELO ratings being the benchmark of standard performance, is the most important rating for chess players. AICF imposes unfair or discriminatory conditions on players by debarring them from its roll and also by removing their ELO rating on their participation in chess events not approved by it.
- (d) *Sharing of non-refundable Earnest Money Deposit (EMD) by AICF:* The investigation has revealed that the practice of collecting EMD out of grants provided to AICF amounts to misutilisation of funds as it deprives the organisers to utilise this amount for meeting the expenses of tournaments. This practice of AICF was found to be in contravention of Section 4(2)(a)(i) of the Act.
- (e) *Sharing of entry fee for various categories:* In terms of the norms of AICF regarding National Championships, any chess player can participate in the competition under the category ‘special/ donor entry’ and there is no restriction on the number of such entries. AICF collects fifty (50) percent of the entry fee in this process, which ranges between Rupees three hundred and fifty (350) to Rupees one thousand and five hundred (1500) for selected entries and Rupees two thousand (2000) to Rupees ten thousand (10,000) for special/donor entries. This practice was found to be unfair and in contravention of Section 4(2)(a)(i) of the Act.
- (f) *Special/donor entries and non-implementation of provision of the LTDP regarding merit in the process of selection of probables in National Championships:* Upon examining the process adopted in



Delhi Chess Association, Haryana Chess Association, Gujarat State Chess Association and Tamil Nadu State Chess Association, it has been found that AICF did not implement provisions regarding selection of probables as per Long Term Development Plan ('LTDP'), which is prepared by respective NSFs as per the code of MYAS issued in 2011. Contrary to the stipulations of LTDP, AICF has been allowing entries, other than on merit, under the type special/donor entries and collecting higher amount of fees from such special entrants. The players of special/donor entries are not having any meritorious background in various chess events conducted under the umbrella of tournaments organised by AICF. Such practice of allowing entry to a specific privileged class who are able to pay higher entry fee was found to be in contravention of Section 4(2)(a)(i) of the Act.

- (g) *Misuse of discretion by the Secretary in nomination of players and non-maintenance of proper record and supervision in the selection of players:* As per AICF Regulations, its Secretary is vested with the discretion to nominate players for various chess tournaments. The Secretary, AICF has been found to have nominated players for various national chess tournaments without any justification. Such practice of AICF granting undue privilege to select players without any justification was found to be in contravention of Section 4(2)(a)(i) of the Act.
- (h) *Award of certificates and their misuse:* NSFs are authorised to issue certificates to chess players. Investigation has revealed that AICF has delegated the powers of issuing certificates to organisers as per their format. AICF neither has any control over maintaining the uniformity in the contents and proper serial number/certificate numbers nor has



any record of the certificates issued or their distribution. In view of these, it was concluded that AICF's conduct is in contravention of Section 4(2)(a)(i) of the Act.

8.5 *Violation of Section 3 of the Act:* With regards to violation of Section 3 of the Act, it has been concluded by the DG that practices and various clauses in the Constitution and Bye Laws of AICF have caused appreciable adverse effect on competition in the country because they have harmed competition, in terms of various factors enumerated under Section 19(3) of the Act, such as creation of entry barriers, driving existing competitors out of the market and foreclosure of competition. These have the effect of limiting and/or controlling supply, market, technical development and provisions of services, in contravention of the provisions of Section 3(3)(b) of the Act. As regards violation of Section 3(4), DG found that vertical relationship does not exist between AICF and its players and thus, would not attract the provisions of Section 3(4) of the Act.

D. Consideration of Investigation Report by the Commission

9 The Commission considered the Investigation Report submitted by the DG, in its ordinary meeting, held on 08th November, 2012 and decided to forward copies of the same to the parties for filing their objections / suggestions.

E. Proceedings before the Hon'ble Madras High Court

10 Subsequently, AICF filed a Writ Petition, bearing Writ Petition (C) No. 34039 of 2012, before the Hon'ble Madras High Court contesting the proceedings before the Commission. *Vide* order dated 18th December, 2012, the Hon'ble Madras High Court granted stay against the proceedings before the Commission, till further orders. Thereafter, the Hon'ble Madras High Court, *vide* another order dated 05th January,



2017, vacated the stay. Being aggrieved by the order of the Learned Single Judge of the Hon'ble Madras High Court, AICF preferred an intra court appeal before Division Bench of the Hon'ble Madras High Court. The Division Bench was pleased to order *status-quo* on 28th March, 2017. However, on hearing the parties, on 05th April, 2017, the Division Bench of the Hon'ble Madras High Court vacated its direction to maintain *status-quo* and permitted the Commission to proceed with hearing in the instant matter. Accordingly, on 13th April, 2017, the Commission directed the parties to file their suggestions/objections to the Investigation Report and appear for oral hearing on 23rd May, 2017. The suggestions/objections to the Investigation Report were filed by AICF and the Informants on 12th May, 2017 and 23rd May, 2017, respectively. The Commission heard the parties on the Investigation Report on 23rd May, 2017 and directed AICF to file an Affidavit to clarify certain issues raised during the hearing along with its Long Term Development Plan. Accordingly, AICF filed an Affidavit and its Long Term Development Plan on 29th May, 2017.

F. Order dated 11th December, 2017 passed by the Commission under Section 26(8) of the Act

11 Considering the materials available on record and upon hearing the parties, the Commission did not agree with the findings of the DG in relation to the relevant market and existence of vertical relationship between AICF and chess players and decided to inquire further into the matter about certain additional facts that the Commission considered relevant to the present case. Accordingly, the Commission issued an order dated 11th December, 2017 to the parties under Section 26(8) of the Act. The major observations of the Commission in the said order are summarised as under:

11.1 While agreeing with the DG on the aspect of AICF as an enterprise, the Commission relied on additional material, including excerpts from the



सत्यमेव जयते



website of FIDE and financials of AICF, to infer AICF as an enterprise. Given the nature of allegations and characteristics of the services involved, the Commission defined two relevant markets: (a) ‘*market for organization of professional chess tournaments/events*’; and (b) ‘*market for services of chess players*’. It was observed that AICF enjoys dominant position on account of the regulatory powers enjoyed by AICF (under the pyramid structure of sports governance) in the market for organization of professional chess tournaments/events in India. AICF was also stated to be dominant in the market for services of chess players due to its regulatory power including its abilities to restrict movement by imposing conditions on professional players who do not possess any bargaining power.

11.2 The abusive conduct, as identified by the DG, relating to the process of bidding and sharing of non-refundable earnest money deposit by AICF; sharing of entry fee for various categories; and making organisation of events commercially unviable for competing organisers were observed by the Commission to be in the market for organisation of professional chess players in India. The conduct relating to special/donor entries and non-implementation of LTDP with respect to merit in the process of selection of probables in National Championships; use of discretion by the secretary in the nomination of players and non-maintenance of proper record in selection of players and award of certificates were observed to fall in the market for services of chess players in India. Restrictions on chess players and organisations like CAI and removal of ELO/FIDE rating of players by AICF were observed to be relating to both the markets.

11.3 The Commission also observed that there exists a vertical relationship between AICF and chess players as AICF buys their services for organisation of chess events. The Commission further noted that the undertaking prescribed by AICF regarding ban on its players to participate in events not



सत्यमेव जयते



authorised by AICF amounts to exclusive distribution and refusal to deal. Non-compliance of such undertaking will result in banning of the player and removal of their ELO rating, as was done in the case of the Informants. These consequences were stated to create entry barriers, foreclose competition and restrict opportunities available for chess players. Since the said conduct was likely to have appreciable adverse effect on competition, the Commission was of the view that the said conduct was in the nature of contravention covered under Sections 3(4)(c) and 3(4)(d) read with Section 3(1) of the Act.

- 12 Based on the above, the OP was directed to show cause as to why it should not be held to be in contravention of Sections 4(2)(a)(i), 4(2)(b)(i) and 4(2)(c) read with Section 4(1) of the Act and Sections 3(4)(c) and 3(4)(d) read with Section 3(1) of the Act. The OP was directed to file its response to the show cause notice of the Commission by 2nd February, 2018. The Informants were directed to file their counter response by 9th February, 2018. It was made clear that the findings of Investigation Report that were not differed with would be read in conjunction with the observations recorded therein. AICF filed its reply on 15th February, 2018. The parties were heard by the Commission on 21st February, 2018. The Commission directed the Informants to file their submissions thereon. AICF was directed to file its rejoinder, if any, with a copy to Informants, latest by 13th March, 2018. Submissions were filed by Informants and AICF on 6th March, 2018 and 13th March, 2018, respectively. These would be dealt with in detail, while analysing the matter on merits.

G. Analysis and findings of the Commission

- 13 The Commission has perused the information, the Investigation Report, the suggestions/ objections to the Investigation Report filed by the parties, submissions of parties to the order dated 11th December, 2018 of the Commission and other material available on record as well as the contentions raised by the parties in the



hearing on 21st February, 2018. Upon consideration of the aforesaid, the following issues arise for determination in the present matter:

- (i) *What is/are the relevant market(s)?*
- (ii) *Whether AICF enjoys dominant position in the relevant market(s)?*
- (iii) *If the answer to Issue No. (ii) is in affirmative, whether AICF has abused its dominant position in the relevant market(s)?*
- (iv) *Whether the declaration, which the players are made to sign by undertaking not to play any open tournament, is anti-competitive agreement as per the Act and it causes appreciable adverse effect on competition as per Section 3(4) of the Act read with Section 3(1) of the Act?*

- 14 Before dealing with the merits of the case, the Commission would first deal with the preliminary issue raised by AICF *i.e.* AICF is not an ‘enterprise’ within the meaning of Section 2(h) of the Act and therefore, the provisions of the Act would not apply to it.

Is AICF an enterprise?

- 15 The Commission notes that Section 2(h) of the Act defines the term ‘enterprise’ as under: “*enterprise*” means a person or a department of the Government, who or which is, or has been, engaged in any activity, relating to the production, storage, supply, distribution, acquisition or control of articles or goods, or the provision of services, of any kind, or in investment, or in the business of acquiring, holding, underwriting or dealing with shares, debentures or other securities of any other body corporate, either directly or through one or more of its units or divisions or subsidiaries, whether such unit or division or subsidiary is located at the same place where the enterprise is located or at a different place or at different places, but does not include any activity of the Government relatable to the sovereign functions of the Government including all activities carried on by the departments of the Central Government dealing with atomic energy, currency, defence and space. The term



‘person’ in turn has been defined under Section 2(l) of the Act to include ‘*a co-operative society registered under any law relating to cooperative societies*’. (emphasis added)

- 16 Hence, it may be noted that the definition of ‘enterprise’ is wide enough to include within its purview any economic activity carried on by any entity. As per this definition, an entity which is engaged in any activity relating to production, storage, supply, distribution, acquisition or control of any article or goods, or provision of services is an enterprise. The activity in question merely needs to be an economic activity. An activity can be considered as an economic activity if an entity is operating in some market and where there are buyers and sellers.
- 17 As stated earlier, DG has found that AICF is an enterprise under Section 2(h) of the Act. The Commission in its order dated 11th December, 2017, agreed with the DG and noted that AICF is an enterprise as defined under Section 2(h) of the Act as it is engaged in organisation of chess tournaments/ events and also undertakes incidental/ related activities that generate income.
- 18 AICF vehemently objected to the conclusion of DG as well as observations of the Commission, in its order dated 11th December, 2017, that AICF is an ‘enterprise’ under Section 2(h) of the Act. AICF has claimed that, being a regulator of the game of chess, it performs its functions without any profit motive and is thus not an ‘enterprise’ under Section 2(h) of the Act. As per AICF, the sport of chess does not generate interest of viewers and there is no income earned through sale of tickets, television rights or advertisements. It was submitted that mere collection of registration fee is not an economic activity and does not generate income for AICF either. This fee collected is utilised towards maintenance of the database and preparation of the rank list *etc.*



सत्यमेव जयते



- 19 It has been further contended that none of the tournaments referred to in Commission's order dated 11th December, 2017, were organised by AICF and they were instead organised by respective State Associations or clubs. AICF only monitors and regulates these tournaments and strictly keeps itself out of the economic activities associated with organisation of tournaments. It stated that Rs. 9 lakhs, which was received by AICF from Doordarshan, was an exception and was for the purpose of preparing highlights of matches. Otherwise it does not earn any income from TV rights, advertisements or telecast rights. In view of these, it has been contended that the Commission has no jurisdiction over AICF.
- 20 The Informants, while agreeing with the findings of DG urged that AICF, is an "enterprise" under the Act. According to them, AICF neither functions as a regulator of the game of chess nor discharges any statutory or constitutional functions. They contended that AICF has several sources of income such as grants from Government of India, registration fee, recognition fees (i.e. share of prize money) entry fee, non-refundable earnest money deposits, etc. AICF also earns by organising chess tournaments under its supervision, granting participation certificates, sponsorship and television rights. The Informants have placed reliance on the judgment dated 4th November, 2011 passed by the Hon'ble Delhi High Court in the case of *Hemant Sharma and others Vs. Union of India* [WP (C) No. 5770 of 2011] holding AICF to be an enterprise under the provisions of the Act. The Informants have also relied upon the judgment dated 07th March, 2017 of the Hon'ble Supreme Court in *Competition Commission of India vs. Coordination Committee of Artist & Technicians of W.B. Film and Television and others* [Civil Appeal No. 6691 of 2014] to suggest that AICF is an enterprise.
- 21 From the facts of the present case, the Commission notes that AICF is a society registered under the Tamil Nadu Societies Registration Act, 1975 and is thus a 'person', as defined in Section 2(l) of the Act. AICF is recognised as NSF for the sport of chess by the Government of India. AICF is also the only organisation from



India to be recognised by and affiliated to FIDE, which is the International body governing the sport of chess. In terms of its Constitution and Bye laws, AICF has *inter-alia* been established to organise national and international championships. Organisation of chess events/ tournaments is, *inter-alia*, a revenue generating activity and falls within the ambit of services covered under Section 2(h) of the Act. Thus, the very fact that AICF has a mandate to undertake the economic activity of organizing chess events tournaments under its Constitution, makes it an enterprise as per the Act.

- 22 Moreover, a perusal of the material available on record shows that AICF, *inter- alia*, has been engaged in organisation of chess events. For instance, the Annual Report of AICF for the Financial Year 2015-16 states that “*the Central Council of AICF decided to honour the above medal winning Olympiad team members by organising an India-China summit clash chess match with the prize fund of Rs. 10 lakhs sponsored by AICF. (emphasis added)*” The extracts from the website of FIDE also confirm that “*to celebrate the historic bronze medal winning performance of India in the Tromso Olympiad 2014, All India Chess Federation organises India – China Chess summit 2015, supported by Telangna State Chess Association at Marriot Hotel, Hyderabad from 2nd to 10th March*”. The same website, at another place, states that “*The All India Chess Federation (AICF) will organise the World Youth U-16 Chess Olympiad in Ahmedabad, India from 10th December (Arrival) to 20th December (Departure), 2017 conducted under the auspices of Federation Internationale Des Echecs (FIDE)*”. The Annual Report of AICF for the financial year 2011-12 states that “*We [AICF] organized World Junior Chess Championships at Chennai and Asian Schools Chess Championships at New Delhi...*”. All these evidences were confronted to the OP *vide* order dated 11th December, 2017. AICF has stated that none of these tournaments were “organised” by them but by the respective State Associations or clubs. It further explained that AICF has either conceptualised the said events or was allotted the said events by the FIDE. Role of AICF is limited to contributing to the prize money, providing technical support,



monitoring, regulating and advising keeping itself out of the economic activities associated with it. AICF has placed on record the extracts of minutes of the meetings in support of its contention that these tournaments were organised by the State Associations or clubs.

- 23 In this regard, the Commission observes that in terms of Section 2(h) of the Act, a person would be an enterprise, irrespective of whether the activities mentioned therein are carried out directly or indirectly through units, divisions or subsidiaries. Thus, if AICF conducts chess events through or in collaboration with the State associations/club, these would be deemed to have been organised by AICF making it an enterprise. Further, the self-proclamation on the website and the annual report, as detailed above, which could not be explained by AICF, clearly bring out that AICF had in fact been a part of organisation of all those chess events/tournaments and there is no scope to assume the contrary.
- 24 In addition to the above, the financial statements of AICF for the financial years 2008-09, 2010-11 and 2015-16 clearly show that AICF received income from sale of advertisement space, sale of media rights and sponsorship. AICF in its response has sought to negate these findings by submitting that the documents referred by the Commission in its order were not audited Financials of AICF but mere estimates/budgets. The said budgets are said to be prepared with the intention of demonstrating that the AICF has identified means to secure the finances it requires to meet its estimated expenditure for the subject financial years. It has further stated that use of the words “advertisement” and “sponsorship” in the budget does not indicate that the advertisement rights are sold by AICF. The Commission is however, not convinced with these explanations. AICF has not demonstrated as to how the contents of audited accounts are different from the unaudited accounts. The minutes of the Annual General Body meeting of AICF dated 20th June, 2008, *inter-alia*, state that “As recommended by the Central Council it was resolved to share the remuneration from Doordarshan for telecast of our chess programmes with LIVE



Tele Shows in the ratio of 40:60 (60% for LTS)". The Informant has also submitted that AICF generates income from registration fee, recognition fees (i.e. share of prize money) entry fee, non-refundable earnest money deposits, donor entry fees, etc., which is evident from chart on money received by AICF in the Financial Year 2011-12, 2012-13 and 2013-14. These aspects clearly establish the revenue generating nature of the activity.

- 25 AICF has also asserted that all fees collected by AICF including the registration fees, earnest money deposit is based on its financial regulations and the intention behind collection of fees is to regulate the game and collect funds to plough it back to sport in the form of prize money to players, expenses for training of coaches, arbiters, etc. It has further submitted that the money received from Doordarshan is purely used for promotion of the game. It has also been strongly contended that AICF does not have profit motive and thus, is not an enterprise under the provisions of the Act.
- 26 The Commission notes that though AICF may plough back all its revenue into the game of chess but that still does not change the nature of economic activities performed by it. It is observed that concept of enterprise does not depend on profit motive alone. The defining feature of the concept '*enterprise*' is that it engages in an economic activity within the ambit of Section 2(h) of the Act. If a person is engaged in any such activity, no matter with or without profit motive, it would be considered as an enterprise, as it interfaces with the market and hence, with other alternatives for the product or service in question. The primary task of a sports federation is to undertake regulatory activities such as framing rules and undertaking measures to preserve the integrity of the sport. However, absence of a profit motive does not alter the enterprise status if the concerned entity pursues economic activities, and that too income generating economic activities.
- 27 The decisional practice of the Commission has also been to regard sports federations as '*enterprise*' if they are engaged in activities covered under Section 2(h) of the Act.



Reference is drawn to the decisions of the Commission in *Dhanraj Pillay and others v. Hockey India* (Case No. 73 of 2011) and *Surinder Singh Barmi v. Board for Control of Cricket in India* (Case No. 61 of 2010) in this regard. Subjecting economic activities of sports federation to competition law is also consistent with the practices followed by mature competition regimes like the European Union. In *Motosyklistiki Omospondia Ellados NPID (MOTOE) v. Elliniko Dimosio* [Case No. C-49/07 (2008) ECR I - 4863], it was held that “A legal person whose activities consist not only in taking part in administrative decisions authorising the organisation of motorcycling events, but also in organising such events itself and in entering, in that connection, into sponsorship, advertising and insurance contracts, falls within the scope of Articles 82 EC and 86 EC.”

- 28 In the light of above, the Commission concludes that AICF has been engaging in organisation of professional chess events/ tournaments as well as in incidental revenue generating activities. Performance of these activities by AICF is found to be sufficient to hold it as an enterprise as defined under Section 2(h) of the Act.
- 29 AICF has raised another preliminary issue concerning non-service of the order dated 09th February, 2012 under Section 26(1) of the Act, which according to it amounts to violation of principles of natural justice. It has contended that the said order came to its knowledge only when it received the Investigation Report dated 11th October, 2012. AICF as such was unable to challenge the proceedings before the Commission including the order passed under Section 26(1) of the Act due to non-service of the said order. However, at a later stage, AICF challenged the order dated 09th February, 2012 before the Hon’ble Madras High Court by filing a writ petition [Writ Petition (C) No. 34039 of 2012] and the same is pending.
- 30 The Commission notes that a preliminary conference was held with the parties on 15th December, 2012 before forming its prima facie opinion. It was only after holding such conference, that the order dated 09th February, 2012 was passed by the Commission. The Hon’ble Supreme Court in *Competition Commission of India v.*



Steel Authority of India Limited and Another, (2010) SCC 744, held that issuance of a direction under Section 26(1) is only an administrative action and the *prima-facie* opinion expressed therein is not a final determination. Therefore, the parties need not even be heard before passing a direction under Section 26(1) and they cannot seek the same as a matter of right. In the instant matter, the DG had issued a notice dated 19th March, 2012 to AICF in relation to investigation in the present case. The notice *inter-alia* mentioned the allegations made against AICF and that CCI has directed the DG to initiate investigation proceedings in the matter. It is strange that AICF claims that it was unaware of the proceedings before the Commission including the investigation despite service of such notice by the DG. The records of the case including the said order were open to inspection and any vigilant party could have taken a certified copy of the said order by making an application under the relevant provisions of the Competition Commission of India (General) Regulations, 2009. However, no effort was made by AICF to make use of these provisions. Thus, the Commission finds no merit in the argument of AICF that principles of natural justice were violated on account of non-service of the order dated 9th February, 2012, passed under Section 26(1) of the Act, upon it.

- 31 Having dealt with the preliminary issues, the Commission proceeds to deal with the issues framed by the Commission.

Issue 1: What is/are the relevant market(s)?

- 32 In any case of alleged abuse of dominant position, delineation of relevant market is important as it sets out the boundaries of competition analysis. Proper delineation of relevant market is necessary to identify in a systematic manner, the competing alternatives available to the consumers and accordingly the competitive constraints faced by the enterprise under scrutiny. The process of defining the relevant market is in essence a process of determining the substitutable goods or services as also to delineate the geographic scope within which such goods or services compete. It is



within the defined product and geographic boundaries that the competitive effects of a particular business conduct are to be assessed. Section 2(r) of the Act defines ‘*relevant market*’ as the market determined with reference to the relevant product market or the relevant geographic market or with reference to both the markets. Section 2(s) of the Act defines ‘*relevant geographic market*’ as a market comprising of the area in which the conditions of competition for supply of goods or provision of services or demand of goods or services are distinctly homogeneous and can be distinguished from the conditions prevailing in the neighbouring areas. Section 2(t) of the Act defines ‘*relevant product market*’ as a market comprising of all those product or services which are regarded as interchangeable or substitutable by the consumer by reason of characteristics of the products or services, their prices and intended use.

- 33 In the instant case, the DG has found the relevant market to be the market for ‘*conducting and governing domestic and international chess activities for both men and women and the underlying economic activities in India*’. While differing with the definition of DG, the Commission, in its order dated 11th December, 2017 observed that there are two relevant markets in the instant case, namely, ‘*market for organization of professional chess tournaments/events*’ and ‘*market for services of chess players*’, keeping in mind the impugned restrictions on the chess players and on the organisers of chess events/tournaments, and the effects flowing therefrom. AICF objected to the definition of relevant market proposed by the Commission as being erroneous.
- 34 Given the nature of findings of investigation in the instant case, the Commission notes that the allegations concern restriction on organisation of chess events/tournaments without approval of AICF and on chess players from participation in such events. The Commission reiterates the view taken in its order dated 11th December, 2018 that the relevant market for assessment of these



restrictions needs to be defined by taking into account impugned restrictions and the probable effects which arise from such restrictions.

- 35 In *Dhanraj Pillay case*, the Commission noted that the sports sector comprises multitude of relationships. For example, a sports federation may be a seller of various rights such as media rights, sponsorship rights, and franchise rights associated with sport event (s) under its purview and correspondingly, there would be a separate set of consumers for each of such rights. However, the ultimate viewers of sport events are the end consumers, who influence the popularity of the sport, which in-turn determines the value proposition of the commercials associated in different verticals. Also, a sports federation requires services of players, officials etc. for staging an event which makes sports federations themselves as consumers. In this multitude of relationships, defining the relevant consumer would enable defining the relevant market.
- 36 With respect to the assessment of the impugned conducts relating to process of bidding and sharing of non-refundable earnest money deposit by AICF, sharing of entry fee for various categories and making organization of events commercially unviable for competing organisers, the Commission finds focal service to be organisation of professional chess tournaments in India. The Commission notes that every sport has unique characteristics which distinguish it from other sports. Given the unique characteristics of chess, it is unlikely that consumers will regard any other sport or event as substitutable. Similarly, from an intended use perspective also entertainment from sport may not be regarded as substitutable with other forms of general entertainment. Thus, other sports and other forms of entertainment do not constrain chess in any manner. On a perusal of the materials available on record, including the Investigation Report and the written submission of the parties, it emerges that chess tournaments are conducted at National, State and District level. Chess tournaments are also conducted by universities, clubs and other organisations. However, the Commission does not find it necessary to segment or sub-segment the



सत्यमेव जयते



market based on different levels as the impugned restrictions of AICF apply to all types of professional chess tournaments/ events organised in India. Accordingly, the relevant product market to assess restrictions on organisations of the chess events will be the “*market for organisation of professional chess tournaments/events*”. In this regard AICF has stated that it does not organise any event and as such is not a constituent of the said relevant market for organisation of professional chess tournaments in India. The Commission has already dealt with the aspect of AICF being an enterprise involved in organisation of professional chess tournament, hence their argument is not tenable.

37 As regards the assessment of the impugned conduct relating to special/donor entries and non-implementation of LTDP with respect to merit in the process of selection of probables in National Championships; use of discretion by the secretary in the nomination of players and non-maintenance of proper record in selection of players and award of certificates, the Commission notes that AICF is hiring the services of chess players. AICF has argued that neither the chess players are service providers nor does it avail any service being provided by the chess players. In this respect the Commission observed that AICF requires the services of chess players for organising chess events which makes it a consumer of chess players. AICF cannot substitute the service provided by chess players with any other service. The monetary consideration for such services is in the form of sharing entry fee with the organisers of professional chess events, irrespective of whether such entry is in regular category or special/donors category. Accordingly, the relevant product market to assess the restrictions on chess players will be the “*market for services of chess players*”.

38 The relevant market for assessment of restrictions on chess players and on organizations like CAI, and actions taken such as debarment and removal of ELO/FIDE rating of players would be market for organisation of professional chess tournaments/events and market for services of chess players, as the said conducts are relatable to both the relevant markets.



- 39 As regards the relevant geographic market, it is observed that AICF being the NSF, it governs the game of chess by way of stipulating rules and regulations that are applicable across India. As a result, the conditions of competition in both the product markets defined above are homogeneous across the nation and thus, the geographic dimension of both the product markets would cover the whole of India.
- 40 Accordingly, the Commission concludes that relevant markets in the instant case would be:
- (a) The '*market for organization of professional chess tournaments/ events in India*'
 - (b) The '*market for services of chess players in India*'.

Issue 2: Whether AICF enjoys dominant position in the above defined relevant market(s)?

- 41 The DG has observed that AICF being the NSF for the game of chess is the only national level chess federation affiliated to FIDE. It is the sole and exclusive authority to regulate and govern the game of chess in India, which includes selection of Indian chess players, conducting national, open and international tournaments, approving tournaments, placing restrictions on participation of players, *etc.* Based on these factors, DG concluded that AICF enjoys dominant position in the market for conducting and governing domestic and international chess activities for both men and women and the underlying economic activities in India.
- 42 In its order dated 11th December, 2017, the Commission also observed that AICF enjoys dominant position in both the relevant markets delineated therein, *i.e.*, '*market for organisation of professional chess tournaments*' and '*market for services of chess players*'. It was observed that AICF enjoys dominant position in both the relevant markets on account of the regulatory powers enjoyed by it under the pyramid



structure of sports governance. In response, AICF has contended that it is governed by National Sports Code that has a policy of ‘One Sport One Body’. As a result, AICF enjoys dominant position for controlling and managing the game of chess. However, its activities cannot be subjected under Section 4 of the Act as it performs only regulatory functions. On the other hand, Informants agreed with the findings of the DG and observations of the Commission in its order dated 11th December, 2017.

- 43 As the factors attributing to dominance of AICF are largely similar in both the relevant markets, the assessment of dominant position in both the markets are being commonly dealt with in the succeeding paragraphs.
- 44 The Commission notes that AICF is the only national level chess federation in India affiliated to FIDE, which in-turn is the sole and supreme international body governing the game of chess. Further, by virtue of its NSF status by MYAS, AICF is vested with the authority to select and field the Indian chess team for international level tournaments and to conduct national and international chess events in India, *etc.* As a result of these, AICF is the *de-facto* regulator and an exclusive body responsible for the conduct and governance of all chess events in India. Further, regulatory powers enjoyed by AICF include sanctioning/disapproving proposals for organisation of chess events and subjecting players to disciplinary action in case of participation in unauthorised chess events.
- 45 To appraise the extent of authority vested in AICF, it would be relevant to refer to the Code of Conduct for the Players contained in its Constitution and Bye-Laws. The relevant extract is reproduced as under:

“(x) Players desirous of participating in any official FIDE/ Asian/ Commonwealth Championships should have participated in the last year’s respective age group, open National Championships. However, the Federation shall have the right to accept or reject any such requests.



(y) Players shall strictly abide by the Constitution, Rules, Regulations and Orders/Instructions of the Federation in force from time to time and also abide by the Instructions of Arbiters and AICF office bearers.

(z) No player shall participate in any tournament not authorised by All India Chess Federation or its affiliate members or District Association and units affiliated to them. The above violation shall attract disciplinary proceedings including cash penalties apart from debarring from participating in any tournaments in future.” (emphasis added)

46 The authority of AICF is also evident from the rules related to Organisation of National Championship/Tournaments; Conditions for organising chess events:

“(j) Players registered with AICF alone will be eligible to participate in the Championships.”

47 These rules undoubtedly confer AICF with control over professional chess players in India, who have no bargaining power. As per the rules, the players desirous of participating in FIDE/Asian/Commonwealth Championships are mandatorily required to participate in National Championships organised by AICF. Further, players registered with AICF alone can participate in State, National and International Championships recognised by FIDE and AICF. By controlling the participation of professional chess players in chess events organised by other entities, AICF enjoys control over organisation of chess events. The Commission notes that sports federation like AICF engaged/ involved in organisation of sports events and economic exploitation of such events are put to advantage if they are vested with the authority to approve/sanction organisation of similar events by other. Undoubtedly, such advantage is a significant source of market power. Further, AICF’s regulatory role empowers it to create entry barriers for other chess events other than those recognised by it, in form of requiring recognition.

48 The Commission has already noted that subjecting the activities of sports association to competition law is consistent with its decisional practice as well as mature competition jurisdictions like European Commission. Regulatory power of any



Sports Federation is considered to be a significant source of market power/ dominant position. In MOTOE (supra), the Court (Grand Chamber), on the issue of dominance of sports association observed that:

“...a system of undistorted competition, such as that provided for by the treaty, can be guaranteed only if equality of opportunity is secured between the various economic operators. To entrust a legal person such as ELPA, the National Association for Motorcycling in Greece, which itself organises and commercially exploits motorcycling events, the task of giving the competent administration its consent to applications for authorization to organize such events, is tantamount de facto to conferring upon it the power to designate the persons authorized to organize those events and to set the conditions in which those events are organized, thereby placing that entity at an obvious advantage over its competitors. Such a right may therefore lead to an undertaking which it possesses it to deny other operators access to the relevant market....”

- 49 The Commission also notes that AICF is the dominant consumer of services provided by chess players. Attention needs to be drawn to clause Z of the Code of conduct for Players contained in Constitution and Bye Laws of AICF and declaration given by players at the time of their registration with AICF for not participating in any other events organised by any other rival organisation of Chess. If a registered player participates in any tournament not authorised by AICF, he/she is subjected to disciplinary proceedings including cash penalties and debarment from participating in any tournaments in future. These regulations and undertakings given by players stand testimony to the monopsony power of AICF *vis-a-vis* professional chess players.
- 50 Having due regard to the regulatory powers enjoyed by AICF under the pyramid structure of sports governance and the predominant buyer of the services provided by professional chess players, the Commission has no hesitation to conclude that AICF enjoys dominant position in both the relevant markets *i.e.* market for organization of professional chess tournaments/events in India and market for services of chess players.



Issue 3: Whether AICF has abused its dominant position in the said relevant market(s)?

51 Having established the dominance of AICF in both the relevant markets, Commission would now deal with the alleged abuses.

(i) Restriction on chess players and organisation of chess tournaments

52 The Commission notes that the impugned restrictions on chess players to participate in tournaments, such as those organised by CAI, not authorised by AICF, actions taken thereof are relatable to both the relevant markets. Accordingly, they are being dealt with together.

53 At the outset, the Commission notes that competition cases relating to sports associations/federations usually arise due to conflict between their regulatory functions and economic activities undertaken by them. The Commission is of the view that system of approval under the pyramid structure of sports governance is a normal phenomenon of sports administration. However, rules governing the players and the organisation of sport events/ tournaments often create a restrictive environment for the economic activities that are incidental to sport. Unlike other abuse cases, these could be justified if it is demonstrated that the restraint on competition is a necessary requirement to serve the development of sport or preserve its integrity. However, if restrictions impede competition without having any plausible justification, the same would fall foul of competition law. In *Dhanraj Pillay v. Hockey India* (Order dated 31st May, 2013 in Case No. 73 of 2011), the Commission has noted that

“The Commission.....is of the opinion that intent/rationale behind introduction of the guidelines as submitted by FIH relating to sanctioned and unsanctioned events needs to be appreciated before arriving at any conclusions. Factors such as ensuring primacy of national representative



competition, deter free riding on the investments by national associations, maintaining the calendar of activities in a cohesive manner not cutting across the interests of participating members, preserving the integrity of the sport, etc. are inherent to the orderly development of the sport, which is the prime objective of the sports associations. Moving further, on the proportionality aspect, the Commission opines that proportionality of the regulations can only be decided by considering the manner in which regulations are applied.”

- 54 A similar approach has been the practice of mature competition regimes also. The White Paper on Sports issued by the European Commission [COM(2007) 391] states that

“...in respect of the regulatory aspects of sport, the assessment whether a certain sporting rule is compatible with EU competition law can only be made on a case-by-case basis, as recently confirmed by the European Court of Justice in its Meca-Medina ruling [Case C-519/04P, ECR 2006, I-6991]. The Court provided a clarification regarding the impact of EU law on sporting rules. It dismissed the notion of "purely sporting rules" as irrelevant for the question of the applicability of EU competition rules to the sport sector...The Court recognised that the specificity of sport has to be taken into consideration in the sense that restrictive effects on competition that are inherent in the organisation and proper conduct of competitive sport are not in breach of EU competition rules, provided that these effects are proportionate to the legitimate genuine sporting interest pursued. The necessity of a proportionality test implies the need to take into account the individual features of each case. It does not allow for the formulation of general guidelines on the application of competition law to the sport sector.”
(emphasis added)

- 55 Commission notes that DG has relied upon several evidences to arrive at its finding of abusive conduct on account of restrictions imposed. These are discussed hereunder:

- (a) In the present case, while registering with AICF, chess players are made to sign a registration form, which amongst other declarations also contain a declaration to the effect that they will not participate in any unauthorised tournament/ championship. Relevant portion of the Registration Form reads as follows:



“I also declare that I will not participate in any un-authorized tournament/ championship”.

It is noted that the restriction is absolute and does not leave any scope for players to participate in any tournament not authorised by AICF. Further, neither the Bye laws nor the constitution of AICF define what is an unauthorised tournament.

- (b) Clause Z of the Code of Conduct for the Players further stipulates that players participating in unauthorised chess tournaments may be subjected to disciplinary action including cash penalties apart from debarring them in participating in any tournaments in future. The text of this provision reads as follows:

“No player shall participate in any tournament not authorised by All India Chess Federation or its affiliate members or District Association and units affiliated to them. The above violation shall attract disciplinary proceedings including cash penalties apart from debarring from participating in any tournaments in future.”

Thus, the consequences of participating in any unauthorised events are very harsh and there is no provision of seeking any permission or being heard for offering an explanation.

The facts on record show that AICF had implemented this provision against players since very long. In the present case, Informants, in 2010, along with 150 players were initially banned for a period of one (1) year, due to their participation in a tournament organised by CAI, which was not authorised by AICF. Further, their ELO ratings, earned by them over a period of time, were also removed and they were asked to surrender fifty (50) percent of the prize money won. Informants have stated that the action was taken without serving any show cause notice on them. Further, as submitted by the informant, the ban continues even today and pursuant to a Show cause notice issued by AICF in 2015, it was informed that the Rules and Regulations



framed by AICF are not just applicable to its members but to every chess player in the country.

- (c) On its website, AICF has also displayed a caution against the tournaments organised by CAI. The caution notice displayed on the website of AICF reads as under:

CAUTION

“This is to inform all chess players/ organisers/ officials that any chess event organized under the banner of “Chess Association of India” is not recognised by All India Chess Federation.”

CAUTION

A set of disgruntled elements have announced that they have formed a chess association as rivals to All India Chess Federation. In their mails the Chess Association of India has announced that, with the permission of World Chess Federation Inc (a rival to FIDE) they will organize an open tournament at Delhi from 23rd Dec, with a prize fund of Rs. 15 Lacs.

All India Chess Federation cautions all chess players affiliated to us not to participate in these tournaments or any other tournaments to be organized by Chess Association of India in future as their events are not organized by All India Chess Federation and as such not authorized by AICF. This is to further remind all AICF registered players that you have signed a declaration in the players’ registration form, which we quote for your ready reference.

“I also declare that I will not participate in any unauthorized tournament/ championship”.

By playing in the tournaments or conducted by Chess Association of India, the registered players of AICF will attract disciplinary action and hence are cautioned against playing in the tournaments to be organized by the rival body. – Published on 09 December, 2009”.



The aforesaid brings out that AICF used the power it possessed to deny other organisers like CAI to access the relevant markets. It is pertinent to mention that AICF has referred to CAI as a rival body.

- (d) The investigation has revealed that there were other instances of AICF restricting players who had participated in events not recognised by AICF, from participating in other chess events. The relevant extracts of the Investigation Report are reproduced as under:

(i) E-mail dated 4th April, 2011 of Bangkok Chess Club

Bangkok Chess Club invited Shri Gurpreet Pal Singh, one of the IP(s) in this case vide its letter 31-01-2011 to participate in its 11th Thailand Open 2011. Subsequently, Bangkok Chess Club vide its e-mail dated 04-04-2011 wrote to Shri Gurpreet Pal Singh, that AICF via FIDE's Secretary informed that his membership was not valid under their federation and hence he should contact AICF urgently. After intervention by the Bangkok Chess club with FIDE Secretary and correspondence with above IP(s), he was allowed to participate in the open Group.

(ii) Letter dated 5.01.2011 of AICF

In another instance, AICF vide their letter dated 05-01-2011 informed to the Joint Secretary, Railways Sports Promotion Board (RSPB) which is one of affiliates of AICF that its four players, including Shri Gurpreet Pal Singh, played in tournaments which are not authorized by AICF, despite its web-site communication in this regard. AICF further informed in the above mention letter that these unauthorized tournaments are organized by some people of CAI. These players are therefore not allowed to play my tournament authorized by AICF and its affiliates and their ELO/ FIDE rating has been removed by the FIDE as per the decision of Central Counsel of AICF. AICF has also advised RSPB to ensure such players should not be permitted to participate in any of the tournaments organized by RSPB as well.



(iii) Circular dated 24th June 2011 of RSPB

RSPB sent a circular dated 24th June, 2011 to its associations conveying that the information received from AICF about participation by some of its players in unauthorized tournaments has been considered by RSPB and it has been decided that Zonal railway and production units shall not allow their chess players in any such tournament which is not authorized by AICF. Further if any player participates in such unauthorized tournaments, the player will not be allowed to participate in All India Railway Chess Championship and will also not be selected for Indian Railway Chess Team.

(iv) AICF's letter dated 11th July, 2011 to Secretary, RSPB

AICF in its letter dated 11th July, 2011 addressed to Joint Secretary, RSPB has stated that some players who participated in such unauthorized tournaments have submitted apology letters to AICF and subsequently Central Council of AICF has decided that those such players who have not won any cash prizes in such unauthorized tournaments may be permitted to play in all tournaments of AICF and its affiliates after one year of their apology letter if recommended by respective State Associations. For those players who have won cash prizes, a penalty equal to won cash prizes is imposed before permitting them to play in all tournaments of AICF and its affiliates after one year of their apology letter. AICF has further conveyed that if such players repeat the mistake after giving apology letter, a life ban will be imposed upon them.

The Commission notes that AICF wrote letters to Bangkok Chess Club and Railways Sports Promotion Board informing CAI's initiatives to be unauthorised and advised that players associated with it should not be allowed to participate in chess tournaments/events. Pursuant to these communications RSPB also issued a circular inter alia conveying its decision that any player who participates in any chess tournament which is not recognised by AICF, will not be allowed to participate in All India Railway Chess Championships and will also not be selected for Indian



Railways Chess Team. The aforesaid brings out the great length to which AICF went against the rival organisation and participating players to oust them from the relevant markets.

- 56 The contents of the rules, registration form, letters/circulars and cautions notices, discussed above, thus confirm the allegations levelled by the informants. These had the effect of restricting the movement of professional players and deter them from participating in any event not authorised by AICF. Further, in the absence of participation by chess players it would not be feasible for any entity to organise any chess tournament thereby restricting competition in the market of organisation of professional chess tournaments. The issue thus left before the Commission is whether the aforesaid conduct and practices followed by AICF are justified. AICF has sought to justify the impugned restrictions by stating that it is the regulator of the game of chess and the restrictions imposed are required to instil discipline amongst the players. This authority is said to be derived from the Constitution and bye laws of AICF, FIDE Code of Ethics and National Sports Code. It argued that as such, the authority to impose punishment is inherent to the functions of a sports federation to maintain discipline, promote fair play and secure interest of players. Hence, it urged that the action taken against the Informants may only be regarded as regulation and cannot be viewed as a restraint on competition. It also contended that any player aggrieved by the sanction(s) imposed by AICF can file an appeal in terms of rules/regulations of AICF. There is no restriction on organisation of any chess tournament but if an organiser intends to update the outcomes in ELO rankings of the players, then the tournament has to be recognised by AICF. Events recognised by AICF comply with FIDE Regulations and thus, the outcomes can be merged with ELO ratings of the participating players. With respect to the caution notice issued against CAI, it has been claimed that the same is justified as it was claiming to be a National Federation and illegally using the word “India” to deceive the general public. It has also referred to the order of the Madras High Court preventing Chess Association of India from using the word “India”. The action taken was thus said to be Regulatory in nature.



57 On the other hand, the Informants have agreed with the findings of DG and Commission's observations in its order dated 11th December, 2018 on this aspect. The Informants have highlighted that declaration requiring the players not to participate in unauthorised tournaments which is contained in the registration form was introduced in the year 2011, with the amendment in byelaws. However, AICF has been enforcing this undertaking even prior to amendment of bye laws. According to them such a clause is not in consonance with the spirit of free and fair competition. Such undertakings are not a part of the player's registration forms by other NSFs in games such as Kabbaddi, Badminton, Boxing and many more. The Informants have contended that AICF, by imposing restrictions has spoiled career of more than 2500 chess players in India. AICF has taken punitive action of removal of International ratings and thus, denied them from participation in national and international events. Further, their ELO ratings were also removed and they were asked to surrender fifty (50) percent of the prize money won. Informants have stated that the action was taken by AICF based on a caution notice issued on its website without serving any show cause notice on them. Further, as submitted by the Informant no. 3, the ban continues and pursuant to a Show cause notice issued by AICF in 2015, it was informed that the Rules and Regulations framed by AICF are not just applicable to its members but to every chess player in the country. Informant has further stated that AICF offered to register him provided apology for playing in unauthorised tournaments was submitted and cases against AICF are withdrawn.

58 The Commission notes that due to the impugned restrictions, chess players cannot participate in tournaments not recognised by AICF. As discussed earlier due to these restrictions, it is not feasible for any entity to organise a chess tournament, without the authorisation of AICF. The evidences available on record clearly establish that AICF created hurdles for CAI for organising chess tournaments as well as prevented chess players, who participated in these, from playing in other chess tournaments. AICF has however, sought to justify its action by stating that CAI was trying to mislead the



people by using the word India and it wanted to instill discipline amongst professional chess players. In this context, Commission notes as also pointed out by the DG, that neither the byelaws nor the constitution of AICF defines what unauthorised tournament is. The Commission also finds it pertinent to mention that AICF has not shown any document which lays down the parameters governing authorisation/sanctioning of chess tournaments that is followed by AICF. In the absence of such guidelines, AICF can exercise absolute discretion in treating any tournament as unauthorised. Further, Commission notes that the restriction imposed on players by way of declaration is absolute and does not leave any scope for players to participate in any tournament not authorised by AICF. As brought out earlier, consequences of participating in any unauthorised events are very stringent and unilateral without offering an opportunity of being heard. In the present case, the Informants were internationally rated chess players. The purported event took place in 2010, however, the ban has continued till date. Removal of ELO ratings which were earned by these players over the years by participating in authorised events is also not found to be justified. The restrictions have deprived informants from playing chess over several years causing irreparable loss given that in sports, players have short professional career. While participation in events not recognised by AICF may not be considered for ELO ratings, complete prohibition from being part of such events denies them professional opportunities for career growth. Usually the calendar for National and International events is known well in advance. Hence, it is not understandable why there should be complete restriction in participating in events that are not clashing with major National and International events or conflict with the training schedule. Normally, participating in other chess tournaments may not entail risks in terms of safety and health of the players, which could be true for other sports, as it does not involve rigorous physical activity. Thus, AICF has not been able to demonstrate how such a blanket ban is necessary to preserve the integrity of sport and towards promoting the game.



- 59 Being the *de-facto* regulator of the game of chess, it is understandable that AICF would have to put in place certain restrictions or some regulatory mechanism that are indispensable to preserve the interest of the game. Such stipulations however have to be proportionate and inherent to preserving the integrity of the sport. Due regard needs to be given to the specificity of the sport while stipulating any conditions. It is important that restrictions imposed by sports federations serve the interest of the sport and at the same time maintain a fine balance between the extent of regulation and its implication on the competition in the economic activities incidental to the sport. Some of the relevant factors to be considered in this regard are nature of sport, limited professional life and level of opportunities for professional players.
- 60 The Commission also notes that chess unlike other sports does not involve physical stress and is not as popular as cricket *etc.* in India. Thus the restrictions in the Registration Form, Clause Z of Code of Conduct of the Players and actions such as those taken against the Informants have put the professional chess players and potential organisers at a disproportional disadvantage and are thus found to be unjustified and unfair. Further, the impugned declaration/rules and restrictions flowing therefrom have the object as well as the effect of restricting free movement of chess players and thereby, foreclosing entry of potential organisers by depriving them of the services provided by professional chess players. The Commission observes that entry of rival chess organisations/ federations and participation of chess players in tournaments organised by them cannot be a sufficient reason to restrain competition. In view of the foregoing, the Commission concludes that AICF indulged in practices that result in denial of market access to organisers of chess events/ tournaments.
- 61 At this juncture it is also pertinent to note that an entity which commercially exploits a game and is also vested with the authority to regulate the game, by way of imposing rules and regulations including sanctioning of third party chess events, has incentives to foreclose competition and protect its commercial interest in organizing sports events



and competitions. There is thus an inherent conflict of interest due to dual capacity of Regulator and organiser.

62 Accordingly, the Commission concludes that the impugned restrictions are in contravention of the provisions of Section 4(2)(b)(i) and Section 4(2)(c) of the Act.

(ii) Sharing of non-refundable EMD and entry fee

63 In relation to sharing of non-refundable EMD and entry fee, investigation revealed the practice of collecting EMD out of grants provided to AICF. Investigation also brought out that AICF has been sharing the entry fee in respect of all types of entries (normal / seeded entry / special or donor) as a pre-condition in the process of awarding the task of organising the chess championships to its affiliates. The use of this amount by the AICF deprives the organisers to utilise this amount for meeting the expenses of tournaments and promoting the welfare of the game of chess. This conduct of AICF was found to be in contravention of Section 4(2)(a)(i) of the Act.

64 In response, AICF contended that the money collected from Government (MYAS) directly goes to State Associations. Further, the money given by Government is spent on boarding and lodging for players and coaches. Money received as entry fees and EMD is used for various expenses like prize money and other promotional events for which grants are not given by the Government. Therefore, there is no question of misutilisation of funds.

65 In this regard, the Commission notes that though the sharing of non-refundable EMD and entry fee reduces the money available with the organizers, it may not be regarded as anti-competitive. Considering the low popularity of the game of chess in India, AICF does not earn huge amounts of money unlike Board of Control for Cricket in India. Further, as submitted by AICF, such grants from MYAS are available only for three (3) National Championships and the Opposite Party organizes more than sixteen



(16) National Championships. The Commission finds merit in the submissions of AICF that the money received from the MYAS, entry fees and in form of EMD from organizer are used for various expenses like prize money, cash award for players and various other promotional activities, boarding and lodging for players, coaches, for medals *etc.* Thus, the Commission is of the view that the sharing of non-refundable EMD and entry fee is not unfair and thus, not in contravention of the provisions of the Act.

(iii) Special/Donor entries and non-implementation of provisions of LTDP regarding merit in the process of selection of probables in National Championships, use of discretion by Secretary in nominating players and award of certificates

66 The investigation revealed that AICF did not implement provisions regarding selection of probables as LTDP. Contrary to the stipulations for LTDP, AICF has been allowing entries, other than on merit, under the type special/donor entries and collecting higher amount of fees from such special entrants. The players of special/donor entries do not have any meritorious background in various chess events conducted under the umbrella of tournaments organised by AICF. Such practice of allowing entry to a specific privileged class who are able to pay higher entry fee was found to be unfair and discriminatory and is contrary to the provisions of the LTDP. It was also revealed during the investigation that Secretary, AICF has nominated players for various national chess tournaments without any justification. Such practice of AICF granting undue privilege to select players without any justification was found to be in contravention of Section 4(2)(a)(i) of the Act in the relevant market . Investigation has also observed that AICF has delegated the powers of issuing certificates to organizers as per their format. AICF neither has any control over maintaining the uniformity in the contents and proper serial number/certificate numbers nor has any record of the certificates issued or their distribution. In view of these, it was concluded by the DG that AICF's conduct is in contravention of Section 4(2)(a)(i) of the Act.



- 67 AICF, on the other hand, has submitted that AICF has not violated LTDP by permitting special/wild card entries. Special/Wild card/Donor entries help to discover hidden talents and the rationale for charging a higher fee charged for such entries is to restrict the number of entries. It has been further contended that allowing such donor entries is an international practice and cannot be regarded as unfair. Selection of players is AICF's sole discretion and is purely based on performance and merit. AICF has stated that award of certificates has been done properly.
- 68 In this connection, the Commission finds merit in the submissions of AICF that such entries may help in discovering hidden talent. Such practices are internationally accepted and Commission has no reason, whatsoever, to consider the practices of allowing donor entries/special entries/wild card entries as abusive under Section 4 of the Act.
- 69 With regard to issuance of the certificates, the Commission is of the view that the irregularities pointed out do not have any exclusionary or exploitative effect either on players or competition. Thus, such conduct does not merit examination under the provisions of Section 4(2)(a)(i) of the Act.

Issue 4: Whether the declaration, which the players are made to sign by undertaking not to play any open tournament is anti-competitive agreement as per Section 3(3) of the Act and it causes appreciable adverse effect on competition as per section 3(4) of the Act read with Section 3(1) of the Act?

- 70 In relation to contravention of the Section 3(3), it has been concluded by the DG that practices and various clauses in the Constitution and Bye Laws of AICF have caused appreciable adverse effect on competition in the country because they have harmed competition, in terms of various factors enumerated under Section 19(3) of the Act, such as creation of entry barriers, driving existing competitors out of the market and



foreclosure of competition. These have the effect of limiting and/or controlling supply, market, technical development and provisions of services, in contravention of the provisions of Section 3(3)(b) of the Act. As regards violation of Section 3(4), DG found that vertical relationship does not exist between AICF and its players and thus, would not attract the provisions of Section 3(4) of the Act.

- 71 The Commission is of the view that the investigation has not revealed any agreement which amount to a horizontal agreement and as such Commission finds no need to scrutinise the case from the perspective of Section 3(3)(b) of the Act.
- 72 As contained in the order dated 11th December, 2018, the Commission further notes that, unlike the finding of DG that chess players and AICF do not exhibit vertical relationship, there exists vertical relationship between them. In the present case, AICF is the consumer of services of chess players for the organisation of any chess event. This relationship between AICF and the players tantamount to a vertical relationship as AICF and the chess players are at different stages of the supply chain.
- 73 It is further noted that the undertaking prescribed by AICF regarding non-participation of its players in events not authorised by it, amounts to restraints that are in the nature of exclusive distribution and refusal to deal as defined in Section 3(4)(c) and 3(4) (d) of the Act. Also, non-compliance of such undertaking will result in banning of the player and removal of their ELO rating, as has been done in the case of the Informants. These consequences create entry barriers, foreclose competition and restrict opportunities available to chess players. The said restrictions are likely to have appreciable adverse effect on competition in terms of factors contained in Section 19 (3) of the Act. The Commission is thus, of the view that AICF has contravened Sections 3(4)(c) and 3(4)(d) of the Act read with Section 3(1) of the Act.

ORDER



- 74 Having found the conduct of AICF to be in contravention of Section 4, the Commission orders the following remedies, which are necessary, sufficient and proportionate to address the harm to competition flowing from the impugned abuses:
- (a) AICF shall cease and desist from indulging into the aforesaid conduct, which is found to be in contravention of the provisions of Sections 4(2)(b)(i) and 4(2)(c) read with Section 4(1) of the Act;
 - (b) AICF shall lay down the process and parameters governing authorisation/ sanctioning of chess tournaments. In doing so, AICF will ensure that they are necessary to serve the interest of the sport and shall be applied in a fair, transparent and equitable manner. Besides, AICF shall take all possible measure(s) to ensure that competition is not impeded while preserving the objective of development of chess in the country; and
 - (c) AICF shall establish prejudice caused by a chess player before taking any disciplinary action against him. Needless to say, the disciplinary actions taken shall be proportional, fair and transparent. The disciplinary actions against the Informant and other similar players shall be reviewed by AICF on these lines;
 - (d) AICF shall file a report to the Commission on the compliance of the aforesaid directions from (a) to (c) within a period of 60 days from the receipt of this order.
- 75 The Commission has also considered the issue of imposition of monetary penalty on AICF and has given its thoughtful consideration thereon.
- 76 Under the provisions contained in Section 27(b) of the Act, the Commission may impose such penalty upon the contravening parties, as it may deem fit which shall be



not more than ten (10) per cent of the average of the turnover for the last three (3) preceeding financial years, upon each of such person or enterprises which are parties to such agreement or abuse.

77 In this connection, it would also be apposite to refer to the decision of the Hon'ble Supreme Court in *Excel Crop Care Limited v. Competition Commission of India and Anr.* [common judgment dated 8th May, 2017 in CA No. 53-55, 2874 and 2922 of 2014] , holding that 'turnover' to be taken for imposition of penalty should be the relevant turnover from the product in question and not the total turnover of the enterprise. The Hon'ble Court has observed as under:

“92. When the agreement leading to contravention of Section 3 involves one product, there seems to be no justification for including other products of an enterprise for the purpose of imposing penalty. This is also clear from the opening words of Section 27 read with Section 3 which relate to one or more specified products. It also defies common sense that though penalty would be imposed in respect of the infringing product, the 'maximum penalty' imposed in all cases be prescribed on the basis of 'all the products' and the 'total turnover' of the enterprise. It would be more so when total turnover of an enterprise may involve activities besides production and sale of products, like rendering of services etc. It, therefore, leads to the conclusion that the turnover has to be of the infringing products and when that is the proper yardstick, it brings home the concept of 'relevant turnover'.

78 Thus, the starting point of determination of appropriate penalty should be to determine the relevant turnover and then, to calculate the appropriate percentage of penalty based on facts and circumstances of the case. The Commission has held that the contravening anti-competitive conduct of AICF amounts to denial of market access in the market for organisation of professional chess tournaments and imposition of unfair conditions as a consumer in the market for services of chess players. The relevant turnover for this contravention would be the revenue of AICF from the market for organisation of professional chess tournaments.



सत्यमेव जयते



- 79 Accordingly, Income reported under the sub- head “Tournament and Fees Receipts”, in the audited financial statements of the AICF, available on its own website <http://aicf.in/> has been taken as relevant turnover. Further, the Commission notes that the conduct has continued till date and thus, it can impose penalty based on financials of AICF during the preceding three (3) years. Accordingly, the average of relevant turnover during the financial years 2014-15, 2015-16 and 2016-17, is as under:

Table 1: Revenue of AICF from Tournament and Fees Receipts for FY 2014-15, FY 2015-16 and FY 2016-17

				(Amount in INR)
Name of OP	Turnover for FY 2014-15	Turnover for FY 2015-16	Turnover for FY 2016-17	Average turnover for three years
AICF	3,06,98,560	3,80,69,222	3,50,84,791	3,46,17,524

- 80 Having decided what constitutes relevant turnover, the Commission now proceeds to calculate the appropriate percentage of penalty. The twin objectives behind imposition of penalty are: (a) to reflect the seriousness of the contravention; and (b) to ensure that the threat of penalties will deter the infringing undertakings. Therefore, the quantum of penalty imposed must be proportional to the gravity of the contravention and must be determined after having due regard to the mitigating and aggravating circumstances of the case.
- 81 The Commission notes that denial of market access is one of the severe forms of abuse of dominant position. Although penalty up to ten (10) percent of the relevant turnover of AICF can be imposed, the Commission finds it appropriate to impose penalty at the rate of two (2) percent of the average relevant turnover for the financial years 2014-15, 2015-16 and 2016-17. Consequently, the Commission imposes a penalty of INR 6,92,350/- only (Rupees six lakhs ninety two thousand three hundred and fifty only) upon AICF for infringing the provisions of Section 4 of the Act.



सत्यमेव जयते



- 82 The Commission directs AICF to deposit the aforesaid penalty amount within 60 days of the receipt of this order and file a report to the Commission on compliance of the aforesaid directions.
- 83 The Secretary is directed to forward copies of this order to all concerned.

Sd/-

(Devender Kumar Sikri)
Chairperson

Sd/-

(Sudhir Mital)
Member

Sd/-

(Augustine Peter)
Member

Sd/-

(U.C. Nahta)
Member

Sd/-

(Justice G.P. Mittal)
Member

New Delhi

Dated: 12/07/2018