

EXCLUSIVE PRIVATE DOMESTIC LEAGUES AND NATIONAL SPORTS
REGULATORS: CHALLENGING THE CCI'S APPROACH

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ABSTRACT

The commercialization of sports has led to an exponential increase in its value and importance. Private investment has catalysed sport to more prominence than ever before, and this has led to increasing scrutiny by competition regulators. Most cases before the Competition Commission of India involve the creation of exclusive private domestic leagues, where a national sports regulator ties up with a private company to set up a league. Pursuant to this, the regulator guarantees that no other private league in competition with this exclusive league will be recognized.

*The legal standard in such cases is the inherece-proportionality test, which requires a balancing of the anti-competitive harms and the pro-competitive benefits. However, the current jurisprudence is primarily concerned with the regulator's intention and whether the regulator was targeting one specific organization during the process. It makes little reference to the pro-competitive benefits that arise from private exclusive domestic leagues. This paper argues that such determination is necessary and lays down these pro-competitive benefits, arguing that it is the only way to attract private investment and ensure the sustained growth of the sport. Such reasoning can also lead to changes in the way cases are decided, as an analysis of the decision in *Shravan Yadav vs. Volleyball Federation of India* demonstrates. The competition regulator can also incorporate such considerations with the current intention-based approach. Ultimately, there is a vacuum in the existing jurisprudence, and this paper provides a framework to comprehensively deal with the issue.*

Keywords: Private Sports League, IPL, Competition, Antitrust, Sports, Competition Law

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I. INTRODUCTION

Sports have always been an important influence in society as it is an important driver of the economy, a popular source of entertainment, and also contributes to national prestige and pride. The value of sports has risen exponentially due to increasing commercialization and private investment. The Indian Premier League [“IPL”] has a brand value of over Rs. 47,500cr¹ and contributes around Rs. 11.5 billion to India’s GDP.² Clubs in the Indian Super League [“ISL”] are worth hundreds of millions of dollars,³ and players in the Premier Badminton League [“PBL”] are paid up to 77 lakhs during player auctions.⁴ Given the growing importance of sports, both in terms of opportunities provided to individual players and the enormous entertainment value it provides, it comes as no surprise that regulation of sports is an important aspect of competition law.

The most frequent cases in sports regulation concern the actions of national sports regulators. Their actions represent a unique challenge for competition law since they are perpetually dominant in their respective markets with little chance of displacement: they are granted a monopoly in the selection of athletes, have the ability to regulate sport, and are often affiliated with the sport’s international regulators.⁵ Thus, their actions are subject to elevated scrutiny, since any decision they take may represent an abuse of market dominance.

Common patterns have emerged across the Competition Commission of India’s [“CCI” or “Commission”] jurisprudence in the context of sports regulators. Most of these cases concern the formation of exclusive private domestic leagues, when the sport regulator ties up with a private organization and forms a league. Consequently, the regulator pledges to not

¹ Gaurav Laghate, ‘IPL brand valuation soars 13.5% to Rs 47,500 crore: Duff & Phelps’ (*The Economic Times*, 20 September 2019) <<https://economictimes.indiatimes.com/news/sports/ipl-brand-valuation-soars-13-5-to-rs-47500-crore-duff-phelps/articleshow/71197984.cms?from=mdr>> accessed 30 October 2021.

² Manas Tiwari, ‘IPL economy: What the cash-rich league adds to India’s GDP’ (*Financial Express*, 22 January 2018) <<https://www.financialexpress.com/sports/ipl/ipl-economy-what-the-cash-rich-league-adds-to-indias-gdp/1025063/>> accessed 30 October 2021.

³ Anonymous ‘Most valuable club in ISL: Find out what the teams are worth’ (*SportsAdda*, 15 March, 2021) <<https://www.sportsadda.com/football/features/most-valuable-club-isl-indian-super-league-market-value>> accessed 30 October 2021.

⁴ ET Online, ‘From PV Sindhu To Chirag Shetty, Here Are The Highest-Paid Players In Premier Badminton League’ (*The Economic Times*, 27 November 2019) <<https://economictimes.indiatimes.com/magazines/panache/from-pv-sindhu-to-chirag-shetty-here-are-the-highest-paid-players-in-premier-badminton-league/let-the-auction-begin/slideshow/72259235.cms>> accessed 30 October 2021.

⁵ *Department of Sports, Ministry of Youth Affairs and Sports v Athletics Federation of India* 2016 SCC OnLine CCI 17: [2016] CCI 18 [44]; *Surinder Singh Barmi v Broadcasting Cricket Council of India* 2017 SCC OnLine CCI 57 [37]-[43] (Surinder Barmi).

recognize or support alternatives, and incentivize players to participate in the newly-formed league. While the IPL is not *per se* such an exclusive league, its dominance renders it the equivalent of such an exclusive league. A number of other leagues have cropped up on the IPL model to replicate its success. For instance, the PBL runs on a contract guaranteeing exclusivity to the league.⁶ This guarantee of exclusivity is important for a sport's development, an argument that will be detailed further in the paper.

In such cases, the applicable legal doctrine is the inherence-proportionality standard put forth in the European Court of Justice's celebrated judgement of *Meca-Medina and Majcen v. Commission*⁷. The standard involves weighing the competitive restriction against the development of the sport that the measure would bring about.⁸ This standard has been applied by the CCI in a number of cases.⁹ Thus, there is a need to assess the pro-competitive benefits has to be carried out. However, in reality, the outcome of the case seems to depend on the perceived *mala fide* intention of the sports regulator as opposed to an actual balancing of the harm to competition versus the pro-competitive benefit.

While there is nothing inherently erroneous with considering the intention of an actor, the CCI's focus on *mala fides* with respect to sport regulators leads to a number of issues. First, the analysis of the actor's supposed intention is used as a replacement for actual analysis of the development of the sport. The inherence-proportionality test requires a balancing of the competitive restriction and the pro-competitive benefit. The CCI's decision demonstrate remarkably little reasoning with respect to the pro-competitive benefit of an exclusive domestic league and the resulting development to the sport. The required balancing is never undertaken comprehensively. In *Surinder Barmi vs. Board of Cricket Council of India* [**"Surinder Barmi"**], the Commission merely argued that the decision to make the IPL an exclusive league was not shown to be in the "interest of cricket", pointedly refusing to undertake its own analysis of whether the move would develop the sport. In *Dhanraj Pillai vs. Hockey India* [**"Hockey India"**], the CCI held that the regulator Hockey India was abusing its dominance to promote its own Hockey League at the expense of alternatives. Thus, it allowed a competitor's World Series Hockey to be held in competition with the

⁶ Ritesh Ranjan, 'Sportzlive wins long-term rights for Premier Badminton League' (*Sportscrunch*, 15 September, 2016) <<https://www.sportscrunch.in/sportzlive-wins-long-term-rights-for-premier-badminton-league/>> accessed 30 October 2021.

⁷ Case C-519/04, *Meca-Medina and Majcen v. Commission*, 2006 ECR I-6991.

⁸ *ibid* 42.

⁹ *Dhanraj Pillay v Hockey India* 2013 SCC OnLine CCI 36 : [2013] CCI 35, ¶10.6.4 (*Hockey India*) *Hemant Sharma vs. All India Chess Federation* 2018 SCC OnLine CCI 53 [54] (*Hemant Sharma*).

Hockey League. It did not consider the pro-competitive benefits of an exclusive, regulator-backed league.

Second, the CCI's reasoning often assumes that the regulator acts in bad faith whenever an unrecognized organization is restricted. However, there is limited analysis of the importance of commercial investment in a sport spearheaded by the regulator. The sport regulator might actually be acting in good faith by preventing proliferation of private competitions. For example, in *Confederation of Professional Baseball Softball Clubs vs. Amateur Baseball Federation of India*, the CCI merely stated that the baseball regulator's actions had violated Section 4 without any examination of the pro-competitive benefits that may have accrued and without acknowledgement of the possibility of the regulator acting in good faith.¹⁰ Thus, there is almost a presumption of these dominant regulators acting against the competition.

The aim of this paper is to challenge the above-mentioned assumptions. After analyzing the reasoning used by the Commission in two of its earliest cases, it will demonstrate how the CCI's current approach is misguided and unfaithful to the legal standard. Further, the legal analysis required by the inherence-proportionality standard cannot be fulfilled unless there is consideration and assessment of the pro-competitive impacts of such exclusive domestic leagues. The piece will provide a normative basis that will serve as a foundation to alleviate the two issues identified with the CCI's focus on intention. The paper will also demonstrate how the Commission's analysis can evolve by applying these principles to the case of *Shravan Yadav vs. Volleyball Federation of India*. Thus, it will demonstrate how considering the pro-competitive benefits of exclusive leagues can influence the decision in cases. Ultimately, even if the CCI decides to continue the intention-based approach to resolving disputes, the normative reasoning provided can influence the CCI's assessment of whether *mala fide* intention was present in a particular case or not.

II. ANALYZING THE CCI'S JURISPRUDENCE

One of the Commission's earliest cases was the case of *Surinder Barmi*. The Board of Cricket Control of India ["BCCI"] had recently inaugurated the IPL, and to that end, stipulated that it would not support or host any cricket tournament that would compete with the IPL.¹¹ Given BCCI's presence as a nodal regulator, this meant that the IPL would effectively become the

¹⁰ *Confederation of Professional Baseball Softball Clubs v Amateur Baseball Federation of India* 2021 SCC OnLine CCI 30 [26].

¹¹ *Surinder Barmi* (n 5) [41].

only private domestic cricket league.¹² Surinder Barmi had filed a suit against this declaration of the BCCI and some other ancillary issues, arguing that this was an abuse of dominance and violated Section 4 of the Competition Act.

The Commission held that BCCI had abused its dominant position. It stated that a complete ban on any other private cricket league for 10 years was a grave antitrust violation.¹³ Further, the BCCI itself had not been able to prove that the move was in the “interest of cricket”,¹⁴ and that the only justification for the same had been pressure from investors. Thus, BCCI was held liable.

Though the CCI’s reasoning seems acceptable on the surface, the underlying assumptions are problematic. In the case of *Hockey India*¹⁵, it had laid down a number of factors to comprehensively carry out the inherence-proportionality test, including the “*primacy of national representative competition, deter[ring] 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.*”¹⁶ A plain reading of all these factors makes clear that they are concerned with maintaining the integrity of the powers of national regulators and ensuring that access to and development of sports is possible. Indeed, the standard of ‘development of sport’ is a standard the Commission itself has utilized.¹⁷ Yet, these have not been considered in the context of exclusive domestic leagues. For instance, the development of the sport that may accrue from leagues, or a regulator’s interest in ensuring that the dates of exclusive domestic leagues do not clash with other competitions are all relevant factors that are simply unaccounted for. The Commission simply fails to consider the benefits that exclusive consolidated domestic sport leagues have despite this being a requirement of the test.

For instance, it is undoubted that the IPL has been a splendid commercial success. It has not only increased monetary rewards for players,¹⁸ but has also served as an effective platform

¹² *ibid* 44.

¹³ *ibid* 49.

¹⁴ *Ibid* 45.

¹⁵ *Hockey India* (n 9).

¹⁶ *ibid* 10.2.1.

¹⁷ *ibid*; Hemant Sharma (n9) [53].

¹⁸ Srishti Singh Sisodia, ‘IPL pays its players more than any other league. You’ll never believe how much’ (*Wion*, 28 November 2018) <<https://www.wionews.com/sports/ipl-pays-players-more-than-epl-la-liga-nba-179946>> accessed 30 October 2021; Cricketnext Staff, ‘IPL: Increase in Salary Purse for Teams, Bid for New Franchises on Cards for BCCI’ (*News18*, 5 July 2021) <[34](https://www.news18.com/cricketnext/news/ipl-increase-</p></div><div data-bbox=)

for talented newcomers to gain recognition,¹⁹ and has contributed immensely to the popularity of cricket in India.²⁰ It has a number of other ancillary benefits that only large leagues have.²¹ It is to be noted that other sports have successfully benefited from commercialization as well; the PBL has massively increased player salaries²² and the ISL has escalated the influence and popularity of Indian football.²³ Further, the PBL has not only revived the sport, but also made it a viable career path for aspiring youngsters.²⁴

Though the Commission cannot be faulted for not predicting the success of private sports leagues, non-consideration of this aspect in its legal analysis was unexpected. Not only were the benefits of such leagues obvious, but there was adequate capacity in the normative framework to factor in such considerations. Hence, this omission on part of the Commission raises questions.

The increasing commercialization of sport has immense benefit, and domestic tournaments that are guaranteed exclusivity by the national regulator further bolster these benefits. Firstly, it leads to the influx of large amounts of capital to support such sports, especially when the sport may not be very famous and lucrative, a guarantee of exclusivity by the apex regulator can benefit it by attracting large amounts of capital in the sport. This does not only have monetary benefits for businessmen and club owners, but also for players. Players and athletes

in-salary-purse-for-teams-bid-for-new-franchises-on-cards-for-bcci-3926279.html> accessed 30 October 2021; Kunal Dhyani, 'IPL New Teams: IPL stars set for mega salary hike as franchises' salary purse to hit Rs 100 crore magical figure' (*Indiesport*, 6 July 2021) <<https://www.insidesport.co/ipl-new-teams-ipl-stars-set-for-mega-salary-hike-as-franchisees-salary-purse-to-hit-rs-100-crore-magical-figure/>> accessed 30 October 2021.

¹⁹ Sporcial, 'IPL: A Platform For The Youth' (*Medium*, 21 May 2019) <<https://medium.com/sporcial/ipl-a-platform-for-the-youth-8961369359f3>> accessed 30 October 2019; PTI, 'IPL Gives Unknown Cricketers Platform to Show Talent: Sehwaag' (*News18*, 19 January 2018) <<https://www.news18.com/cricketnext/news/ipl-gives-unknown-cricketers-a-platform-to-show-their-talent-sehwaag-1636995.html>> accessed 30 October 2021.

²⁰ Tristan Lavalette, 'The Billion-Dollar Indian Premier League Has Americanized Cricket' (*Forbes*, 14 April 2019) <<https://www.forbes.com/sites/tristanlavalette/2019/04/14/the-billion-dollar-indian-premier-league-has-americanized-cricket/?sh=52796f51702d>> accessed 30 October 2021.

²¹ Chandralekha Bhogadi, 'The economics of IPL' (*The Times of India*, 4 October 2020) <<https://timesofindia.indiatimes.com/readersblog/the-twisted-whisper/the-economics-of-ipl-26767/>> accessed 30 October 2021.

²² Sohinee, 'Premier Badminton League is a major boon financially. Here's why.' (*The Bridge*, 14 December 2018) <<https://thebridge.in/badminton/premier-badminton-league-major-boon-financially-here-why/?infinitescroll=1>> accessed 30 October 2021.

²³ Tarkesh Jha, 'Marketing, foreign recruitment, strategic partnerships; how ISL is transforming Indian football' (*Khelnow*, 2 July 2020) <<https://khelnow.com/football/isl-indian-football-development>> accessed 30 October 2021.

²⁴ Manoj Bhagavatula, 'The improbable success of the Pro Kabaddi League' (*ESPN*, 24 April 2021) <https://www.espn.in/kabaddi/story/_/id/20170469/the-improbable-success-pro-kabaddi-league> accessed 30 October 2021.

now have access to better training facilities, more public support, a stable source of income, the opportunity to compete against skilled opponents,²⁵ and to win acclaim.²⁶ In the long term, this can also lead to the development of the national team.²⁷ This is more relevant considering the terrible plight of Indian athletes. Players have to train in reprehensible conditions. They lack access to even acceptable training facilities, and perpetually starve for funds. Even the most celebrated athletes of the country do not have sustained sources of income for regular training,²⁸ and many have to sell their medals and work in low paying jobs in order to ensure a basic income.²⁹

This situation has been created by the inefficiency of state bodies and facilities, which have miserably failed to improve the conditions of athletes despite allocating large sums of money for decades.³⁰ Even though the government has begun an overhaul of the system, the process is likely to take a massive amount of time and investment.³¹ In this backdrop, increasing commercial investment has incredible benefits, and furthermore, it is the only viable method

²⁵ Y.B. Sarangi, 'Pro Wrestling League: A launch pad to shine on the bigger stage' (*Sportstar*, 5 September 2020) <<https://sportstar.thehindu.com/magazine/pro-wrestling-league-indian-wrestlers-vinesh-phogat-sakshi-malik-deepak-punia-olympics-covid-19/article32530931.ece>> accessed 30 October 2021.

²⁶ Rajender Sharma, 'PBL: Badminton's biggest showbiz and ultimate security for global stars' (*InsideSport*, 21 December 2018) <<https://www.insidesport.co/pbl-badmintons-biggest-showbiz-and-ultimate-security-for-global-stars/>> accessed 30 October 2021.

²⁷ PTI, 'Ultimate Table Tennis league will help the sport benefit in India, says Wong Chun Ting' (*Indian Express*, 14 June 2017) <<https://indianexpress.com/article/sports/sport-others/ultimate-table-tennis-league-will-help-the-sport-benefit-in-india-says-wong-chun-ting-4703900/>> accessed 30 October 2021.

²⁸ Mail Today Bureau, 'Athletes who brought laurels to the nation are languishing in poverty, thanks to Centre's apathy' (*India Today*, 4 July 2014) <<https://www.indiatoday.in/india/north/story/athletes-in-poverty-centre-negligence-159477-2013-04-21>> accessed 30 October 2021.

²⁹PTI, 'Eight gold medals winner athlete Geeta Kumar forced to sell vegetables in Jharkhand' (*Indian Express*, 30 June, 2020) <<https://indianexpress.com/article/sports/athlete-geeta-kumar-forced-to-sell-vegetables-in-jharkhand-6483296/>> accessed 30 October 2021; Shreya Verma, 'It breaks my heart to see an Indian international shooter has to sell chips to earn a living' (*The Bridge*, 24 June 2021) <<https://thebridge.in/shooting/indian-international-shooter-selling-chips-living-22361>> accessed 30 October 2021.

³⁰ Shreyanshi Singh, 'Why Is India Bad at Sport?' (*The Diplomat*, 21 January 2011) <<https://thediplomat.com/2011/01/why-is-india-bad-at-sport/>> accessed 30 October 2021; Nyshka Chandran, 'Why is India so bad at sport?' (*CNBC*, 20 August 2016) <<https://www.cnbc.com/2016/08/19/lack-of-sporting-culture-institutional-support-and-inequality-blamed-for-indias-poor-olympic-record.html>> accessed 30 October 2021.

³¹ Hannah Beech and Shalini Venugopal Bhagat, 'Why India Struggles to Win Olympic Gold' (*The New York Times*, 4 August 2021) <<https://www.nytimes.com/2021/08/04/world/asia/olympics-india.html>> accessed 30 October 2021.

to create real and sustained progress in sports, including the performance boost at a national level.³²

However, the benefits provided by exclusive leagues are likely to magnify these pro-competitive benefits in a number of ways. First, consumer interest and public support is likely to be enormous for mega-leagues with the best talent. If leagues are fragmented, then the quality of players will be reduced for all leagues, and the viewership will also be scattered. This would mean reduced revenue for the players and the ecosystem in general. For instance, football players can benefit massively if the proposed merger of the I-League and ISL goes ahead, since the ISL is superior at a technical level.³³ Moreover, consumer interest would also be far lesser in such a potpourri of leagues since the primary appeal of sport lies in the ability to see high-quality competition continuously. Having many leagues does not only scatter the competition, but the collective bargaining power available to a single mega-league is also capable of attracting a larger number of international players, who would otherwise have not been persuaded. The PBL³⁴ and Ultimate Table Tennis³⁵ have been able to attract foreign talent and helped player growth, while foreign hockey players were split between the Hockey India League and World Series Hockey.³⁶ If they were all concentrated in one league, there would be a larger number of higher quality, foreign talent. This would promote the popularity

³² Shamy Dasgupta, 'How Indian Super League can make a positive difference to football in India' (*The Economic Times*, 14 September 2014) <https://economictimes.indiatimes.com/news/sports/how-indian-super-league-can-make-a-positive-difference-to-football-inindia/articleshow/42396993.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst> accessed 30 October 2021.

³³ Pulasta Dhar, 'It's not just about the money: Why Indian players think ISL is miles ahead of I-League' (*Scroll.in*, 24 July, 2017) <<https://scroll.in/field/844828/its-not-just-about-the-money-why-indian-players-think-isl-is-miles-ahead-of-i-league>> accessed 30 October 2021.

³⁴ Ashok Venugopal, 'We get to learn a lot from foreign players: PV Sindhu on PBL' (*The Indian Express*, 22 January, 2020) <<https://www.newindianexpress.com/sport/other/2020/jan/22/we-get-to-learn-a-lot-from-foreign-players-pv-sindhu-on-pbl-2092746.html>> accessed 30 October 2021.

³⁵ 'Top foreign stars for Ultimate Table Tennis' (*Outlook*, 5 June, 2017) <<https://www.outlookindia.com/newscroll/top-foreign-stars-for-ultimate-table-tennis/1068484>> accessed 30 October 2021.

³⁶ PTI, 'Over 100 foreign players interested in World Hockey League' (*Times of India*, 14 January, 2011) <<https://timesofindia.indiatimes.com/sports/hockey/top-stories/over-100-foreign-players-interested-in-world-hockey-league/articleshow/7286758.cms>> accessed 30 October 2021; Jashan, 'Hockey India League: Will it revive Indian hockey?' (*Sportskeeda*, 7 October, 2021) <<https://www.sportskeeda.com/hockey/hockey-india-league-will-it-revive-indian-hockey>> accessed 30 October 2021.

of the sport by increasing the quality of the league. This concentration of talent is what has pushed up the popularity of the IPL.³⁷

Second, the increased consumer interest can eventually snowball over time and lead to the creation of considerable public interest in the sport that can be channelled in a number of ways. Once the public is exposed to the talent and quality that Indian players demonstrate against top global players, this public opinion can be channelled into lobbying for pouring more state resources into cash-starved sporting facilities at all levels and lead to increased public accountability to manage inefficiencies. Thirdly, given the uncertainty that exists in less famous sports, a ten-year guarantee massively alleviates investor concerns.³⁸ This has become increasingly frequent in many competitions trying to emulate the IPL's franchisee model.³⁹

Finally, much of the competition incentive sought by law is fulfilled by the unique structure of the league itself. A number of teams compete in the league, and each is motivated to perform well for monetary benefits and to receive acclaim. Thus, a vibrant market for players is likely to develop within a league. This means the benefits associated with competition, in general, are likely to exist anyway, but while also providing a basic safety net to players participating in the league due to minimum revenue associated with the league's popularity. However, the benefits associated with mega-leagues are exclusive only to such leagues and cannot be attained otherwise. While having multiple leagues in a sport can also lead to competition-linked benefits, the benefits of exclusive domestic leagues seem to exceed these marginal improvements.

The CCI simply does not account for this considerable pro-competitive benefit from regulator-backed exclusive leagues in its judgements. The CCI's reasoning is often restricted to the intent of the regulator. In the case of *Hockey India*, the Commission held that Hockey India did not violate Section 4 of the Competition Act on the grounds that they had not acted against Indian Hockey Federation with prejudice and specific malice but had merely exercised its regulatory powers in general. Further, there was no discussion of the outcome of

³⁷ Mahesh Sethuraman, 'What makes the IPL successful?' (*ESPN Cricinfo*, 6 May, 2013) <<https://www.espnricinfo.com/story/mahesh-sethuraman-what-makes-the-ipl-successful-634118>> accessed 30 October 2021.

³⁸ Atul Pande, 'INDIAN SPORT: Private leagues, private capital, and future glory' (*Sunday Guardian Live*, July 2021) <<https://www.sundayguardianlive.com/sports/indian-sport-private-leagues-private-capital-future-glory>> accessed 30 October 2021.

³⁹ *Sporty Solutionz Pvt. Ltd. v Badminton Association of India and Anr.* 2020(2) ArbLR35 (Delhi) [2(c)(iv)].

the proposed Hockey India-backed league and potential benefits that may have accrued. Most importantly, the CCI itself recognizes that this efficiency argument exists,⁴⁰ but it still does not account for the same in its decisions.

One final caveat remains, which is that not all leagues will be as successful as the IPL and it is admittedly difficult to predict the success of a league in advance. However, a number of options are open to the Commission in this regard. It can scrutinize the details of the plan, whether previous deadlines have been adhered to, the number of players that can be benefited, the amount of capital involved via broadcasting and sponsorship, and/or other factors that might be relevant. Notably, requiring the disclosure of business information is not barred by confidentiality restrictions. Sensitive commercial information does not have to be disclosed to the other party, but only considered by the Commission in its decision-making. This does not cause any confidentiality concerns.⁴¹

Thus, the possible pro-competitive benefit will depend on the facts of a particular case. This does not excuse the pertinent need to factor in the pro-competitive benefits, since the CCI is experienced in economic analysis. Ultimately, however, whatever the strength of an argument is concluded to be, this additional understanding considerably influences the manner in which the CCI resolves cases.

III. THE VOLLEYBALL FEDERATION OF INDIA CASE

The previous section detailed the pro-competitive benefits of an exclusive domestic league. Not only is the analysis of such benefit necessary under the legal standard, it can also influence the outcome of cases. The recent case of *Shravan Yadav vs. Volleyball Federation of India*⁴² can serve as a clear example of such an impact.

Shravan Yadav dealt with the actions of the national volleyball regulator. In the backdrop of poor performance by the Indian team internationally,⁴³ the Volleyball Federation of India ["VFI"] tied up with a company called Baseline in order to create an IPL-like Volleyball League.⁴⁴ To this end, VFI pledged to not permit or vote any other domestic league for ten

⁴⁰ Hockey India at (n 9) [10.6.4].

⁴¹ Bhumesh Verma and Shashank Saurabh, 'Making Sense of the Confidentiality Claims under the Competition Law Regime' (*The SCC Online Blog*, 13 March, 2020), <<https://www.sconline.com/blog/post/2020/03/13/making-sense-of-the-confidentiality-claims-under-the-competition-law-regime/>> accessed 30 October 2021.

⁴² *Shravan Yadav vs. Volleyball Federation of India* 2021 SCC OnLine CCI 28.

⁴³ *ibid* 6.

⁴⁴ *ibid* 7.

years.⁴⁵ Further, VFI announced that the winners of the Volleyball League would be chosen to represent India at the Asian Championships,⁴⁶ and moreover that Volleyball League would receive preference over other international competitions in case the dates of the competition were to clash.⁴⁷

The CCI held that VFI's actions caused an abuse of its market dominance. Specifically, it stated that forcing players to participate in the domestic league as opposed to attending international tournaments was not "necessary for promoting the game or preserving its integrity".⁴⁸ It thus held that a *prima facie* abuse of dominance was disclosed and directed the Director-General to carry out an investigation.⁴⁹ As usual, the Commission did not make even a cursory enquiry into the pro-competitive benefits of an exclusive domestic league. However, had it done so, its reasoning would certainly have changed, and maybe even the outcome would have been different.

Even though the Director-General's investigation is pending, it can be *prima facie* argued that the case should have been rejected. The Indian Volleyball Team had a subpar performance at an international stage,⁵⁰ and given that the conditions of the game, they are not expected to undergo a sudden revolution in the near future. It is unclear why the Commission chose to focus on the possibility of not being able to participate in international competitions, especially since VFI had indicated in their submissions that they would not enforce the same.⁵¹ Indeed, without better facilities and competition, repeated participation sets up national teams for failure. As indicated earlier, private investment and the capital influx is the only speedy path to ensure the development of the sport actually occurs. On proportionality, the possibility of success and commercial acclaim for the sport outweighs the foreclosure of competition, especially in the backdrop of a string of disappointing performances and lack of access to adequate resources. Thus, if the CCI had carried out an actual analysis, it would have concluded that on balance, the development of sport would have been better by such restrictions and would not have ordered an investigation.

⁴⁵ *ibid* 33.

⁴⁶ *ibid* 11, 34.

⁴⁷ *ibid* 34.

⁴⁸ *ibid* 44.

⁴⁹ *ibid* 44-45.

⁵⁰ *ibid* 6.

⁵¹ *ibid* 43.

Lastly, it is well-regarded that state sports regulators are usually marred by corruption, political infighting, and massive inefficiency. In case, the Commission decides to rule that such exclusive leagues are valid from a competition law perspective, one can expect a proliferation of them. Regrettably, that means that some of these deals will be marred by fraud and corruption. This is reprehensible, and nothing in this paper prejudices the CCI from investigating whether the process of allocation has followed due process or not. However, even with such a scenario, tie ups to form domestic leagues are better. First, companies are generally averse to investing unless there is a viable economic plan and a chance of success. Thus, most leagues are only formed when the national regulator has demonstrated some level of competence. Second, the number of competitions propelled by fraud can be mitigated if the CCI investigates them thoroughly. Third, even if a large number of these competitions are corrupt and do not reach massive financial success, there is still some minimal competition which leads to an increase in access to competition and satisfactory training, along with all of the benefits that come from a consolidated, single league. Compared to the current conditions, the pace of commercialization can be boosted by enabling the existence of monopolistic domestic leagues. Some corrupt deals do not take away from the clear benefits enunciated above.

IV. CONCLUSION

Competition law has developed sophisticated systems to determine the legality of actions taken by actors in the field of sports, but in practice, some aspects of the test are side-lined in favour of an emphasis on others. This paper makes a broad argument for the consideration of the pro-competitive benefits of exclusive domestic leagues formed by the tie-up of a sectoral regulator and a private company, as it is faithful to the legal requirements of the current standard. This is pertinent in the backdrop of widespread lack of access for sportspersons and the explosion of media access through the introduction of digital streaming apps.

In order to ensure that the process of forming such leagues itself is fair and not violative of competition law concerns, the Commission should make some modifications in the information it seeks from parties. In cases where the actions of national sports regulators identified above, the CCI should demand that the regulator provides information about the amount of investment that teams currently have, the recent performance or achievement of teams at a national level, or even take cognizance of resources that speak of the issues associated with the sport. Further, the CCI should command the regulator to provide information about the deal, and infer the possible fruitfulness of the proposed league in its

decision-making. In such cases, the confidentiality of information is not a bar, since the Commission has vast powers to acquire information. Moreover, since this information does not have to be revealed to the other party, it does not violate any confidentiality provisions.⁵² Such considerations are not only required by the legal test, but are also necessary to ensure that sport itself can be viably developed in the long run.

However, even if the Commission chooses to not explicitly incorporate such factors into its decision-making and continues to operate by an intention-based approach, the reasoning provided above can also be valuable there. The problem with the current approach is that the CCI holds that sports regulators are violating their dominant position without much reasoning as to why, and pertinently, what circumstances are required for it to not abuse its position, since most of the case law creates an almost irrebuttable presumption of abuse of dominance. In such instances, the CCI can consider specific benefits conferred by exclusive domestic leagues, then determine their viability in each case, and subsequently judge the possibility of their success. Based on the outcome, the CCI can impute the intention on the regulator; if there is very little chance of success, the regulator may have been acting in bad faith, but if there is a fair chance of success, the regulator was acting in good faith which leads to the development of the sport.

The framework of the Commission requires a fresh perspective. The Director-General and Commission will need to carry out economic analysis in order to determine the feasibility of the plan, and then determine the possibility of success. In conclusion, despite what path it chooses, the Commission's current analysis is flawed and incomplete without full consideration of the legal factors involved. The marginal increase in time taken to process such data is worth it as it creates stability in the application of the law and ensures that the contours of competition are actually protected.

⁵² Bhumesh Verma and Shashank Saurabh, 'Making Sense of the Confidentiality Claims under the Competition Law Regime' (*The SCC Online Blog*, 13 March, 2020), <<https://www.sconline.com/blog/post/2020/03/13/making-sense-of-the-confidentiality-claims-under-the-competition-law-regime/>> accessed 30 October 2021.