



Transforming Cricket Administration Through Competition Law

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Abstract

This paper explores the intersection of competition law and sports law in the context of cricket, particularly in India. With the commercial growth of cricket, epitomized by high-investment ventures like the Indian Premier League (IPL), the sport has transitioned from amateurism to a highly commercialized industry. The governance of cricket in India, primarily overseen by the Board of Control for Cricket in India (BCCI), has faced increasing scrutiny due to issues of corruption, political control, and nepotism. While the BCCI regulates the sport's rules and discipline, it does not address the adherence to competition laws in its commercial operations. This paper examines the emergence of a new legal field—sports law—and its application to regulate cricket's commercial aspects, highlighting the anti-competitive practices that have taken root in the industry. By analyzing the monopolistic control exerted by sports federations and the blurred lines between governance for the sport's benefit and commercial interests, the paper advocates for stronger competition law enforcement to ensure fair and effective sports administration.

KEYWORDS: Administration, Cricket, Competition Law, Sports Law.

I) INTRODUCTION

“When you love competition, you don’t want the market to consolidate.” - Xavier Niel

The sports economy developed immensely in the western world following the availability of increased leisure after World War II. Countries with predominant influence on cricket were left uninterrupted with advantages that a developing sports economy could offer largely because of the Boards of Cricket. Cricket lived off the patronage of the state and the game itself was played largely in British Colonies who would be looking up to the Cricket Boards in Australia and England to take a lead. These Boards were content in imagining their supremacy in the game but in the last 10 years, the role has been taken up by the Indians. With the never-ending revenue the country generates out of cricket, BCCI dictates the terms in the cricketing world with dominance backed by cricketing talent, infrastructure, viewership, and commerce.

The role of law in the sports industry is instrumental in expanding its purview to the regulation of the sports market through autonomous bodies. Lack of regulatory framework to deal with the conflict between players, clubs, governing bodies, and emerging associations over mostly commercial interests has given rise to a fundamental question that is if competition law and commission support the sports federations promoting fairness, which is affected by the poor administration and anti-competitive terms in the market. The commercialization of sport has resulted in the sports associations reaping the benefits of investment, with discretionary powers and indulging in unregulated anti-competitive activities, by virtue of them being the regulators. Further, most competition regimes aim to avoid the anti-competitive behaviour of cartels and prevent firms from abusing their dominance in any particular market.¹

II) STRUCTURE OF REGULATION

There are two models of regulation, Interventionist, and Non-Interventionist. In the interventionist approach, sport is considered a public function and the state has a right and the responsibility to deliver, achieved by implementing ‘specific legislation on the structure and mandate of a significant part of the nation’s sports movement.’² On the other hand, In the non-interventionist approach, states take a less interventionist approach to the sport. The

¹SIMON GARDINER, ROGER WELCH, SIMON BOYES AND URVASI NAIDOO, SPORTS LAW 351 (3rd ed., 2006).

²LEWIS, ADAM AND JONATHAN TAYLOR, SPORT: LAW AND PRACTICE 5 (2nd ed., 2008).

provisions of the sport have not been regarded as a public service responsibility of the government. Thus, no general 'law of sport' is enacted to regulate activity in this sector. Rather, legislation or other intervention is generally countenanced only as a measure of last resort, in response to a pressing public interest requirement. In India, the sports sector has been neglected so far and the State's attitude has been that of a non-interventionist. Under the Constitution of India, 'sports' is in the State List along with entertainment and amusement. Thus, the responsibility for the development of sports primarily lies with each state government. The role of the Central Government is limited to planning and providing infrastructure. The Ministry of Youth Affairs and Sports is the apex body which designs sports policies.³ A trend of monopoly has always been prevalent in the field of sports owing to the existing pyramidal structure, in order to preserve the elements of integrity and uniformity associated with the field. The competition law in the jurisdiction of the USA and EU grants certain immunity to this sector from the applicability of competition law framework, taking into consideration certain distinctive features that the industry possesses. The major goal of the Competition Act in India is to protect the market from anti-competitive practices. In recent times, sports organizations have turned monopolistic in nature and they are alleged to have taken undue advantage of their monopoly in the relevant industry. The underlying problem in such a situation is that there exists no express body to watch over the practices of these sports organizations and this gives them the leeway to act arbitrarily. These organizations have been alleged to impose different forms of economic restraints like revenue-sharing, spending caps, drafts, non-tampering clauses, etc. and because of these activities, they have been under the radar of the competition law.

III) INTERNATIONAL PERSPECTIVE

Competition Issues related to Sports was discussed in OECD⁴ and it identified the following questions during a Roundtable in which various countries had participated:

³ Vijay Kumar, *Issues in Emerging Area of Sports Law: Lex Sportiva*, 1 INDIAN LAW REVIEW (May 23, 2017)

⁴OECD, Competition Issues Related to Sports, OCDE/GD(97)128 (1997), available at <<http://www.oecd.org/regreform/sectors/1920279.pdf>>.

1. Should they be considered as normal commercial enterprises subject to competition law or as private non-profit-making bodies which merely regulate the sports? – Nature of Sports Federations.
2. Should the federations or leagues be viewed as cartels of clubs or as bodies independent of the clubs? – The relationship between Sports Federations or Leagues and the Clubs
3. Are different sports substitutable for one another or within the same sport are different competitions substitutable, particularly from the broadcasting perspective? – Nature of the relevant market.
4. Should the contracts be viewed as contracts of employment excluded from competition laws or should they fall within the purview of such laws? – The relationship between Players and Clubs.

Considering the aforesaid issues, an analysis of administrative failures of the BCCI through various decisions by CCI⁵ highlighting the instrumental role played by Competition law in transforming Cricket Administration.

IV) CASE STUDY: SURINDER SINGH BARMİ v. BCCI

The interaction between the sports industry and competition law can be analyzed through jurisprudence developed in the European Union. The wrangle on the role of the European Commission in analyzing the regulatory framework began with the Bosman case,⁶ which laid down the application of competition law to sport. Similarly, the intervention of the CCI with regard to the BCCI case⁷ signifies the transition from autonomy to regulating the regulator in the Indian sports industry, whose decisions have a commercial impact in the market.⁸

In *Surinder Singh Barmi v. Board for Control of Cricket in India*,⁹ the case was brought before the Commission by the informant alleging anti-competitive agreements between BCCI, IPL¹⁰, and the IPL teams causing an appreciable adverse effect on competition in

⁵ Competition Commission of India (Hereinafter CCI).

⁶C-415/93, Union Royal Belge des Societies de Football Association ASBL &Ors. v. Jean-Marc Bosman, (1995) ECR I-4921.

⁷Competition Commission of India, Surinder Singh Barmi v. Board for Control of Cricket in India (BCCI), Case No. 61 of 2010 [61 of 2010.pdf \(cci.gov.in\)](#).

⁸BhagirathAshiya, *The Sport, Money and Law: Transforming Indian Sports Administration through Competition Law*, 1 ICLR 16(2016).

⁹*Supra note 10*.

¹⁰Indian Premier League (Hereinafter IPL).

India. It was also alleged that there was an abuse of dominance by BCCI-IPL in the organization of T-20 matches. Commission formed a prima facie view in the matter for further investigation by DG. Once DG Reports were submitted and parties were heard, the Commission upon found that BCCI has abused its dominant position in contravention of Section 4(2)(c) of the Act which dealt with practices resulting in a denial of market access and passed the following order:

1. to cease and desist from any practice in the future denying market access to potential competitors, including the inclusion of similar clauses in any agreement in the future.
2. to cease and desist from using its regulatory powers in any way in the process of considering and deciding on any matters relating to its commercial activities. To ensure this, BCCI will set up an effective internal control system to its satisfaction, in good faith, and after due diligence.
3. to delete the violation clause 9.1(c)(i) in the Media Rights Agreement which provided a long-term media rights agreement.
4. the Commission considers that the abuse by BCCI was grave and the quantum of penalty that needs to be levied should be commensurate with the gravity of the violation. The Commission has to keep in mind the nature of barriers created and whether such barriers can be surmounted by the competitors and the type of hindrances by the dominant enterprise against the entry of competitors into the market. The Commission has also to keep in mind the economic power of enterprise, which is normally leveraged to create such barriers and the impact of these barriers on the consumers and the other persons affected by such barriers. Accordingly, a penalty of 6% of the average annual revenue of BCCI for the past three years was imposed under Section 27(b) of the Act which amounted to ₹52.24 Crores.
5. the Commission considered IPL as a new genre of cricket wherein revenue generation was a primary consideration and it was an organization of private

professional cricket league in India viewed from a demand perspective in terms of advertisement, revenue, and TRP¹¹ ratings than other sports.

The CCI further held that BCCI was in a dominant position in the relevant market for the following reasons:

1. BCCI was the de facto regulator of cricket in India;
2. BCCI was empowered by ICC by-laws with the right to sanction/approve cricket events in India and consequently, its approval is required by any prospective private professional league;
3. BCCI was at a significant commercial advantage by owning infrastructure;
4. BCCI controlled a pool of cricket players under contract.

Therefore, the competition commission in order to improve sports administration directed the concerned sports body (BCCI) to establish a healthy competition environment by observing the following directions:

1. fix a reasonable time frame for franchise agreements and not to re-enter into a perpetual franchise agreement in the future;
2. fix a period for future media agreements and scrap the associate sponsorship contracts given to various parties without following the tendering process and resort to a fair and transparent competitive bidding process in the future.

The commission in this case noted that BCCI's economic power is enormous as a regulator that enables it to pick winners. BCCI has gained tremendously from the IPL format of cricket in financial terms. Virtually, there is no other competitor in the market nor was anyone allowed to emerge due to BCCI's strategy of monopolizing the entire market. The policy of BCCI to keep out other competitors and to use their position as a de-facto regulatory body has prevented many players who could have opted for the competitive league.

The dependence of competitors on BCCI for sanctioning of the events and dependence of players and consumers for the same reason has been total. BCCI knowing this had foreclosed the competition by openly declaring that it was not going to sanction any other event. BCCI undermined the moral responsibility of a custodian and de-facto regulator.

¹¹Television Rating Point/Target Rating Point

Presently, this case is under appeal before National Company Law Appellate Tribunal. There has been one more case brought before CCI against BCCI, however, the Commission closed the case holding that there is no requirement of investigation in this matter as it has already been done and the matter is pending before the Tribunal.¹²

CCI in the discussed case implied that the self-regulation of the sports authorities to a permissible extent can go hand-in-hand with the competition laws in the country. CCI while respecting this right of self-regulation observed that “the sports bodies have the right of self-regulation with regard to issues, which are purely sporting, such as the selection of teams, formulation of rules of the sport, etc. or even the issues which have economic aspects such as the grant of various rights related to sports events or organization of leagues, etc.” also made it clear that the commercialization in the sports industry can very well fit in the competition regulations.

The remarks made by the CCI in the above-mentioned cases reflect the opinion of the CCI on the impugned intersection that “certain sporting activities are excluded from the purview of competition and the other being the activities generating commercial gain will be within the ambit and the scope of the competition statute”.

V) CONCLUDING REMARKS: HOW COMPETITION LAW CAN TRANSFORM CRICKET ADMINISTRATION

There is an inevitable relation between sports and competition law. The legal developments in India and across the country have certainly embraced their unique interactions in various spheres of organization and administration of sports events. As we look for reconciling the legal principles to their unique relationship with sports there can be certain regulatory changes by the sport’s governing bodies to assist in streamlining the process. The regulatory bodies should come up with fair, standardized, and non-discriminatory criteria for the organization of leagues and events by other organizations.

India has developed competition law to fulfil its modern-day needs and when competition issues in sports arise it cannot be allowed to be overlooked. No enterprise in the country is

¹²Competition Commission of India, Pan India Infra Projects Private Limited v. BCCI, Case No. 91 of 2013, available at [Case no. 91 of 2013.pdf \(cci.gov.in\)](#).

now permitted to indulge in any anti-competitive business practice prohibited by the Competition Act. Thus, the following measures must be adopted:

1. There must be a clear separation between sports regulation and the commercialization of sport. A delineation between economic activities and strictly regulatory functions of governing bodies should be done. Delineation of these activities will aid authorities to take appropriate action and ensure that these bodies can enjoy varying standards of autonomy depending on the nature of functions performed by them.
2. No material step has been taken to term sports as an event of national importance. The league matches shall not be a matter of national importance as it does not involve the participation of the National team.
3. There are various clubs owned by corporate houses or businessmen of various parts of the country which makes the sport exciting for a commercial prospect than purely entertainment-based.
4. The aspects related to accountability and independence of BCCI needs to be scrutinized to bring in the balance of both. Strict government regulations and competition policy could hinder the effective functioning of BCCI. However, considering the extent of their dominance, they cannot be left unchecked either. Therefore, a harmonious balance between the two needs to be achieved.
5. The European Court of Justice in the famous Meca Medina case¹³ noted the need for sport rules to be compatible with the EC competition law. Further, in the UEFA Champions League and FA Premier League cases, the European Commission accepted the joint selling of media rights by football associations on behalf of football clubs provided *inter alia* this was done through open and transparent tender procedures, was for a limited period (like 3 years) and the rights were broken down into smaller packages to enable several competitors to bid.
6. This process can be adopted for transparency within sports governance bodies and will go a long way in ensuring fair market principles are upheld. How media rights are granted, if it's made clear, predictable, fair, and transparent, will create healthy competition in the market and reduce the need for constant interference by competition authorities. Yes, the BCCI has an anti-corruption code in place but it's not been effective and a clear vision and mission needs to be adopted with respect to

¹³C-519/04 P, Meca-Medina & Majcen v. Commission of European Communities, (2006) ECR I-06991.



good and transparent governance especially when it comes to commercial aspects of the game.

The development in the interaction between sports and competition will be very interesting to note, considering growing jurisprudence and emerging trends in the field. The cases before the Commission have brought the issue of dual roles exercised by the sports federation in the light and the real need for fairness in their commercial dealings. Thus, Competition law has in a real sense paved way for better administration of Cricket.