SPORTS AND COMPETITION LAW IN INDIA

A CRITICAL STUDY WITH SPECIAL REFERENCE TO CRICKET

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by

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INTRODUCTION

With the ever-increasing commercialization of sports, big sports today have gone a far way from merely being a form of exercise and amateur sports to an industry. The sporting federations in order to acquire players, and pay for their ever-increasing salaries spend a huge amount of money. The advent of satellite television with dedicated sports channels has considerably increased the market for sports broadcasts. India, too, is no stranger to this phenomenon and the major sport undergoing such a commercial revolution is cricket.

The Board of Control for Cricket in India (BCCI) is the apex governing body for cricket in India. It is a private body registered in 1929 under the Tamil Nadu Societies Act, yet, such is the pull of cricket in the subcontinent that the BCCI rakes in profits of thousands of crores every year from sponsors. With the Indian Premier League (IPL) that has been structured as a special purpose vehicle of BCCI, the game of cricket has got a shot in its arm in the form of corporatization. However, the emergence of a new competitor — the Indian Cricket League (ICL) has to a certain extent upset the monopoly of BCCI and opened the doors to competition in the cricket segment. But, such competition is not without its share of resistance by the existing market player who continues to have market power to influence competition among leagues, players and broadcasters and regulate the activities of cricket professionals. Now, the tussle between the BCCI and the newly formed ICL has received attention from a rather unexpected quarter, with the Monopolies and Restrictive Trade Practices Commission (MRTPC) asking its Director-General of Investigation to conduct a preliminary enquiry into the decision of the cricket body to take action against cricketers joining the ICL.

The main focus of this research paper is to reconcile aspects of sport operations that are inherently anti-competitive with the Competition Act, 2002 with special reference to cricket in India. The paper begins by defining the parameters of an economic analysis of sports. It then analyzes the nature of the sports federation in cricket i.e. the BCCI and the general structure of cricket organization in India. It will highlight the emergence of Twenty20 League Cricket in India and examine the competition effectiveness of such a league in comparison to those in Europe and United States. Then, the paper attempts to highlight the essential points of intersection between sports (in this case cricket) and competition law in the Indian scenario

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with regard to the following aspects: Competition between leagues, Sale of exclusive broadcasting rights, and Salary caps in player contracts. Lastly, the paper attempts to emphasize on the importance of integration of sports in competition policies and the competition regulation of professional sports.

ECONOMICS OF SPORTS

Sport accounts for 3% of world trade.[2] And it is more than a business, it is also a social and political activity, which has developed a rulebook to enhance competition rather than restrict it. A competitive sports league requires a significant degree of off-field cooperation and solidarity (i.e. equality of arms) between the teams for an interesting and exciting product to be made available to the public. Fundamentally, this is because sporting competition is necessarily a *joint* product. It is clear enough that no single team can ever create the product that is of interest to television, sponsors, the newspapers, the public or anyone else. A single team is essentially incapable of producing anything of independent value because without its competitors it would have no product at all. As an American antitrust court colourfully put it: '*A league with one team would be like one hand clapping…*'[3]. Thus sports teams are not engaged in a series of individual business ventures. Rather the venture is a necessarily a collective one: they must agree upon co-operation off it.[4]

Simon Rottenberg in his paper *The Baseball Players' Labor Market* was of the belief that the economics of professional sports leagues could be analysed using the same economic framework as for any other industry. He did, however, an unusual characteristic– the fact that competitors must be of approximately equal size if any of them are to be successful.[5]

He emphasized that the nature of the sport industry is such that competitors must be of approximately equal 'size' if any are to be successful. This is one of the unique attributes of

[2] European Commission (1998), Developments and Prospects for Community Action in the Field of Sport, Commission Staff Working Paper, Directorate General X, 29/09/98. p.1 & 6.

[3] *Chicago Professional Sports LP* v. *NBA* F 3d 593, 598-99 (7th Cir 1996)

[4] Adam Lewis and Jonathan Taylor, *Sport: Law and Practice* (Butterworths LexisNexis, London, 2003) p.351

[5] Peter J. Sloane, *Rottenberg and the Economics of Sport after 50 Years: An Evaluation*, http://ssrn.com/abstract=918719 last visited on June 30, 2008

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professional competitive sports.[6] According to him in baseball no team can be successful unless its competitors also survive and prosper sufficiently so that the differences in the quality of play among teams are not "too great."[7]

Two teams opposed to each other in play are like two firms producing a single product. The product is the game, weighted by the revenues derived from its play. In one sense, the teams compete; in another, they combine in a single firm in which the success of each branch requires that it be not "too much" more efficient than the other. If it is, output falls.[8] Unequally distributed playing talent can produce, in contemporary terminology, "competitive imbalance".

Another pillar of Rottenberg's analysis was the uncertainty of outcome hypothesis and it is clear that what he had in mind here was uncertainty of match outcome. Thus, he states 'the highest degree of uncertainty occurs when the probability that any given team will win in any given game is 0.5.' Later authors have identified at least three forms of uncertainty of outcome. These are:

- short-run uncertainty of match outcome.
- medium term or seasonal uncertainty of outcome, implying either
    - the more teams in contention for the league title the higher attendances, or
    - the longer one's own team remains in contention the higher attendances.
- long term uncertainty of outcome, which refers to lack of domination by one or more clubs over a number of seasons.[9]

This is in acknowledgement that pure market competition based on the desire by participants to achieve a position of monopoly / oligopoly serves no one's interest. In other words, the financial elimination of competitors will diminish rather than enhance the respective position of participants as the sporting 'spectacle' requires competitive balance. Without it, sport

[6] Allen R. Sanderson and John J. Siegfried, *Simon Rottenberg and Baseball, Then and Now: A 50th Anniversary Retrospective*, http://www.vanderbilt.edu/Econ/wparchive/workpaper/vu06-w06.pdf last visited on May 21, 2008

[7] Simon Rottenberg, *The Baseball Players' Labor Market*, The Journal of Political Economy, Vol. 64, No. 3 (June 1956) pp. 242-258

[8] *Ibid*

[9] *Supra* note 4

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would not attract public interest. Whereas economic actors in other sectors benefit from the failures of their competitors, sports clubs have a vested interest in creating an environment in which their competitors are able to present effective (and therefore exciting) opposition. Put differently, the fundamental economic principle that the public interest is served best by unrestrained competition in a completely free market environment simply *does not apply* in the sports sector.[10]

COMPETITIVE BALANCE IN SPORTS

One of the key issues in the economics of sport is the issue of 'competitive balance'. Revenue to professional leagues and thereby levels of remuneration, it is argued, depend in large part on the excitement of the competition generated by teams that are relatively even-matched. Since the league structure is providing that competition, it is commonly suggested that the league should be treated as a single entity in law rather than each individual club, with implications for the applicability of anti-trust or anti-competitive laws concerning collusive behaviour designed to enhance 'competitive balance'.

As mentioned previously, there are two broad 'models' of the operation of a professional league. The first is the North American variant of a closed league (new entrants or 'franchises' can only be jointly approved in the event of an agreed expansion or the end of an existing franchise) with a self-contained league management structure which negotiates joint broadcasting rights and sometimes shares gate revenue. There are often 'artificial' measures to promote greater competition or to restrict the financial and performance discrepancies between the previous best and worst teams, such as a 'draft' system to feed the best new players into the worst performing teams in the previous session and caps on salary bills (and, in the past, salaries) that may bind on the more successful teams.[11]

The second model is the European model whose most important characteristic is the 'open' competition model, based on promotion and relegation. Most sport competitions have a pyramid-like structure where each season clubs or athletes are grouped based on their

[10] Adam Lewis and Jonathan Taylor, *Sport: Law and Practice* (Butterworths LexisNexis, London, 2003) p.352

[11] Richard Disney, *Remuneration of Sports Stars: Implications for Regulation*, http://www.nottingham.ac.uk/economics/cpe/publications/Disney_2006_Remuneration_of_sports_stars.pdf last visited on May 15, 2008

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sportive quality. At the end of a season, champions promote to a higher level, while the team(s) with the worst records move down one step. At the top of the national pyramids teams can qualify for international club competitions.

In the past, maintaining competitive balance (sportive equality) has never been an important issue in the European Model of Sports. Although some measurements were installed to limit the powers of rich clubs (for example, quota on foreign players and the redistribution of pooled TV-income), the open structure limits the incentives for 'horizontal solidarity' (within the league), as each year clubs leave and other clubs join the competition. The notion that revenues should be divided equally for the 'good of the game' has never really been part of the European Model of Sports.

The American Model of Sport differs in many ways from the European Model. For one thing, it is organised on a more overtly commercial basis, with a strong emphasis on the entertainment aspect of sport. The main characteristics of the American Model of Sport are: a strict division between amateur and professional sports, focus on profit-maximising, closed competition structures based on economic rather than sportive entry barriers and the use of various measures to ensure competitive balance between clubs.

Based on economic ratio, they realise that a well-balanced, exciting competition benefits all teams and their owners. Fans do not want to watch sport if on-the field competition is weak. Even the wealthy and profitable New York Yankees realise they have to support the weaker teams in their League in order to keep the baseball product interesting.[12]

THE ECONOMIC FRAMEWORK FOR PROFESSIONAL SPORTS

A comprehensive model was developed by Li, Hofacre and Mahony, where they define the sport industry as the cluster of:

- firms and organisations that produce sport activities;
- firms and organisations that provide products and services to support the production of sport activities, and

[12] *Professional Sport In The Internal Market*, A Report Commissioned by the Committee on the Internal Market and Consumer Protection of the European Parliament available at http://www.sportslaw.nl/documents/cms_sports_65_1_Professional%20sport.pdf last visited on May 25, 2008

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- firms and organisations that sell and trade products related to sporting activities.

Based on this definition they constructed a sport industry model, which consists of two main sectors. The first sector is the *sport activity producing sector*. This sector includes all firms and organisations that produce sport games, events and services. Professional teams are in this sector, as well as fitness clubs, sport and recreation departments, independent athletes, trainers and instructors and owners of racing participants (horses, cars). The sport activity producing sector or "competition participating services" is the core of the sport industry.[13]

The other sector that emerges on a close analysis of the sport industry is something that Australian courts have recognized as being "competition organizing services".[14] Thus a league is a *sport activity organizing sector* that is independent of the clubs and is clearly focused on improving the competitive environment among the playing teams. Antitrust law does not forbid the exercise of monopoly power, although the Sherman Act prohibits a league from engaging in anticompetitive acts to maintain its dominance. To prove illegal monopoly maintenance a plaintiff must prove not only that rules are exclusionary but they are unnecessarily so – that is, that they are inefficient.

To be sure, a league – like current club-run leagues – cannot engage in blatantly anticompetitive acts, such as blacklisting players who sign with rival leagues. In addition, foreclosing rivals from essential inputs would subject leagues to liability. Thus, a league could not tie up every television network. It would also have to ensure that player contracts were structured so that a rival could have access in any given year to a sufficient number of players.[15]

The competition question that emerges now is whether vertical integration between "competition organizing services" and "competition participating services" is a good idea? Ross & Szymanski[16] answer this in the negative. According to them, commercial leagues are best organized by an entity separate from participating clubs. It follows from the Residual Claimant Theory, which states that as long as the independent competition organizer is

[13] *Ibid*

[14] *News Ltd.* v. *Australian Rugby Football League Ltd.* (1996) ATRP 41-466

[15] Stephen F. Ross and Stefan Szymanski, *The Law & Economics of Optimal Sports League Design*, http://papers.ssrn.com/pape.tar?abstract_id=452861 last visited on June 3, 2008

[16] *Ibid*

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getting lucrative profits from running the league, it will have incentive enough to ensure a competitive environment in the sport league. Moreover, independent leagues are more likely to set effective league policy than club-run leagues, which set sub-optimal policy because voting members care about own club's interests.

The IPL is a league based on the above theory, and it is evident from its very structure that provides for an independent sport organizer. IPL has five Board of Directors appointed by the BCCI, among which is the IPL Chairman Lalit Modi. These Board of Directors are responsible for setting the rules of the competition and are directly responsible to the BCCI. The nature of the league is inherently commercial in as much as fixed percentages of television revenue, sponsorship revenue, gate receipts is reserved for BCCI, which in turn provides an incentive for BCCI to act in a manner to promote competition better. Since, the more attractive the sport, the more attractive are the media rights, sponsorship and audience turn out at stadiums, thereby ensuring more money for BCCI. As a consequence, there is more than an appropriate incentive for BCCI to act in a manner that promotes competition.[17] (See Box)

Understanding IPL's Financial Levers[18]

The entire concept of IPL is based on the assumption that the public will take a fancy to supporting league teams, as opposed to national teams, and come out in large numbers to watch their favourite stars play, whatever their nationality. It will franchise eight teams for a start with two more to be added over the next six years, for a maximum of 10 teams only. The eight franchises have been auctioned to the highest bidders who will own them for perpetuity. IPL has bagged a cool $724 million from the sale of franchise rights to the eight teams.

The main revenue streams for the franchisees are from the sale of broadcast rights, sponsorship, gate receipts in matches at their home grounds and team sponsorship. All of these, except for the team sponsorship, have to be shared with IPL in pre-determined ratios over the next 10 years.

Broadcast rights: The broadcast rights have been sold by IPL to Sony for $1.02 billion for 10 years in a contract that is linked to the success of the League and to television rating points (TRPs).

[17] Lecture by Stephen F. Ross on '*The Globalisation of Sport: How Australian Law teaches an American Law Professor how to Advise a British Sports Manager Helping Build an Indian Sports League*' held at Melboure Law School on May 29, 2008, podcast available at http://www.masters.law.unimelb.edu.au/index.cfm?objectid=6893947E-1422-207C-BA1FBD1C615DEDA5&DiaryID=3808 last visited on June 5, 2008

[18] http://www.thehindubusinessline.com/2008/05/09/stories/2008050950570900.htm last visited on May 15, 2008

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In the first two years, 80 per cent of the money earned from the broadcast rights will be shared by the franchisees equally with the rest going to IPL. The latter's share will increase gradually and by the fifth year, IPL will get to share 40 per cent of the broadcast revenue.

Sponsorship: The title sponsorship fee of Rs 40 crore per annum for the next five years to be paid by DLF will be shared with the franchises. IPL will retain 40 per cent of this with the balance 60 per cent to be shared between the franchisees equally. While these revenues accrue from the central pool to the franchisees, they will generate team sponsorship at individual levels. For instance, Nokia is the team sponsor for Kolkata Knight Riders while Aircel sponsors Chennai Super Kings. This revenue will remain wholly with the franchisees.

Ticket sales: The final revenue source, of course, is ticket sales at home stadiums. Each franchise will get seven matches at home and the revenues from ticket sales will be shared with IPL, which will get 20 per cent, with the rest going to the franchisee. There are also other smaller revenue sources such as from in-stadia advertising a part of which will go to the franchisee.

Table 2

Financial model

Revenue sources
Broadcast rights (Franchisee:IPL 80:20)
Sponsorship (Franchisee:IPL 60:40)
Team sponsorship
Gate receipts
In-stadia advertising
Main expenses
Franchise fee to IPL
Player acquisition costs
Stadium hire charges
Marketing/Promotion costs

Thus, borrowing from the concept of "competition organizing services" developed by Australian jurisprudence, it can be said that independent leagues are better than club-run leagues, and should be how leagues are to be set up. An independent entity organizing a popular sporting competition is likely to enjoy significant advantages over the tradition club-run leagues. The competition is more likely to be designed to enhance consumer appeal and operated in a manner to maximize overall profits. Because The League's business decisions will either be unilateral or "vertical" agreements with independent clubs, The League will enjoy significant legal flexibility to make decisions that would otherwise risk serious antitrust liability. The result, given the assumed absence of competition, should be greater

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profitability.[19] IPL is the perfect example of that. The model of the IPL is the future of cricket, and any problem with it will not be because of its structure.

SPORTS AND COMPETITION LAW: AN INDIAN EXAMPLE

Since sport is generally organized in a kind of a 'pyramid' structure, with a single governing body controlling most regulatory and commercial aspects of each sport, the governing body appears to be de facto 'dominant' and therefore claims relating to the abuse of monopoly power maybe relatively easy to make. However, simply *having* a dominant position is not, in itself, problematic. Rather it is the *abuse* of a dominant position that infringes Art. 82.[20] As the European Commission has said:

"It is not the power to regulate a given sporting activity as such which might constitute an abuse but rather the way in which a given sporting organization exercises such power."[21]

Founded in 1929, for almost 80 years the BCCI has held the only set of keys to Indian cricket. With the Zee-backed ICL as the new kid on the block the BCCI may no longer be able to retain the same gate-keeping value. BCCI is not a natural monopoly and as in the case of many continuing monopolies, is a strong institutional legacy that no one has, since, either dared or bothered to replicate. Essentially, this is a problem of 'monopoly' disruption. There are many beneficiaries of a monopolistic regime and each feels insecure about his impending redundancy and displacement. The new entrant is unconstrained by extant institutions and structures and is often able to think unconventionally and unlock or redistribute economic value. This is evident from the fact that ICL was launched by the Zee group and former BCCI officers who were disgruntled by the appalling state of domestic cricket in India. As a result, the BCCI's actions would be subject to the general competition laws of the land. The player and service provider bans, discriminatory denial of access to stadia and revocation of benefits could be challenged in a court of law by aggrieved parties based on legal principles such as unreasonable restraint of trade, unfair competition and the "essential facilities" doctrine.

THE COMPETITION DEBATE BETWEEN IPL AND ICL

[19] *Supra* note 14

[20] Adam Lewis and Jonathan Taylor, *Sport: Law and Practice* (Butterworths LexisNexis, 2003 London) p.340

[21] 'Commission debates applications of competition rules to sport', Commission press release dated 24 February 1999, IP/99/133

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Sports governing bodies often attempt to preserve for themselves the sole ability to regulate the sport and to organize events. In order to prevent the development of rival organizations, they have sought to tie players in by prohibiting them from competing in other events, on pain of exclusion from 'official' events, and such rules have been the subject of challenge.[22]

The BCCI sacked Kapil Dev as chairman of the National Cricket Academy for aligning with the rebel league (ICL) and barred all the 44 defecting players from playing for India or at the domestic level. It has made it clear that any cricketer who aligns with the rebel body will be banned for life from playing for India. Moreover, the Board has also said that players signing up for the breakaway league will also be barred from taking part in all domestic tournaments.[23] Following this, the Pakistan Cricket Board also took a similar decision of banning the four players -- former captain Inzamam-ul-Haq, Mohd Yousuf, Imran Farhat and Abdul Razzaq -- from playing for the country.[24] Further, with the International Cricket Council (ICC) throwing its weight behind the BCCI in the latter's stand-off with the ICL has said that the BCCI was its "only recognised body" to administer the sport in India, making it evident that BCCI is using its clout in the cricket world to drive out any competition it may face from the rival league.

It is this kind of an exclusionary practice on part of the BCCI that may attract liability under the provisions of the Competition Act, 2002. As per Section 4(2)(c) of the Act if any enterprise "*indulges in practice or practices resulting in denial of market access in any manner*", then it shall be liable for abuse of dominant position. Thus, such practice of banning players from domestic tournaments on account of joining the rival leagues may prove expensive for the BCCI, which may face a challenge on grounds of abuse of dominant position.

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[22] *Grieg* v. *Insole* [1978] 1 WLR 302. The court held in unreasonable restraint of trade the rules of the TCCB bannign any player who wanted to compete under its auspices from taking part in competitions organized by any competing organization, in that case Kerry Packer's cricket world series.

[23] *Players aligning with ICL will be banned for life: BCCI*, http://www.hindustantimes.com/StoryPage/FullcoverageStoryPage.aspx?id=7f70aa4c-fa75-462b-94af-9c3c1bbde830Indiancricketleague_Special&&IsCricket=true&Headline='Players+aligning+with+ICL+warned' last visited on May 15, 2008

[24] *ICC not to intervene, says ICL is BCCI's internal matter*, http://www.hindustantimes.com/StoryPage/StoryPage.aspx?id=40e36319-cbde-4a8c-9ded-d490408f28a0&&IsCricket=true&Headline=ICC+not+to+intervene+in+ICL+issue last visited on May 15, 2008

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In the case of *Greig* v. *Insole*[25], the English High Court applied the common law doctrine of restraint of trade to restrictions imposed in a sports context. The 34 first class cricket players who had signed to play in Kerry Packer's unsanctioned tour were banned indefinitely by the ICC and TCCB[26] from playing in official competitions. The court held that it was legitimate for the ICC and TCCB to try and protect the public interest in the proper organization and administration of cricket, and in particular the status of the test calendar as the principal source of revenue for the sport as a whole, but ruled that imposing a total and retrospective ban from first class cricket on players who had contracted to play for an unsanctioned series was not reasonable and justifiable in the circumstances of the case.[27]

Furthermore, in a celebrated Australian case popularly known as the "Superleague" case, a litigation arose out of an attempt by News Ltd to establish a new rugby league competition, known as "Superleague" (or "Super League"), to operate in competition with the established national rugby competition which has been conducted for many years under the auspices of the New South Wales Rugby League Ltd or the Australian Rugby Football League Ltd (hereafter referred to collectively as "the League").

During 1995, News Ltd or its associated Superleague companies entered into contracts with over 300 players and coaches to participate in the Superleague competition. The signing of the players and coaches took place after the League had executed Commitment and Loyalty Agreements with the 20 clubs that comprised the national competition. These Agreements precluded the clubs from participating for five years (until the end of the 1999 season) in any competition not conducted or approved by the League. In return, each of the clubs was admitted to the national competition for five years. Previously the clubs were required to apply annually for admission to the competition. News Ltd claimed, amongst other things, that the Commitment and Loyalty Agreements were void on the basis they contravened the *Trade Practices Act 1974,* as they contained "exclusionary provisions" (resulting in a breach of s.45(2)(a)(i)[28] or s.45(2)(b)(i)[29] of the Act), and that they had the purpose or effect of

[25] [1978] 1 WLR 302

[26] Test and County Cricket Board

[27] Adam Lewis and Jonathan Taylor, *Sport: Law and Practice* (Butterworths LexisNexis, 2003 London) p.369

[28] Section 45 (2) A corporation shall not: (a) make a contract or arrangement, or arrive at an understanding, if: (i) the proposed contract, arrangement or understanding contains an exclusionary provision;

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substantially lessening competition in various markets (in contravention of s.45(2)(a)(ii)[30] or s.45(2)(b)(ii)[31] of the Act). News also claimed the League had abused its significant market power by preventing the entry of the proposed Superleague.

The League filed cross-claims including that the "rebel clubs" (those clubs prepared to release players and coaches from their existing contracts to participate in the Superleague) had breached contractual obligations to the League; that the rebel clubs had breached fiduciary duties arising from a "joint venture" between the clubs and the League; that News Ltd and the Superleague companies had induced the rebel clubs to breach their contractual and fiduciary duties.

The League and loyal clubs succeeded before the trial Judge, who rejected News Ltd's claims that the Commitment and Loyalty Agreements contravened the *Trade Practices Act*. However, The Full Court disagreed with the trial Judge and held that the clubs were in competition with each other for the acquisition of the services of News Ltd as an alternative competition organiser. It viewed the Commitment and Loyalty Agreements as being designed, in large measure, to prevent any of the clubs from choosing to participate in the rival competition, which the Court considered was very much at the forefront of the minds of the representatives of the League.

Agreements containing exclusionary provisions are *per se* contraventions of the *Trade Practices Act*. Exclusionary provisions are defined in s.4D as provisions of a contract, arrangement or understanding having the purpose of preventing, restricting or limiting the supply or acquisition of goods or services by persons in competition with each other in relation to those goods or services. The Court held that, while the clubs and the League may have had other objectives in entering the agreements, these were substantial purposes on any view open of the word "substantial" for the purposes of s.45(2). Accordingly, the Court held

[29] Section 45 (2) A corporation shall not: (b) give effect to a provision of a contract, arrangement or understanding, whether the contract or arrangement was made, or the understanding was arrived at, before or after the commencement of this section, if that provision: (i) is an exclusionary provision

[30] Section 45 (2) A corporation shall not: (a) make a contract or arrangement, or arrive at an understanding, if: (ii) a provision of the proposed contract, arrangement or understanding has the purpose, or would have or be likely to have the effect, of substantially lessening competition

[31] Section 45 (2) A corporation shall not: (b) give effect to a provision of a contract, arrangement or understanding, whether the contract or arrangement was made, or the understanding was arrived at, before or after the commencement of this section, if that provision: (ii) has the purpose, or has or is likely to have the effect, of substantially lessening competition

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that the arrangement contained an exclusionary provision and therefore contravened the Act.[32]

In light of the *Superleague* case, the statements made by the BCCI officials that threaten to ban players from the domestic and national sides if they join ICL can amount to an exclusionary abuse of dominant position and have the effect of affecting competition negatively by denying market access to players who have defected to the rival league, in as much as they face a life ban from appearing in any future domestic or national games.

DENIAL OF STADIUMS AND 'ESSENTIAL FACILITIES DOCTRINE'

Another sport related competition issue that may prove to be troublesome for the BCCI is the denial of use of stadiums to the rival league ICL. This practice can be deemed to be anti-competitive by the Commission on the application of the essential facilities doctrine.

The essential facilities doctrine refers to a situation where a dominant firm owns or controls a facility that is indispensable to its competitors and refuses to grant access to that facility. It imposes liability when one firm, which controls an essential facility, denies a second firm reasonable access to a product or service that the second firm must obtain in order to compete with the first.[33]

The doctrine is not an independent cause of action, but rather a type of monopolization claim."[34] The doctrine seeks to prevent the firm with monopoly control over an essential asset from unlawfully excluding actual or potential rivals, or from extending its monopoly over that asset to the final stage of production (a finished product market, for example). A company, which has monopoly power over an essential facility may not refuse to make the facility available to others where there is no legitimate business reason for the refusal.

Under antitrust law, the leading US essential facilities case has been *MCI Communications Corp.* v. *AT&T*[35], in which the Seventh Circuit identified four elements necessary to establish liability under the "essential facilities doctrine". These are:

[32] *News Limited* v. *Australian Rugby Football League Limited* (1996) ATRP 41-466

[33] *Alaska Airlines, Inc.* v. *United Airlines, Inc.*, 948 F.2d 536, 542 (9th Cir. 1991)

[34] *Kramer* v. *Pollock-Krasner Found.*, 890 F. Supp. 250, 257 (S.D.N.Y. 1995)

[35] 309 F.3d 404 (7th Cir. 2002)

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- Control of the essential facility by a monopolist
- Inability of the competitor seeking access to practically or reasonably duplicate the essential facility
- The denial of the use of the facility to the competitor.

Under UK Competition law, the fundamental characteristics of an essential facility are:

- Competitors must have access to the facility because it is essential for the provision of goods or services in that related market
- It is not economically efficient, or may not be feasible, for new entrants to replicate the facility.

The concept implies the existence of two markets: an upstream market and a downstream market. One firm, which is dominant, is active in both the upstream and the downstream market. While the competitor seeking access is operational in the downstream market, the dominant firm is usually vertically integrated and owns an input (the essential facility), and uses that input to compete in the downstream market. The first step of the analysis is to define the downstream market in order to establish whether the dominant firm and the firm seeking access are really competitors. The second step is to define the upstream market, the market in which the essential facility lies. The market must be reasonably defined taking into account supply and demand side substitutes.

The firm operating in both markets must be dominant in the upstream market in which the competitor is seeking access. There must be barriers to entry in this market. If there are barriers to entry, then entry is likely and competition can be enhanced through entry and innovation.

The facility must be extremely difficult or impossible to duplicate due to physical constraints. Most facilities found to be "essential" have been utilities, natural monopolies or other assets involving large sunk costs that would be expensive and inefficient to duplicate. However, there is no clear answer as to how "reasonableness" should be measured. The competitor seeking access must have no other reasonable alternative.

The competitor seeking access to the facility deemed essential must have been refused access to that facility by the dominant firm. It must be impossible or impractical for the competitor

to duplicate the facility. Denial of access to a facility must create a handicap so that the competitor's activities in the relevant market are impossible, or seriously uneconomic, thereby creating a huge barrier to entry.[36]

An essential facility can be a product such as a raw material, or a service. Under antitrust case law some of the following facilities have been deemed essential: railway bridges, telecommunications network, local electricity transmission network, sports stadium.

The conditions precedent for the invocation of this doctrine was reiterated in 1978 in a famous football case[37]. A rival football club was denied access to the stadium owned by the incumbent. It was held by the Court that it was not possible to construct another stadium in a reasonable timeframe and denying such access would be against the Sherman Act. [38]

In both the U.S. and EU, the plaintiff in an essential facility lawsuit must objectively prove that access to the facility is indispensable in order to compete in the market with the firm that controls the facility. Further, it should be noted that *Aspen Skiing Co.* v. *Aspen Highlands Skiing Corp.*[39], the Supreme Court supplemented the 'intent to monopolize' test by requiring plaintiffs to establish the existence of exclusionary or predatory conduct. The essential facilities doctrine does not require a plaintiff to neatly distinguish the relevant levels of production into two separate antitrust markets. It is sufficient to prove that the parties compete – or would compete if the plaintiff were permitted access to the defendant's asset – in the same ultimate market. [40] Numerous courts require simply that plaintiffs demonstrate that they are competitors (including potential competitors) being denied access to an essential facility controlled by the defendant monopolist.[41]

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[36] Seema Nunkoo, *Essential Facilities Doctrine*, http://www.compcom.co.za/resources/september2002/pages/04_facilities.htm last visited on May 15, 2008

[37] *Hetch* v. *Pro Football Inc*., 1978, 436 US 956; Also see *Ferguson* v. *Greater Pocatello Chamber of Commerce, Inc.*, 848 F.2d 976 (9th Cir. 1988). Football stadium was held to be an essential facility.

[38] Amitabh Kumar, *The essential facilities doctrine* http://www.financialexpress.com/old/fe_full_story.php?content_id=158679 last visited on June 5, 2008

[39] 472 U.S. 585 (1985)

[40] Robert Pitofsky, *The Essential Facilities Doctrine Under United States Antitrust Law*, http://www.ftc.gov/os/comments/intelpropertycomments/pitofskyrobert.pdf last visited on June 13, 2008

[41] *Mid-South Grizzlies* v. *Nat'l Football League*, 550 F. Supp. 558, 570 (E.D. Pa. 1982)

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In India's Competition Act of 2002, one of the abuses of one's dominant position is to indulge in any practice or practices that result in denial of market access in any manner. The intention of the lawmakers seems to be an implicit recognition of the doctrine of essential facilities. The denial of stadiums by the BCCI can attract liability for abuse of dominant position under s.4(2)(c) of the Competition Act, 2002 as by denying the use of essential facility under its control it raises the barriers to entry in the market for its competitors, resulting effectively in denial of market access. Operating from just one stadium in Chandigarh, the ICL is clearly missing out on one of the integral aspects of leagues sports i.e. a fan base, since it is unable to capture home crowds for matches on account of non-access to the stadiums in the club's cities. It is necessary for the success of the league for it have a large city-based audience, which in turn generate interest in the game, leading to more attendance in matches and ultimately better revenues. Thus, this denial of stadiums to ICL may be a sticky wicket for the BCCI since it itself uses government-owned stadiums across the country at a nominal annual rent, which makes the entire scenario appear as an exercise of BCCI's monopoly in cricket in India.

BROADCASTING ISSUES RELATED TO SPORTS AND COMPETITION

We cannot close our eyes to another new phenomenon: sport has increasingly become big business. Competition law is concerned with the effects that anti-competitive agreements or practices have on the consumer. Consequently, determining relevant markets calls for inquiries into the impact that restrictive agreements have on the opposite side of the market by asking about the effect on the choices of the enterprises, which are the clients of the parties to a restrictive agreement. It is evident that the relevant market for sports broadcasting rights cannot be determined by the actual or potential spectator, as in that case not only different types of sports, but also individual matches from the same sports competition or even within a given tournament, as well as each single match of the national team, will have varying degrees of spectator appeal. The EC has observed that live sport events reach an identifiable audience and have a separate market because of the unpredictability of outcome, thereby distinguishing them from other forms of entertainment.[42]

[42] Werner Rumphorst, *Sports Broadcasting Rights and EC Competition Law*, http://www.ebu.ch/CMSimages/en/leg_p_sports_rights_wr_tcm6-4406.pdf last visited on May 17, 2008

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Just as the substitutability of feature films cannot be annulled by assuming that a Disney film will appeal to a different audience from a James Bond film (and even among the existing James Bond films you will find varying spectator appeal, partly because different actors have played the hero), the demarcation of the relevant market for sports broadcasting rights would be largely unpredictable, if not virtually impossible, if the emphasis were put on the potential audience.[43]

Thus, sports coverage on television has certain particular characteristics:

- First, sport is an ephemeral product. Viewers are mainly interested in live broadcasts.
- Next, substitution is difficult. A viewer who wants to see a given event is unlikely to be satisfied with coverage of another event.
- Finally, the concentration of rights in the hands of sports federations reduces the number of rights available. Moreover, availability of rights is reduced still further by an increasing number of TV rights contracts being concluded on an exclusive basis for a long duration, or covering a large number of events. This strengthens the market position of the most important broadcasters because they are the only operators who are able to bid for all the TV rights sold in large packages.[44]

Intuitively, however, there is something to say for defining the relevant market as just the transmission of Twenty20 cricket matches in order to ascertain possible competition issues that may arise in the broadcasting sector. Given the popularity of this format of the game, viewers would not easily switch to other channels showing different types of programs. Of course, in TV broadcasting it is not the viewers themselves but advertisers who pay for the programs. But the advertisers' decisions as to around what programs they buy airtime depend directly on the viewers' preferences. Thus, a hypothetical monopolist who is the only present and future broadcaster of these matches would likely impose a small but significant (five percent) and non-transitory increase in the price of advertising airtime around those matches.

[43] *Ibid*

[44] Alexander Schaub, *Sports and Competition: Broadcasting Rights of Sports Events*, http://ec.europa.eu/comm/competition/speeches/text/sp2002_008_en.pdf last visited on May 17, 2008

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Advertisers would not switch to other programs because viewers are captive to watching these matches, whether or not transmitted by a monopolist.[45]

HORIZONTAL AND VERTICAL ANTI-COMPETITIVE EFFECTS OF SPORT BROADCASTING

Horizontal effects, where sporting associations pool the rights of the participating clubs, and thereby restrict price competition, competition on features and often limit output in an attempt to maximise revenues.

Joint selling, of particular relevance in the top leagues such as in the Champions League, and the big national leagues such as the Premier League in the UK and the Bundesliga in Germany. Joint selling of TV rights describes a situation where sport clubs assign their rights to their associations, which sell the rights on behalf of the clubs.

Normally, the associations bundle all the rights in large exclusive packages and sell them to a single broadcaster in each country. Joint selling agreements prevent clubs from competing in the sale of their rights. As a consequence, it may limit competition between broadcasters and thereby consumer choice. The effect on competition has to be evaluated in its economic and legal context, taking into account, for example, the feasibility of participants selling rights individually.

When joint selling agreements fall under the prohibition of Article 81(1)[46], we have to see whether they can be exempted under Article 81(3)[47]. In this context, specific factors such as

[45] *Competition Issues Related to Sports*, An OECD Report (1997) available at http://www.oecd.org/dataoecd/34/49/1920279.pdf last visited on May 15, 2008

[46] 1. The following shall be prohibited as incompatible with the common market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market, and in particular those which:

(a) directly or indirectly fix purchase or selling prices or any other trading conditions;

(b) limit or control production, markets, technical development, or investment;

(c) share markets or sources of supply;

(d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;

(e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

[47] 3. The provisions of paragraph 1 may, however, be declared inapplicable in the case of:

- any agreement or category of agreements between undertakings;

- any decision or category of decisions by associations of undertakings;

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the possible link between the joint selling of rights and financial solidarity between clubs or between professional and amateur sport could be taken into consideration with all other relevant factors, as long as they are quantifiable and objectively defined.[48]

Vertical effects, whereby the pooling upstream, or the simple excessive exercise of exclusive rights in case of a single owner, leads to a single buyer on the downstream television markets creating or reinforcing dominant positions those markets, and closing these markets to competitors by withholding from them a vital input.

Major issues have been:

- The *duration* of the agreements; and
- The *scope* of the exclusivity.

Commercial transactions in sports do not make much sense unless there is some exclusivity. Generally speaking, the less exclusive the rights given, the less commercial value, and therefore the less the clubs get in terms of money. The European Commission recognizes the commercial need for exclusivity. The Commission is more concerned that the exclusive rights are given on the basis of objective selection criteria and for a fixed period of time. Depending on the nature of the exclusivity the contract should not be for too long, for example in the case of broadcasting not more than three years, and there should be no clause in the agreement allowing automatic renewal. It seems the problem of exclusivity is largely a question of transparent and objective processes and a contract that is not excessive in length.[49]

The granting of broadcasting rights for sport events on an exclusive basis is undoubtedly an established commercial practice. It enhances the value of TV rights for sport events,

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- any concerted practice or category of concerted practices, which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:

(a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;

(b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

[48] *Supra* note 42

[49] Simon Gardiner, *Sports Law* (Cavendish Publishing, Australia, 3rd Edition, 2006) p.367

particularly as interest in, and therefore the value of, sport events is ephemeral. We consider that exclusive contracts for a single sport event or for one season in a given championship would not normally pose any competition problem. However, exclusivity of a longer duration and for a wide range of rights can restrict competition, as it is likely to lead to market foreclosure. This is particularly the case if the broadcaster is in a dominant position or if the market is oligopolistic in nature.

This does not mean that contracts of a longer duration are never justified. Such is the case when a new operator requires such a contract to ensure successful entry into the television market. It is also the case when an operator wishes to develop a new technology, which requires heavy investments.[50]

The European Commission (EC) views the sale of exclusive broadcast rights for football matches as anti-competitive not only because it reduces consumer choice, but also because it prevents other broadcasters from competing for the rights. This has implications for broadcast rights of cricket matches owned by the Board of Cricket Control for India (BCCI) and the Indian Premier League (IPL). Due to similarities in law, issues dealt with by the EC are likely to arise before the Competition Commission of India (CCI).

Under the European competition law, agreements which prevent, restrict or distort competition are also considered illegal.

In one case (KNVB/Sport 7), the EC held that though exclusivity per se is not anti-competitive, grant of exclusive broadcast rights for eight years by the Danish Football Association was anti-competitve. In TV Rights to the Union of European Football Associations (UEFA) Champions League (2002), the EC held that granting the sale of the "entire rights" on an exclusive basis for a long period to one broadcaster leads to unsatisfied demand from other broadcasters, and a reduced ability to make an attractive offer to customers. Further, at the end of the exclusivity period, the existing broadcaster is financially better equipped to acquire the rights a second time. The EC also opined that broadcast rights get limited with an increasing number of TV rights being awarded on an exclusive basis for a long duration, or for covering a large number of events. This strengthens the market position

[50] *Supra* note 42

of the most prominent (richest) broadcasters, as they are the only operators who are able to bid for TV rights sold in large packages.

India's Competition Act, 2002, (Act) holds void any agreement that causes or is likely to cause an appreciable adverse impact on competition. Agreements which limit or control supply are presumed to be anti-competitive. But BCCI has been selling exclusive broadcast rights for long periods. With the emergence of private broadcasters in the 1990s, BCCI sold a five-year contracts to ESPN STAR Sports (1995-99), and to Prasar Bharati (1999-2004). Thereafter BCCI sold the rights on a territorial basis and Nimbus Communications bought the rights for India for five years (2006-10), ESPN STAR Sports for overseas matches for four years (2005-08) and Zee Television for matches in neutral venues for five years (2006-11).

The broadcast rights to IPL were sold to a WSG-Sony Entertainment combine for a period of 10 years for $1.03 billion. It's important to consider the impact of such agreements on the existing players. Nine major broadcasters are either involved or plan to bid in India—ESPN STAR Sports, Ten Sports, Sony Entertainment Television, Nimbus, Zee Television, Prasar Bharati, 9X, Sahara and the NDTV Group. Of these, only Nimbus, Zee and ESPN STAR possess broadcast rights for different territories.

The cumulative effect of BCCI's grant of exclusive rights can lead to the following: (i) creation of barriers to new entrants, (ii) driving out existing competitors and (iii) foreclosure of competition by hindering entry into the market. The granting of an exclusive broadcasting right for a long duration will lead to foreclosure of competition on account of the fact that at the time of renegotiation at the end of the contract, the broadcaster with the exclusive rights will be at an advantage in comparison to the other players due to the massive revenues it amassed during that long time. Therefore, it does not allow for any real allocation of rights at the end of exclusivity.

Granting exclusive rights to a private broadcaster also restricts the supply to consumers of these matches (viewers) in India. Of the 112 million television homes in India, only 68 million are cable and satellite homes and 3.2 million are direct-to-home subscribers. This means 64% of television homes have access to paid channels such as ESPN STAR—depriving 36% of the live telecast. Doordarshan, the terrestrial broadcaster, reaches 75% of the urban population and 38% of the rural population.

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The consumer reach of these matches is extended to the Doordarshan-dependent population by the Sports Broadcasting Signals Act, 2007, which mandates sharing of sports broadcasting signals of "sporting events of national importance" with Prasar Bharati. These events include all one-day and Twenty-20 matches played by the Indian cricket team as well as the semi-finals and finals of the World Cup and the ICC Championship Trophy. By requirement of law, live telecast of specified matches has been made available to the Doordarshan-dependent population. But the anti-competitive elements of BCCI and IPL agreements remain in question. [51]

The granting of exclusive TV rights of sports is undoubtedly an established commercial practice. It is said to enhance the value of TV rights, particularly as interest in and therefore the value of sport product is ephemeral. One must consider that in many cases exclusive contracts for a single sport event or for one season in a given championship would not normally pose any competition problem. A three-year period would seem acceptable. However, exclusivity of a longer duration and for a wider range of rights can restrict competition, as it is likely to lead to market foreclosure. This is particularly the case if the broadcaster is dominant.[52] Thus, the 10-year contract to WSG-Sony Entertainment for the IPL broadcast points towards an imminent market foreclosure. And though it is difficult to predict the outcome, one can safely say that BCCI and its exclusive broadcasters may have questions to relating the anti-competitive nature of their agreements.

SALARY CAPS AND COMPETITION LAW

An aspect of competition in sports that may arise in Indian league cricket is the question of salary caps for teams in sports leagues. There is raging debate in the cricketing circle about the salary cap in the IPL, which currently stands at USD five million. Australian captain Ricky Ponting fears that scrapping the salary cap of IPL franchisees might take away the competitive edge from the exciting Twenty20 tournament. While maestro Sachin Tendulkar is of the opinions that the 'salary cap' is something that cannot stay forever. Moreover, with

[51] Anurag Dubey and Kartik Ganapathy, *Consumer choice & live cricket*, http://www.livemint.com/2008/04/09224822/Consumer-choice-amp-live-cri.html last visited on May 21, 2008

[52] Torben Toft, *TV Rights of Sports Events*, http://ec.europa.eu/comm/competition/speeches/text/sp2003_002_en.pdf last visited on May 25, 2008

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the IPL Chairman and Commissioner Lalit Modi also hinting that the cap may be lifted in the coming seasons, the main question that emerges is: what will happen to the competition?

Many sources blame professional football's current financial woes on the massive escalation in player wages. For example, most FA Premier League clubs spend a seemingly unsustainable proportion of their turnover on player wages. The wage inflation is driven by a desire to compete not only on the domestic stage but also in UEFA cross-border competitions against elite foreign clubs. The biggest clubs, driven to capture the riches of European competition, are playing players millions of pounds per year.

One apparent solution would be a restriction in the rules on the amount of money that each club can pay on player wages i.e. a salary cap. Salary caps already exist in rugby league, rugby union and basketball in England, as well as in European ice hockey and basketball leagues. They are also of course a central feature of the big four professional sports in the United States (baseball, basketball, grid-iron football and ice-hockey).[53]

In the NFL, for example, each team had a basic salary bill cap of $85 million in 2005. In NBA (basketball) the figure was $47 million with some exceptions. In baseball, teams with a high salary bill pay a 'luxury tax' that is redistributed to other teams. In Britain, rugby league teams had a salary bill cap of £1.7 million in 2005 and rugby union a cap of £2 million. Caps on salary bills have been suggested in order to improve 'competitive balance' in professional football in the UK, and also caps on the wage bill as a fraction of revenue as a means of keeping football clubs solvent.[54]

In professional sports, a salary cap is a limit on the amount of money a team can spend on player salaries, either as a per-player limit or a total limit for the team's roster (or both). Several sports leagues have made salary caps mandatory, both as a method of keeping overall costs down, and in order to balance the league so a wealthy team cannot become dominant simply by buying all the top players.

Salary caps were largely unnecessary in the era of the reserve clause, which was long a standard clause in professional sports player contracts and which forbade a player from negotiations with another team without the permission of the team holding that player's rights

[53] Adam Lewis and Jonathan Taylor, *Sport: Law and Practice* (Butterworths LexisNexis, 2003 London) p.387.

[54] *Supra* note 10

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even after the contract's term was completed. This system began to unravel in the 1970s due largely to the activism of players' unions, and the threat of anti-trust legal actions. Although anti-trust actions were not a threat to baseball, which has long been exempt from anti-trust laws, that sport's reserve clause was struck down by a United States arbitrator as a violation of other labor laws of that country. By the 1990s most players with several years' professional experience became free agents upon the expiry of their contracts and were free to negotiate a new contract with their previous team or with any other team. This situation, called Restricted Free Agency, led to "bidding wars" for the best players--a situation which inherently gave an advantage in landing such players to more affluent teams in larger media markets.

In a response to this and as a way of limiting the damage this did to the competitive balance necessary to maintain fan interest in their sports, in the 1990s both the National Football League and the National Basketball Association negotiated salary cap arrangements with their respective players' unions.[55]

In an effort to create more balance in baseball, contemporary scholars and practitioners have proposed schemes to constrain spending – salary (and/or payroll) ceilings, taxes on excessive payrolls – or to reduce revenue disparities – more revenue sharing among teams – as ways to create more parity. Rottenberg anticipated salary caps: “As [a] possibility, let teams bid for players and players accept offers, subject only to the constraint that a ceiling is imposed on the salaries that may be paid to individual players.” Caps or taxes may discourage teams from amassing an inordinate amount of talent, but they also reduce the overall demand for talent as well, which is why players’ unions oppose them.[56]

Obviously salary caps restrict the ability of clubs to compete with each other for the services of players, and would therefore appear to be anti-competitive. However, the argument in response would be that salary caps

- maintain the economic viability of teams competing in the league; and
- preserve the competitive balance between the clubs.[57]

[55] http://en.wikipedia.org/wiki/Salary_cap last visited on June 23, 2008

[56] *Supra* note 5

[57] Adam Lewis and Jonathan Taylor, *Sport: Law and Practice* (Butterworths LexisNexis, 2003 London) p.387. Salary caps in the US professional sports have survived antitrust attack because they are deemed to be

Thus, as a regulator of the league BCCI needs to be conscious of a situation whereby, if the salary cap is removed, it may lead to distortion of competition in league cricket in India on account of a few teams clearly overtaking other in terms of expenditure to acquire all the top players, thus resulting is an uneven, unexciting and certain competition.

CONCLUSION

Our sports industry is still in a rather nascent stage and labour laws, league regulations and the like are not matters of mainstream consciousness. With increasing market maturity and the need for clear and comprehensive legal documentation, sport issues are slowly becoming a major focus as contracts must be able to clarify parties' expectations and commitments, must protect the athlete's and the brand's big-picture interests and must factor in regulatory, legal and other risks inherent in the industry.

With the emergence of league cricket in India, the one question that does arise is what will drive the success of such a league? The simple answer to this question is demand. The fan base determines demand, and demand translates into revenues, profits and franchise value in that order. The league will be financially viable if the entertainment that is packaged, marketed and sold is what the fans demand.

However, in the long run, interest in IPL matches will be determined by the level of competition in the league. The professional sports leagues in the US have striven over the years to ensure “parity” as the price a viewer is willing to pay is directly related to the enjoyment he gets from watching the game. Therefore, it is in the interest of the league organiser, BCCI, to ensure an adequate level of competition that will sustain demand and determine the long-run viability of the league prevails.

Furthermore in sport, the aim of the game is not to eliminate the weaker competitors. There is interdependence between competing adversaries and a need to maintain a balance between them to preserve uncertainty as to results and a degree of equality in order to maintain the spectators’ interest. It is this unique feature of sporting competitions that Competition authorities must bear in mind, for professional sport teams would be free to cooperate in the ways necessary to maintain competitive balance and to achieve other efficiencies that make

restrictions agreed as part of a collective bargaining arrangement and therefore to be covered by the labour exemption to the antitrust laws.

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their brand of sport popular with fans. The leagues, however, should no longer be allowed to misuse their monopoly power to maintain restrictions on competition that enhance their profits at the expense of its competitors and consumers.

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