



Competition Commission of India

3rd TNNLU – CCI National Moot Court Competition, 2020

March 6th - 8th, 2020

Organised by Tamil Nadu National Law University
in collaboration with
Competition Commission of India

With Knowledge Partners



3rd TNNLU – CCI NATIONAL MOOT COURT COMPETITION, 2020

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Tamil Nadu National Law University

The Tamil Nadu National Law University (TNNLU) was established by the Government of Tamil Nadu by an Act of State Legislature (Tamil Nadu Act No. 9 of 2012) to provide quality legal education at the global level. TNNLU has been established with the objective of advancing and engaging with the knowledge of the law, its processes, and its role in national development. TNNLU is committed to the endeavour of developing in its students and research scholars a sense of responsibility to serve the society in the field of law by cultivating skills in advocacy, legal services, legislation and reforms. TNNLU has organized lectures, seminars, symposia and conferences, including a recent international conference on Affirmative Action and the Sustainable Development Goal of Gender Equality, to promote legal knowledge and to make law and legal processes efficient instruments of social development.

The Competition Commission of India

The Competition Commission of India (CCI) at New Delhi is a regulatory body established by the Government of India. The duty of the Commission is to carry out the objectives enumerated under the Competition Act, 2002, i.e., to prohibit anti-competitive agreements, abuse of dominant position by enterprises and regulate combinations (acquisition, acquiring of control and M&A), which cause or are likely to cause an appreciable adverse effect on competition within India. The broad objective of the Act is to create and sustain fair competition in the economy that will provide a ‘level playing field’ to the producers and make the markets. To this end, the mandate of the CCI includes eliminating practices having adverse effect on competition; inspiring businesses to be fair, competitive and innovative; protection of the interests of consumers, and ensuring freedom of trade in the markets of India. To achieve its objectives, the Commission engages in wide-ranging advocacy programmes like competition assessment of policies and legislations by collaborating with educational institutions, conducting training sessions, panel discussions and conferences on issues in competition law, offering internship opportunities to students and also organizing national level essay writing competitions.

Centre for Competition Law, TNNLU

TNNLU has been empanelled by the CCI on September 7, 2017 under the CCI (Competition Assessment of Economic Legislations and Policies) Guidelines, 2017 to be an Empanelled Institution (EI) to carry out Competition Assessment (CA) of the economic legislations, bills and policies. TNNLU was one among the four Universities across India to be empanelled by CCI for this prestigious work. The Centre for Competition Law (CCL), TNNLU was set up in February 2018 to promote and create awareness among the general public about the developments and implications in Competition Law and to carry out research in the growing field of Competition and Commercial Laws. With a view to disseminate information on promoting competition in the market, the Centre intends to conduct workshops, training programmes, publish newsletters and conduct other inter-disciplinary activities in the domain of Competition Law.

Moot Court Committee, TNNLU

The Moot Court Committee (MCC) of TNNLU has been regularly conducting various inter and intra moot court competitions since 2014. The first edition of the National Moot Court Competition was organised from 24th to 26th March 2017. In 2018, MCC collaborated with CCI for the first time to organise the 1st TNNLU-CCI National Moot Court Competition from 2nd to 4th February 2018, and the 2ⁿ edition of the TNNLU-CCI National Moot Court Competition from 6th to 8th of March 2019. Both editions saw large participation from law students all over India. This year we are happy to collaborate with CCI once again to organise the 3rd TNNLU-CCI National Moot Court Competition, 2020.

Organizing Committee

Competition Administrator:

Sumedha Ray Sarkar, Assistant Professor of Law

Student Coordinators:

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OFFICIAL SCHEDULE

| | |
|---|--|
| Commencement of Provisional Registration | 15th December 2019 |
| Release of Moot Problem & Rules | 19th December 2019 |
| Last Date for Final Registration | 11:59 PM (IST), 8th January 2020 |
| Last Date for seeking Clarifications | 11:59 PM (IST), 10th January 2020 |
| Release of Clarifications | 14th January 2020 |
| Deadline for submission of Soft Copy of the Memorials | 11:59 PM (IST), 29th February 2020 |
| Inauguration Ceremony, Orientation for Participants and Memorial Exchange for Preliminary Rounds | 6th March 2020 |
| Preliminary Rounds and Quarter Final Rounds | 7th March 2020 |
| Researchers' Test | 7th March 2020 |
| Semi-Final Rounds, Final Round and Valedictory Ceremony | 8th March 2020 |

RULES OF THE 3RD TNNLU – CCI MOOT COURT COMPETITION, 2020**1. DEFINITIONS**

- 1.1. Advanced Rounds:** It refers to the Quarter-final, Semi-final and Final rounds of the 3rd TNNLU – CCI National Moot Court Competition, 2020.
- 1.2. Memorial:** It means the written arguments submitted, on behalf of both parties, according to the Rules of the Competition by each team.
- 1.3. Competition:** The Competition refers to all the aspects of the 3rd TNNLU – CCI National Moot Court Competition, 2020.
- 1.4. Oral Round Scores:** It refers to the average of the scores secured by both the Speakers in the Oral Rounds.
- 1.5. Oral Rounds:** It refers to the Competition rounds during which the teams orally submit their pleadings in front of the judges on behalf of one of the parties against another team representing the opposing party.
- 1.6. Organizers:** It shall mean the Moot Court Committee of the Tamil Nadu National Law University, Tiruchirappalli.
- 1.7. Power Match-up:** The fixtures for the Oral Rounds of the Competition will be done on the basis of a power match-up (T1 v. T24, T2 v. T23, T3 v. T22...). For the first round of the Qualifying Round, power match-up will be based on the memorial ranks secured by the team. For the Advanced Rounds, the power-up will be based on the Oral Round Scores secured by the teams.
- 1.8. Qualifying Round:** The Qualifying Round is the preliminary round of the Competition consisting of two rounds wherein teams must argue for both the parties.
- 1.9. Scouting:** Scouting is the act of attending a round in which the members of the team or any person related to the team are not competing.
- 1.10. Slide match-up:** The fixtures for the second round of the Qualifying Round will be determined by the Organizers on the basis of a slide match-up (T1 v. T13, T2 v. T14, T4 v. T15...) of the memorial ranks secured by the teams.

2. GENERAL

2.1. Eligibility

All students enrolled in a three (3) year LL.B. programme or a five (5) year LL.B. programme shall be eligible to participate in the Competition. However, only one team per institution shall be eligible to participate. Students enrolled in post-graduate or diploma courses are not eligible to participate.

2.2. Team Composition

2.2.1. The team composition for the Competition shall be either two members (Both the members designated as Speakers) or three members (Two members designated as Speakers and one member designated as a Researcher)

2.2.2. Substitution of any team member or alteration of team composition is not allowed after the date of Final Registration except in extenuating circumstances and only with the permission of the Organizers.

2.2.3. A Researcher, in extenuating circumstances, may be allowed to argue during the Oral Rounds with the permission of the judges.

2.3. Language

The Competition shall be conducted in English language only. All oral submissions and written submissions (memorials and compendium) shall be in English.

3. REGISTRATION

3.1. General Rules for Registration

3.1.1. Selection of teams shall be on first-come-first-serve basis and only 24 teams will be registered to participate in the Competition.

3.1.2. Institutions may provisionally register and reserve a slot in accordance to the procedure prescribed in Rule 3.2. However, provisional registration does not secure a slot unless the team has completed the registration process prescribed in Rule 3.3.

3.2. Provisional Registration

- 3.2.1. Provisional Registration for the Competition shall open on 15th December 2019. Institutions can temporarily block a slot by writing to the Organizers at nmcc@tnnlu.ac.in. Institutions will receive a response immediately regarding the availability of slots and reservation of the same.
- 3.2.2. The last date for Provisional Registration shall be 11:59 PM (IST), 28th December 2019.
- 3.2.3. Institutions who have provisionally registered must complete the Registration process described in Rule 3.3 by 11:59 PM (IST), 8th January 2020.

3.3. Final Registration

- 3.3.1. A slot can be secured only after teams complete the Final Registration process by 11:59 PM (IST), 8th January 2020. Teams will receive a unique Team Code, for identification purposes, once the Final Registration is complete.
- 3.3.2. To complete the Final Registration, teams must email a soft copy/scanned copy of the duly filled Registration Form, which has been annexed with this Brochure at page 24, along with a scanned copy of the Demand Draft drawn in accordance to Rule 3.3.3 to nmcc@tnnlu.ac.in with the subject '**Registration for 3rd TNNLU-CCI NMCC, 2020**'
- 3.3.3. A fee of Rs. 4,000/- (Four Thousand Rupees Only) is payable towards registration. The registration fee must be paid by drawing a **Demand Draft in favour of 'The Registrar, Tamil Nadu National Law University', payable at Tiruchirappalli.**
- 3.3.4. The hard copy of the Registration Form and the Demand Draft must reach the Organizers, via post, before 19th January 2020. The Registration Form and the Demand Draft shall be sent to the following address:

The Registrar, Tamil Nadu National Law University (TNNLU),
Dindigul Main Road, Navalurkuttapattu,
Tiruchirappalli, Tamil Nadu – 620 027.

Teams are requested to avail *Speed Post* services as it is the most convenient given the location of the Organizers.

4. RELEASE OF PROBLEM AND CLARIFICATIONS

Clarifications regarding the Moot Problem may be sought by the teams till 11:59 PM (IST), 10th January 2020 via an email to nmcc@tnnlu.ac.in with the subject '**3rd TNNLU-CCI NMCC, 2020 - Clarifications.**' The Clarifications sought by the teams will be published and circulated to the teams via email by 14th January 2020.

5. MEMORIAL RULES

5.1. General Rules for Memorials

- 5.1.1. All the teams must submit the soft copy of the memorial to the Organizers on or before 11:59 PM (IST), 29th February 2020. The soft copy of memorials once submitted cannot be revised or resubmitted.
- 5.1.2. Teams must submit the soft copy of the memorial in the Google Form circulated via email by the Organizers to the teams who have registered.
- 5.1.3. Memorials submitted 24 hours after the deadline prescribed above will not be accepted.
- 5.1.4. The memorials shall not contain any annexure, photograph, graph, diagram or any other representation of like nature.
- 5.1.5. The deadlines for Memorial Submission are as prescribed below:
Soft Copy of the Memorials: 11:59 PM (IST), 29th February 2020.
Hard Copy of the Memorials: To be turned in during Registration/Orientation at the venue of the Competition on 6th March 2020.

5.2. Rules for Submission of Soft Copy of the Memorials

- 5.2.1. The soft copy of the memorial must be submitted as Word Document (.docx) as well as PDF Format (.pdf) in the Google Form sent to the teams.
- 5.2.2. Memorials submitted via email or any other similar platform will not be accepted.
- 5.2.3. The memorials must be named in the following format: “*Team Code –Informant/Opposite Party*”, for example, “T20 - Informant”. The file name shall not carry any other identifying marks.
- 5.2.4. Memorials for both the parties must be submitted together. Separate submissions or any request for separate submission will not be accepted or entertained.

5.3. Rules for Submission of Hard Copy of the Memorials

- 5.3.1. Teams must turn in five (5) hard copies of each memorial to the Organizers during the Registration/Orientation on 6th March 2020 at the venue of the Competition.
- 5.3.2. Memorials must be printed on both sides.
- 5.3.3. All hard copies of the memorials must be spiral bound.
- 5.3.4. The colour of the Cover Sheet must be **Blue for Informant and Red for Opposite Party**.

5.4. Rules on the Content and Formatting Specifications of Memorials

5.4.1. Format Specifications

Each Team is required to prepare a memorial for each party of the dispute with the following mandatory heads:

- i. Cover Page
- ii. Table of Contents
- iii. Index of Authorities
- iv. Statement of Jurisdiction
- v. Statement of Facts (Must Not Exceed 2 Pages)
- vi. Issues Raised
- vii. Summary of Arguments (Must Not Exceed 2 Pages)
- viii. Arguments Advanced (Must Not Exceed 25 Pages)
- ix. Prayer (Must Not Exceed 1 Page)

5.4.2. The Cover Page must contain only the following information:

- i. The Team Code in the upper right corner of each memorial. No other page must contain the team code.
- ii. The name of the Forum resolving the dispute.
- iii. The name of the Competition.
- iv. Name of the parties and status before the Forum
- v. The party on whose behalf the memorial has been prepared

5.4.3. All parts of the memorial (including headers, footers and headings) must be typed on A4 sized paper/format, with the following Formatting Specifications:

- i. Page Orientation: Portrait
- ii. Font Type: Times New Roman
- iii. Font Size: 12
- iv. Line Spacing: 1.5
- v. Margins: One (1) Inch On Each Side

5.4.4. For Footnotes, the Formatting Specifications are as below:

- i. 20th Edition Bluebook style of uniform footnoting must be followed throughout the memorials
- ii. Font Type: Times New Roman
- iii. Font Size: 10
- iv. Line Spacing: 1
- v. Speaking footnotes or endnotes are not allowed.

5.4.5. The memorials must not contain any identification apart from the team code allotted. If any discrepancy or any attempt to disclose identity by any team is noticed by the Organizers, the team will be disqualified.

5.5. Evaluation of Memorials

The maximum score for each memorial shall be 100 marks. The memorials shall be evaluated on the following criteria:

| Criteria For Evaluation | Maximum Marks |
|--|---------------|
| Application of Facts | 25 marks |
| Knowledge, Interpretation and Application of Law | 25 marks |
| Ingenuity and Logical Reasoning | 20 marks |
| Use of Authorities and Precedents | 20 marks |
| Presentation and Formatting | 10 marks |

5.6. Penalties

Any team violating the specifications as prescribed under Rule 5.1 to Rule 5.4 will be penalised as described in the scheme below:

| Description | Penalty |
|---|------------------------------|
| Failure to include all the sections in the memorials | 5 marks for each section |
| Failure to include necessary information on the Cover Page of the memorial or use of a colour on the cover page contrary to the scheme provided | 5 marks for each memorial |
| Disclosure of identity of the team or of the institution being represented | Disqualification of the team |
| Delay in submission | 1 mark per hour of delay |

| | |
|--|--|
| Use of incorrect font style, font size or line spacing | 1 mark per violation, maximum of 10 marks per side |
| Incorrect Margins | 2 marks – one-time penalty |
| Excessive length of any section of the Memorials | 1 mark for each extra page |
| Plagiarism in Memorials | Disqualification of the team |

5.7. Copyright and Publication of Memorials

The Organizers reserve the right to reproduce and disseminate the memorials for the purpose of the Competition. The submission of the memorial in this Competition will constitute the consent for the same.

6. COMPETITION ROUNDS

6.1. General Rules for Competition Rounds

- 6.1.1. The Competition Rounds will comprise of four rounds: Qualifying Rounds, Quarter-Final Rounds, Semi-Final Rounds and the Final Round (Advanced Rounds). Each of the rounds shall be conducted in the manner detailed in the following rules.
- 6.1.2. The time split between the speakers must be communicated to the Court Clerks prior to the commencement of each round.
- 6.1.3. There will be no extension of time. If the judges are of the opinion that a certain exigency does require an extension of time, they may extend the cumulative speaking time for a team.
- 6.1.4. There shall be no oral communication between team members seated on the table and the speaker delivering oral submissions. However, the teammates can write a note to the speaker which shall be passed on by the Court Clerk.
- 6.1.5. Use of electronic gadgets is strictly prohibited inside the Court Hall. If any of the members of the team are found to be using electronic gadgets during the proceedings in the Court Hall, such team will be disqualified immediately.
- 6.1.6. The teams shall not disclose to the judges, in any manner whatsoever, for the entire duration of the rounds, either their own individual identities or the identity of the institution that they represent.

- 6.1.7. Teams may pass on a compendium of the sources they have cited in their Memorials to the judges through the Court Clerk present in the Court Hall.
- 6.1.8. Sur-rebuttals may be allowed at the discretion of the judges.
- 6.1.9. If a team scheduled to participate in the oral submissions of a round does not appear for ten (10) minutes after the scheduled commencement of such round, the team will be disqualified and the other team shall make oral submissions ex-parte.

6.2. Qualifying Rounds

- 6.2.1. Each team will argue in two (2) Qualifying Rounds, once for each party.
- 6.2.2. The fixtures will be based on the memorial scores secured by the teams. The fixtures for the teams will be prepared by the Organizers on the basis of a power match-up (T1 v. T24, T2 v. T23, T3 v. T22...) and slide match-up of ranks (T1 v. T13, T2 v. T14, T3 v. T15...) for the first and second rounds respectively.
- 6.2.3. Each team will be given 30 minutes which is inclusive of the time for rebuttal and sur-rebuttals. Each team is entitled to a maximum of five (5) minutes out of the thirty (30) minutes for rebuttal and sur-rebuttal.
- 6.2.4. The ranking of the teams in the Qualifying Round will be based on both Memorial Scores and the Oral Round Scores. The scores of the Qualifying Round will be the aggregate of the average scores in both the oral rounds and the Memorial score (70% of oral round scores and 30% of Memorial Score). For example, if the average of the memorial scores is x, the average for the oral rounds is y, then the aggregate score will be a combination of 30% of x and 70% of y.
- 6.2.5. If two or more teams have the same cumulative score (Memorial Score + Oral Round Scores), the team with the higher cumulative Oral Rounds Scores shall be ranked higher.
- 6.2.6. In case of a tie, it shall be resolved in the following order:
 - (i) Memorial Score
 - (ii) Highest Score under the scoring criteria '*Application of Legal Principles & Usage of Authorities*'
 - (iii) Coin Toss

6.3. Advanced Rounds

- 6.3.1. The fixtures will be prepared by the Organizers on the basis of power match-ups generated using the ranks from the Qualifying Round. The party each team has to argue on behalf of will be determined by draw of lots.
- 6.3.2. The teams will be given forty five (45) minutes each which is inclusive of time allocated for rebuttal or sur-rebuttal. Each team is entitled to a maximum of five (5) minutes out of the forty five (45) minutes for rebuttal and sur-rebuttal.
- 6.3.3. The qualification in the Advanced Rounds shall be on the basis of win/loss, which will be determined by taking into account the Oral Round Scores in the respective rounds.

6.4. Scoring Criteria

The maximum score a Speaker can get is 100 marks. The criteria for evaluation in the Oral Rounds are as below:

| Criteria for Evaluation | Maximum Marks |
|--|---------------|
| Application of Legal Principles & Usage of Authorities | 25 Marks |
| Knowledge of Facts | 20 Marks |
| Structure, Articulation & Clarity | 20 Marks |
| Ingenuity & Response to Questions | 20 Marks |
| Court Etiquette, Presentation Style & Time Management | 15 Marks |

6.5. Researcher's Test

- 6.5.1. The Researcher's Test will be conducted on 7th March 2020.
- 6.5.2. Only a participant designated as the Researcher at the time of Final Registration shall be eligible to participate in the Researcher's Test.
- 6.5.3. The duration of the test is One (1) hour. The test will have both objective and subjective questions based on the facts in the Moot Problem and the law applicable to the same.
- 6.5.4. Usage of any notes, bare acts, books or any other material or electronic aid is strictly prohibited. Any participant found violating this rule shall be disqualified from the Researcher's Test.

7. AWARDS

- 7.1. The Competition includes the following awards:

| Awards | Prize Money |
|-----------------|--------------|
| Winners | Rs. 45,000/- |
| Runners Up | Rs. 25,000/- |
| Best Researcher | Rs. 10,000/- |
| Best Speaker | Rs. 10,000/- |
| Best Memorial | Rs. 10,000/- |

- 7.2. The Best Speaker will be decided on the basis of Oral Round Scores in the Qualifying Round.
- 7.3. The Best Researcher will be decided on the basis of the Researcher's Test only.

8. CODE OF CONDUCT

- 8.1. The Rules governing the conduct of the Competition should be strictly adhered to. Any deviation thereof can attract penalties or disqualification at the sole discretion of the Organizers.
- 8.2. Any attempt to contact the framers of the Moot Problem will result in immediate disqualification.
- 8.3. The identities of the teams shall not be disclosed in any form in the memorials or the compendiums.

- 8.4. All participants shall maintain decorum in the Court Hall during the Competition and are expected to conduct themselves in a manner befitting the legal profession. Within the campus, the participants are also expected to strictly adhere to the Rules of the Organizing University.
- 8.5. Scouting of a team's future opponent is strictly prohibited. Violation of this rule will result in immediate disqualification.
- 8.6. No team member or individual participating in the Competition shall attend the arguments of any other team or individual except for the Final Round or receive information from any person who has attended any of the other rounds in the Competition.
- 8.7. The Dress Code for the participants shall be formals. Men are expected to wear Western Formals only (Black Blazer, Black Pants, White Shirt, and Black formal shoes). Women can wear either Western Formals (Black Formal Skirt or Black Pants, White Shirt, Black formal footwear) or Indian Formals (White Kurta, Black Salwar/ Chudidhar, Black formal footwear).
- 8.8. The Organizing Committee reserves the right to take appropriate action with regard to any dispute, unethical, unprofessional or immoral conduct.

9. MISCELLANEOUS

- 9.1. If and when any one of the members of a team is notified or informed of any detail or information concerning the Competition, it shall be deemed as if the said team as a whole has been duly notified or informed.
- 9.2. In case of any doubt in the understanding or interpretation of any matter concerning the Competition, the decision of the Organizers shall be final and binding.
- 9.3. The Organizers reserve the right to amend, alter, vary or change, in any manner whatsoever, the Rules governing the Competition, which would be communicated to the teams within a reasonable period of time.

MOOT PROPOSITION

- 1 The Imarti Competition Act, 2002 (ICA) is the primary statute governing competition law in the developing country of the Republic of Imarti. The objective of the statute is to ensure that the process of competition is left free without stronger enterprises manipulating the market to their advantage and following from that, to the disadvantage of consumers. The Act sets up the Competition Commission of Imarti (CCI) as the principal enforcement mechanism under the Act.
- 2 Gaming is a nascent industry in Imarti. In the early 1980's gaming has been restricted to the personal computer (PC). Epoc Games Private Limited, (Epoc) incorporated in Imarti in 1984, is a game developer (developer). A developer is a company that designs and executes the creation of video games. Epoc has created two of the most loved games in Imarti to be played on the PC - Prince of Arabia and Road Rush. Both games involve an elaborate story line where the central character leaps, jumps, drives, or slides across different surfaces to collect points and advance through levels.
- 3 In order to provide impetus to the gaming industry in Imarti, Epoc believes in 'open source development', where it releases a limited source code of all the games it creates to the public. A limited source code is a basic set of commands in the program used to create a game. This allows other developers to create their own games of Epoc's versions, but without infringing Epoc's intellectual property rights over the sound, graphics, video, characters, artwork and other content.
- 4 In the international market, however, the gaming industry has been revolutionised by the advent of the 'home console' (console). A console is a gaming device which can be connected to the television, thus allowing children and adults alike, to play their favourite games from the comfort of their own homes on a big screen. A console comes with a set of games which the manufacturer of the console licenses from developers through agreements.
- 5 International gaming companies are yet to identify Imarti as a profitable market for consoles. This has led to an effort within Imarti to create consoles domestically.
- 6 Umbrella Private Limited (Umbrella) is one of the first companies in Imarti to be incorporated to develop consoles in 1998. Umbrella manufactures all the parts for the console itself. However, Umbrella does not have the expertise to design its own games. It, therefore, reaches out to Epoc in January 1999, the developer with the best reputation in the market and the fastest development process - to create a new game for its console exclusively. Epoc, ready to enter the console market, creates a game 'Mountain Run' which it grants an exclusive license of to Umbrella in an agreement.

- 7 In June 2000, Umbrella launches the first console in Imarti - GameCast. GameCast comes with compact disks of Mountain Run, ten other Epos developed games, and multiplayer capabilities. Mountain Run is similar in concept to Prince of Arabia and Road Rush but comes with a brand new storyline featuring temples, monsters and a search for gold.
- 8 GameCast, which is priced at 15,000 INR, is a huge success, despite it being a significant investment for most households. Mountain Run has also become a blockbuster hit (in industry standards certified 'AAA'), with gamers lining up to buy the GameCast just so they could play it. A significant factor in GameCast's success was also Umbrella's repair service strategy. Umbrella decided to make its technical know-how, component parts and diagnostic tools freely available in the market. This led to a large number of software engineers within Imarti to set up independent service operations (ISOs) thus keeping repairs and services accessible at very low costs for consumers.
- 9 GameCast's success triggered a boom in the gaming industry in Imarti, with console companies coming to be viewed as profitable investments. The revenue from the gaming industry as of 2002 is accounted for in Table 1:

Table 1
Revenue Shares in the Gaming Industry: March 2002

| Gaming Industry Segment | Revenue Share as of March 2002 |
|-------------------------|--------------------------------|
| PC Games | 38% |
| Home Consoles | 51% |
| Other Devices (Mobiles) | 11% |

- 10 Companies that launched new consoles followed the same service strategy as Umbrella. This led to a strong service market for ISOs. Over time ISOs expanded their businesses to sell add-ons for consoles - headsets, controllers and games bought directly from developers.
- 11 The console market has proved to be very dynamic and time sensitive, with companies constantly having to innovate new proprietary formats to set their consoles apart, and bring new versions of their exclusive flagship games in order to retain their market shares. As of 2008, the market shares of the console companies are as given in Table 2:

Table 2
Market Shares in Console Market: March 2008

| Console Company | Place and Year of Incorporation | Market Shares as on March 2008 |
|---------------------------|---------------------------------|--------------------------------|
| <i>Umbrella Pvt. Ltd.</i> | Imarti, 1998 | 35% |
| <i>Phantom Pvt. Ltd.</i> | Imarti, 1999 | 7.9% |
| <i>Boggle Pvt. Ltd.</i> | Imarti, 1999 | 8% |
| <i>Klingon Pvt. Ltd.</i> | Imarti, 2000 | 11% |
| <i>Rimmel Pvt. Ltd.</i> | Imarti, 2001 | 14% |
| <i>Nimoy Pvt. Ltd.</i> | Imarti, 2002 | 16.1% |
| <i>Ahoy Pvt. Ltd.</i> | Imarti, 2004 | 2% |
| Others | Varied | 6% |

- 12** Acme Private Limited (Acme) is a new company incorporated in Imarti in 2008 to manufacture consoles. Recognising that it is entering a market with significantly established players, Acme decides to adopt a different business strategy to set itself apart. Instead of developing new games, Acme chose to curate vintage video games in order to capitalise on their charm. Acme, therefore, approaches Epoc to create a high quality version of their games Prince of Arabia and Road Rush over which Acme would hold an exclusive license for its console. Acme is also an environmentally conscious brand - rejecting single use plastic in its manufacturing for a patented recycled material.
- 13** In May 2011, Acme launched its first console - PlayBox, with its flagship games - Prince of Arabia and Road Rush, and three other vintage games from other developers. PlayBox is priced at 25,000 INR, more expensive than the average cost of 20,000 INR for a home console that year. Acme decides to not share its technical know-how, diagnostic tools or console components in the service market, choosing instead to keep a tight rein on who services the PlayBox. Acme markets this as a quality control initiative - stating that they guarantee superior service and internally trained engineers specially equipped to deal with the sophisticated PlayBox. PlayBox and Prince of Arabia (subsequently certified AAA) are wildly successful, beating many of its competitors. An annual survey conducted in March 2013 assessing market shares showed that Acme held 22.2%, only second to Umbrella's 33%.
- 14** Early in 2013, Umbrella ran into serious issues with the newest version of Mountain Run. Gamers began to report that Mountain Run would hang, incorrectly record player statistics, and have

compatibility issues with the recently released GameCastPro. At this time, Umbrella was also fielding millions of complaints of sub-standard maintenance and repairs by ISOs. The ease of access to technical information and necessary parts had led to a proliferation of ISOs, along with a substantial counterfeit market. Umbrella was heavily affected by this as its consoles frequent updates meant that ISOs were not trained to deliver the service needed and often fitted outdated parts - leading many gamers to report that their consoles were entirely ruined. Finally, sales for Umbrella's consoles also dropped due to unlicensed clones being produced and sold at markedly low prices.

- 15 Meanwhile, Acme's environmentally conscious, vintage identity, and quality service has led to an increase in the number of first time purchasers in Imarti, thus expanding the market. Acme's success with reviving Prince of Arabia also led to the game being picked up for a high profile television series. For the year 2014, PlayBox had the highest sales at 82,000 units sold, with GameCast sales at 56,000. The Annual Survey in 2015 reflected the significant market shares as given in Table 3:

Table 3
Market Shares in Console Market: March 2015

| Console Company | Place and Year of Incorporation | Market Shares as on March 2015 |
|----------------------------|---------------------------------|--------------------------------|
| <i>Umbrella Pvt. Ltd.</i> | Imarti, 1998 | 30.5% |
| <i>Klingon Pvt. Ltd.</i> | Imarti, 2000 | 10% |
| <i>Rimmel Pvt. Ltd.</i> | Imarti, 2001 | 8% |
| <i>Nimoy Pvt. Ltd.</i> | Imarti, 2002 | 17.1% |
| <i>Acme Pvt. Ltd.</i> | Imarti, 2008 | 24.5% |
| <i>Bamboozle Pvt. Ltd.</i> | Imarti, 2009 | 3% |
| <i>Minion Pvt. Ltd.</i> | Imarti, 2011 | 4.5% |
| <i>Others</i> | Varied | 2.4% |

- 16 By April 2015, Umbrella is designing a new generation console, one with a completely new software, hardware and user experience. Taking note of the impact of the issues it has previously faced, Umbrella decides to exert intense control over the compatibility of games with its console, sharing of proprietary information, and servicing. After assessing its options, Umbrella proposes an Agreement to Epos with the following relevant terms:

- A. DEVELOPMENT: UMBRELLA and EPOC shall share all relevant proprietary information regarding new technologies including but not limited to (i) product proposals (ii) game designs

and development (iii) game software (iv) software development tools and hardware (v) business and marketing strategies, and be closely involved in development of the sequel to Mountain Run and other games to ensure optimum compatibility.

- B. REVENUE SHARING: UMBRELLA shall agree to a revenue sharing ratio where EPOC may negotiate a rate higher than the standard market revenue share for Developers.
- C. EXCLUSIVITY REGARDING DEVELOPMENT AND SALE OF VIDEO GAMES FOR CONSOLES:
- (i) During the term of the Agreement, EPOC shall have an exclusive relationship with UMBRELLA regarding the development and licensing of any video games in Imarti.
- (ii) During the term of the Agreement, UMBRELLA will exclusively only carry and market games developed by Epoc.
- D. INTELLECTUAL PROPERTY: EPOC shall be the owner the relevant intellectual property with respect to games developed by it, but shall not release any further part of the source code of Mountain Run or any other game developed during the subsistence of this Agreement.
- E. TERM: The Agreement shall subsist for a term of six years from the date of signing by both Parties.
- F. CONFIDENTIALITY: EPOC agrees not to disclose any of the terms and/or any information received under this Agreement during and beyond the subsistence of this Agreement to any third party.

17 Epoc, finding the terms to be in its financial interest, accepts and enters into the Agreement dated 09.05.2015. The two companies work at an accelerated pace, and in January 2016, after the acquisition of the relevant patent and intellectual property rights over it, Umbrella releases GameCastXperience (GCX) with ‘Mountain Run: Journey to Monkey Temple’. All the games accompanying GCX are mounted on special proprietary disks and were the first 3D games to be introduced in the market. The GCX itself is the first multi-use console accompanied with a DVD, CD drive and mp3. An additional feature is also the backwards compatibility of the GCX with the previous generation of released games.

18 Umbrella changed its service model and established several Umbrella Authorised Repair Centres, offering to maintain not only the GCX but also previously released consoles. As quality control, Umbrella also places a seal of quality on all its licensed game and accessories with an official

“Umbrella Seal of Approval”. To combat the issue of proliferation of unlicensed parts and services, Umbrella issues licenses to ISOs to become Authorised Service Centres on the condition that they only service Umbrella consoles and offer Epoc Games for sale. It otherwise does not make any of its information for servicing freely available.

- 19 GCX opens to unprecedented sales. At a price of 32,500 INR, higher than the average console cost of 26,000 INR at the time, GCX sells over 1 million units in ten months. Umbrella simultaneously also drops the price of GameCast to 13,000 INR. End of the year internal surveys conducted by the company report that customer service approval ratings are at a high.
- 20 On news of the release, Acme, which has not been in the development process for the past year despite calls from its consumer base for a sequel to Prince of Arabia, hurriedly approaches Epoc to create it. Epoc, now bound by the Agreement, expresses its inability to work with Acme and also declines to disclose the terms of the Agreement in response to Acme’s insistence on a negotiation. Epoc however advises Acme that the limited source code for the Prince of Arabia version created for Acme in 2011 is publicly available, and Acme may approach other developers to create a new game with specifications that do not infringe the intellectual property rights Epoc holds over ‘Prince of Arabia’.
- 21 In the two years since GCX’s release, Acme’s attempts to release a new console that rivals the GCX have failed. While Acme’s new console PlayBox2 is a powerful system, its new game ‘King of Alibaba’ designed by another developer has bombed. A drop in its sales and consumer base has also impacted Acme’s ability to conclude exclusivity agreements with other developers. Meanwhile, ISOs are quickly losing business because GCX’s success in the market has instigated a pattern among all console manufacturers to announce a ‘seal of approval’ on their parts and set up authorised service centres.
- 22 On 07.09.2018, Acme filed an information under Section 19 of the Imarti Competition Act, 2002 with the CCI alleging that Umbrella and Epoc had violated the provisions of the Act by restricting distribution of Epoc’s games and their source code exclusively to Umbrella vide Agreement dated 09.05.2015. The information also alleged that Umbrella had abused its position in the market for manufacture and sale of gaming consoles by denying Acme access to this market. Finding a *prima facie* case, the CCI directed its investigation arm - the Director General (DG) - to investigate the allegations and registered the case as Case No. 76 of 2018.

- 23** Shortly thereafter on 10.01.2019, the ISOs approached the CCI and filed an information under Section 19 of the Imarti Competition Act, alleging that -
- (a) the console manufacturers who were now also present in the market for repair and servicing of consoles through their authorized service centres had become collectively dominant in this market since they were the sole repositories of the technical information required to operate in this market; and
 - (b) the console manufacturers had abused such collective dominance by cutting off access to information required to service such consoles. The ISOs alleged that this commercial conduct by all the console manufacturers had denied the ISOs access to this market for service and repair. The ISOs alleged that given the pace of innovation in this market, continuous access to such information was imperative for ISOs to operate in this market.
- 24** While forming its opinion, the CCI found the allegations in the present complaint, Case 1 of 2019, to be integrally connected with Case No. 76 of 2018 and clubbed the matters together. It, therefore, ordered the DG to submit a consolidated report.
- 25** The DG submitted its report on 27.10.2019 wherein it had found that the Agreement dated 09.05.2015 was an anti-competitive vertical agreement, the effect of which was to deny market access to Umbrella's competitors in the market for gaming consoles in Imarti. However, the DG found that, given the number of console manufacturers in Imarti, Umbrella could not be said to be dominant in this market and concluded that Umbrella had not engaged in abuse of dominant position.
- 26** Further, the DG also noted that though the concept of collective dominance had so far not been a part of Imarti's competition law jurisprudence, this was an appropriate case for the concept to be introduced, as the denial of market access to ISOs was the result of systematic withholding by all console manufacturers of information key to the servicing of consoles. The console manufacturers all denied the allegations and contended that their actions were business protective and in the interest of innovation and protection of their intellectual property rights.
- 27** The CCI considered the findings of the DG Report and forwarded the same to the Parties for their consideration. The CCI issued an order to list the matter for consideration on 06.03.2020. Accordingly, written and oral arguments before the CCI are invited on behalf of the Informants - Acme and ISOs; and the Opposite Parties - Umbrella, Epoc and Other Console Manufacturers.

Note

1. The laws of Imarti are *pari materia* to India. Orders and judgments of the Indian courts have a high persuasive value in Imarti. Of significant value is also the decisional practice of competition regulators in the European Union and the United States of America.
2. Participants are at liberty to identify and frame issues as they deem fit.
3. Participants may make reasonable assumptions about the relative cost of gaming consoles to other needs of households in developing countries.
4. The authenticity of the market share reports and surveys are not to be questioned.
5. Please do not presume or insert any other parties than the ones mentioned in the production chain.
6. For the purposes of this Moot Proposition, participants are advised to not go beyond the definitional understanding of the terms ‘open source development’, ‘source code’ and ‘game developers’ as given in the proposition.
7. Names, characters, businesses, places, events and incidents are either the products of the author’s imagination, or used in a fictitious manner. Any resemblance to actual persons or actual events is purely coincidental.
8. Please do not attempt to contact the author(s) of the moot proposition, any attempt to do so will result in disqualification.

3RD TNNLU – CCI NATIONAL MOOT COURT COMPETITION, 2020**MARCH 6TH - 8TH, 2020****REGISTRATION FORM**

Competition Commission of India

DETAILS OF THE INSTITUTION

Name and Address of the Institution

Contact Number _____

Email Address _____

DETAILS OF THE PARTICIPANTS

| Participant | Name And Year Of Study | Gender | Mobile No. And Email ID | Photograph |
|--------------------|-------------------------------|---------------|--------------------------------|-------------------|
| Speaker 1 | | | | |
| Speaker 2 | | | | |
| Researcher | | | | |

PAYMENT DETAILS

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| Demand Draft No. | |
| Date Of The DD | |
| Name Of the Bank | |

DECLARATION

We hereby declare that the institution and its team members will abide by all the Rules of the Competition set by the Organizers and as notified to us from time to time throughout the period of the Competition. We also declare and confirm that all the information provided by the Organizers in the registration form is true and accurate to the best of our knowledge. In case of non-compliance or violation of any rules or regulations on our part, the Organizers shall reserve the right to cancel our registration/candidature.

Speaker 1
(Name & Signature)

Speaker 2
(Name & Signature)

Researcher
(Name & Signature)

Date: _____

Seal and Signature of the Head of the Institution

TNNLU-CCI
National Moot Court Competition
March 6 – 8, 2020

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