



K.C.L.C.  
K. C. Law College  
**Moot Court Association**



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12<sup>th</sup> K.C. Law National Moot Court Competition, 2018

Moot Court Problem

In a recent survey conducted by a leading international magazine, the State of Gondolin was ranked 38 in the Ease of Doing Business Index. It raised 5 ranks since the previous year. The State of Gondolin is a Sovereign Secular Socialist Democratic Republic.

Gondolin is a developing country that was liberalized, privatized and globalised by the government in the early 1990s. This wave of reform caused the disposable income available in the hands of the general public to increase twenty times in the last 15 years. That coupled with the rise in the young and urban population, ushered in the cell phone age. Ancillary to the rise in cell phones is the telecom industry which is seeing a year on year customer growth of 8%, the industry is currently being valued at US \$150 billion. The competition in this sector is fierce with companies reducing rates regularly so as to stay in the fray.

Mr. Alfred Jingle, an entrepreneur wanted to bring data services to the masses. In an auction of spectrum organized by the Government of Gondolin, he through his company Raven Co. won spectrum allocation in ten of the seventeen telecom circles in Gondolin facilitating the release of Raven Co's 4G services in Gondolin. As CEO of Raven Co. he was perplexed to find that the pricing structure of data and voice services by telecom companies was already quite low and no matter how competitive he made his rates, the competition was quick to reduce theirs as if they were swimming in sync.



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In pursuance of this doubt in his mind, Mr. Jingle hired a Private Investigator to look into these price changes, the following are brief excerpts from this Private Investigator's report:

- Mr. Mambaniwalla was an industrialist who featured in the Forbulous List of 20 Richest Gondolinians.
- Mr. Mambaniwalla is a majority shareholder of Mearas, a telecom company that was the second largest in Gondolin.
- Insiders in Mearas, on condition of anonymity, have stated that instructions of changes in price were not given by the Marketing Department of the company but the instructions would emanate from the top management, sometimes ignoring recommendations of the Marketing Department.
- An old journal was found bearing the name of the CEO's secretary. In it, there were entries of meetings between the CEO and management of Sutch and Dontell. The agenda of the meetings was not mentioned.

After analysing the report of the Private Investigator, Mr. Jingle forwarded the information to the Competition Commission of Gondolin (hereinafter referred to as "CCG"). The information sent stated that three telecom companies, namely Dontell, Sutch and Mearas (hereinafter collectively referred to as the "DSM") had violated provisions of the Gondolin Competition Act, 2000 and that the three companies have entered into agreements with each other that are likely to cause an appreciable adverse effect on competition within Gondolin. The basis of these agreements was to stifle the competition by directly or indirectly determining the sales price.



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After considering the information and material on record, the CCG in its opinion felt that there was a prima facie case of anti-competitive behaviour and directed the Director General (hereinafter referred to as "DG") to cause an investigation to be made into the matter and submit a report. The DG in his report found that there indeed was an oral agreement between the three companies, made via many telephone calls during the last eleven months, that the prices will be fixed as per terms decided by them mutually. The DG also discovered that DSM, against whom the information was given had one majority shareholder who was Mr. Mambaniwalla. The CCG forwarded the findings of the DG to the parties.

DSM in their objections stated that they had a right to have such agreements between each other and contended that they were a Single Economic Entity (hereinafter referred to as "SEE") and hence agreements between them would not be termed as being anti-competitive. The CCG in its order stated that the agreements indeed were anti-competitive and hence violate the said Act. It directed DSM to discontinue and not to re-enter into such agreements and imposed a penalty of ₹ 10 Lakhs on them.

DSM appealed to the Competition Appellate Tribunal (hereinafter referred to as "COMPAT"). After which, the COMPAT set aside the order of the CCG by stating that in public interest, it had the power to pierce the corporate veil and hence it was proved that the companies were an SEE by virtue of them having the same majority shareholder. No appeal was sought from the order of the COMPAT.



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On the same day, The Gondolinian Express, a newspaper, published an article titled "Your Children Will Not Grow Up With The Freedom To Choose Online". The article stated that it had conclusive proof that DSM used its dominant position to sign an exclusive agreement with Ignorkut, a social media network. This agreement violates the principles of Net Neutrality. The agreements stated that if the users on the network of DSM accessed a list of websites using the mobile application of Ignorkut they would be able to access those websites for free and at a speed faster than the competitors of DSM can access them. The users of DSM would not need to pay any fee to download the app, use it and access the websites that Ignorkut and DSM agree on mutually. The promotions for Ignorkuts app advertised that you could access many popular websites such as Mykiemedia, Blutube and Red-it at twice the speed compared to other Service Providers. The consideration of this agreement was not disclosed.

Based on its own evidence and that collected by the Gondolinian Express, a consumer rights group- 'Right to Free Net' filed a Public Interest Litigation before the Supreme Court contending the following:

1. The order passed by the COMPAT declared that DSM is a Single Economic Entity. Relying on that order it is felt that DSM is abusing their Dominant Position, as can be seen in Annexure I.
2. Nonetheless, the Agreement between DSM and Ignorkut violates the principals of Net Neutrality



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3. Agreements that are not Net Neutral violate the Fundamental Rights guaranteed by Article 19 and 21 of the Constitution of Gondolin.
4. The Agreement between DSM and Ignorkut will destroy the competitors of Ignorkut as users will not see the need to pay for the internet.

In light of the urgency of the matter, as it affects the Fundamental Rights of the Citizens, the Supreme Court has decided that it shall hear all final arguments on 10<sup>th</sup> March 2018.

The Telecom Regulatory Authority of Gondolin after an uproar had issued a press release that it will currently not comment on the issue of Net Neutrality and deferred forming a committee to look into the issue of Net Neutrality.

It must also be noted that The Constitution and Laws of the State of Gondolin are Pari Materia to those of the Union of India.

Participants must frame issues themselves based on the Moot Problem, as they may deem fit



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**ANNEXURE I**

<u>NAME</u>	<u>MARKET SHARE</u>
Dontell	11%
Sutch	9%
Mearas	21%
Callmephone	30%
Raven Co.	2%

