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3rd National Moot Court Competition

‘VakTavya’

10th – 12th October 2019

MOOT PROPOSITION



Moot Proposition

1. The sovereign Republic of Atlantis is a South Asian democratic country, the laws are *pari materia* with the laws of India, subject to exceptions specified below. The Atlantis Competition Act (ACA) is the primary statute governing competition law in Atlantis, and the *Atlantis Competition Commission (ACC)* is the statutory authority charged with the enforcement of the *Atlantis Competition Act (ACA)*. ACC is empowered to and has issued, several regulations, like the *Atlantis Combination Regulations (ACR)* which deals with mergers and acquisitions.
2. The decisions of the major countries where common law is prevalent are of significant value for the Republic of Atlantis. The ACC also relies on established competition law precedents of the European Union and the United States of America.
3. Ranked at 45th position in Fortune 500 world ranking, *Sigma* is one of the fastest growing companies of Atlantis. *Cosmos* is a new subsidiary company of the Sigma Group providing 5g services in Atlantis. Anish Mangwani is the chairman of this group. Other businesses of Sigma group are chemicals energy, steel, petroleum gas, DTH, Airlines, shopping malls – retail chain, clothings etcetra.
4. In a 5G spectrum auction, *Cosmos* won the race and purchased one of the spectrums. Owing to high price of the bid many business groups did not participate and those who did were not ready to pay a base bid price as high as 5.77 Lakh crore Atlantis Rupee (expected revenue). In Atlantis earlier, only 2.400-2.4835 GHz and 5.825-5.875 GHz were unlicensed bands for indoor and outdoor use of low power equipment. Recently, 5150-5250 MHz, 5250-5350 MHz, 5470-5725 MHz and 5725-5875 MHz frequency bands have been included as unlicensed for use in indoor and outdoor environment. The opening of more unlicensed frequencies will facilitate development of 5G ecosystem as per directives of the *Telecom Regulatory Authority of Atlantis (TRAA)*. Single-band bid price varies from spectrum to spectrum from 4000 Crore to 8000 Crore Atlantis Dollar.

5. *Cosmos* was the first company to introduce a 5g spectrum in the Republic of Atlantis. *Cosmos* invested almost 600,000 thousand crores to develop 5g network in the Republic of Atlantis.
6. With the advent of the science and technology, especially Artificial Intelligence (AI) future belongs to those companies which are running on superfast 5g network, for instance, self-driven cars need high precision to take real-time decisions to avoid accidents. Following are the key areas where 5g network is a big boom; agriculture, transportation, photography, market investment, health (to identify future illness i.e. cancer), life on another planet, marketing, customer services, computer apps and programs, machine learning, space travel, real-time web search, etcetra.
7. *Worldcom* and *Uniphone* were the major telecommunication companies in Atlantis, comprising a total of 70% share in the telecommunication market (40% *Worldcom* and 30% *Uniphone*, respectively). But the entry of *Cosmos* in the telecom market of Atlantis with its predatory pricing policy and new superfast 5g network. As a result, within 3 years *Cosmos* has become a leading player with 59% share in the telecom market. Out of 12 mobile operators which were functioning in Atlantis, only 5 operators have sustained because other operators stopped working due to predatory pricing policy and political relations of *Cosmos*. According to a new global survey, *Cosmos* is expected to become the world’s largest telecom service providing company by 2021.
8. *Cosmos* started providing almost free connections (free data and calling plan) to new consumers for one year as a gift, thus, leading millions of consumers to switch to *Cosmos* under *National Mobile Portability Scheme*. Therefore, *Worldcom* and *Uniphone* approached the ACC regarding the misuse of the dominant position and predatory pricing policy. The TRAA was silent on this event and later announced that a subscriber is eligible to make a porting request only after 90 days of the date of activation of his mobile connection. If a number is already ported once, the same can again be ported only after 90 days from the date of the previous porting. TRAA has explained that this

minimum period is required so as to enable the service provider to recover the customer acquisition cost. After porting of a mobile number, if it remains disconnected for 90 days, it will be reversed back to the number range holder (original operator).

9. Mr. Anish Mangwani (Chairperson- *Sigma*) is also a member of the parliament of Atlantis and has good relations with the ruling government. Being one of the biggest businessmen and entrepreneurs of Atlantis, he is helping Atlantis in becoming global leader at different forums i.e. United Nations, World Bank, WTO, GATT, etc. because of which there are rumors that Atlantis can be a global leader by 2050.
10. *Cosmos* took benefit of its position in the market share, made an agreement of acquisition with *Virgino Telecom*, *Inrich Cellular* and *Airfree Cellular* and purchased these companies at comparatively much lesser price (due to market uncertainty). But there is a big dispute regarding acquisition agreement i.e. the terms and conditions were not fair and existing shareholders of above-mentioned companies were not in favor of this agreement.
11. Atlantis is also a party to different global treaties on anti-trust. Monopolies regulations and World Trade Organisation are also against this malpractice and blind support to big corporate giants.
12. Citing similar powers available with the fair-trade watchdog ACC, *Security Exchange Board of Atlantis (SEBA)* has proposed to impose a lesser penalty on a person who may have violated securities laws but provides assistance during investigation. *Cosmos* is providing every kind of support to all the regulatory bodies both at National level and International level.
13. The ACC has exercised its powers to club matters together and asked both Worldcom and Uniphone’s matter (Misuse of Dominant Position) and *Virgino Telcom*, *Inrich Cellular*



and Airfree Cellular’s matter (Malafide Acquisition) to file brief written submissions covering their arguments in relation to both matters.

14. ACC denied all the allegations of *Worldcom* and *Uniphone* regarding misuse of dominant position and exploitative and exclusionary conducts.
15. Meanwhile, the Investigation Bureau has issued its investigation report wherein it has concluded that the allegations made by *Worldcom* and *Uniphone* against *Cosmos* are correct.
16. *Worldcom* and *Uniphone* have decided to go against the decisions of the ACC and have appealed to the Supreme Court of Atlantis.
17. *Virgino Telecom*, *Inrich Cellular* and *Airfree Cellular* have also decided to be party to the above said appeal and moved an application regarding this in the Supreme Court.

Notes: (i) Please assume that Indian telecom regulatory laws are applicable in Atlantis. (ii) Indian market is very good proxy for the market in Atlantis.



Issues:

1. Whether the appeal is maintainable before the Hon'ble Supreme Court?
2. Whether the misuse of the dominant position is a direct violation of;
 - Article 19 (1)(g) and 39 (b)(c) of the Constitution; and
 - the Atlantis Competition Commission Act, 2002?
3. Whether the report of the Intelligence Bureau can be a good base for preferring an appeal against the decision of the ACC Tribunal?
4. Whether the acquisition and merger of the Virgino Telcom, Inrich Cellular and Airfree Cellular against Cosmos, is good in the eye of law and whether their case is maintainable before the ACC?

Note:

- *Teams are advised to frame additional issues, if any, based on the Factual and Legal aspects.*
- *All persons, characters, state names and other incidents in the moot problem are purely incidental and do not resemble any person living or dead*

Happy Mooting!!!