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THE THIRD NLU ANTI-TRUST LAW MOOT COURT COMPETITION, 2012

National Law University, Jodhpur

*In association with
Competition Commission of India
and
Amarchand & Mangaldas & Suresh A. Shroff & Co.*

Knowledge Partner



CONSOLIDATED STATEMENT OF AMENDMENTS & CLARIFICATIONS TO THE PROPOSITION *(As on February 22, 2012)*

AMENDMENTS TO THE PROPOSITION

1. The relevant portion of the seventh line of paragraph 7 of the Proposition is amended as follows:

“NWC has long term agreements to supply half of Beta, Gamma and Theta’s requirement. ...”

2. The relevant portion of the first line of paragraph 16 of the Proposition is amended as follows:

*“The **widget** filter business of WL has assets in Bohemia of BR1485 crores, and an annual turnover in Bohemia of BR700 crores, according to WL’s latest annual reports. ...”*

3. The note to the Proposition is amended as follows:

*“The laws of Bohemia are, **and have always been**, in pari materia with the laws of India, with the limited exceptions created in this Proposition. ...”*

CLARIFICATIONS TO THE PROPOSITION

FILTER AND WIDGET FILTER MARKETS

1. The market share of WL referred to in paragraph 3 of the Proposition refers to market share in the filter market as a whole.
2. The actual supply of widget filters equals the actual demand. The potential supply exceeds the actual demand as manufacturers of other filters can switch to manufacturing widget filters easily.
3. The exclusive supply agreement between NWC and WL was renewed after a term of 3 years as per the agreement of 2007.

THE MARKET FOR WIDGETS

4. With regard to the widget market, both NWC and RWM claim that they provide a superior product. However, the market dynamics suggest that the single most important point of competition is price. Purchasers of widgets can easily switch between the widgets produced by NWC and RWM if they wish to.
5. NWC has entered into an agreement to sell half of each of Gamma, Beta and Theta’s requirements of widgets to them. This contract is a long term contract. NWC is under an obligation currently to supply half the requirements. However, the contracts allow these companies to purchase their remaining requirement of widgets from any other source.
6. Just like the scheme with Alpha, the preferential discount schemes developed by NWC with Beta, Gamma and Theta are tailored to the specific quantities of widgets purchased by these companies. The higher the proportion of each company’s total demand that it satisfies by buying NWC’s widgets, the higher the discounts available to it. Therefore, the nature of the agreements with all four companies was

similar. However, the agreements are personalized, catering to individual demands and requirements. Also, the schemes were first offered before May 20, 2009 but continued to be offered after 2009 as well.

THE WBRB

7. The WBRB is competent to only pass a “cease and desist” order. If the same is not complied with, it can order companies to pay fines or face criminal sanctions.
8. The suit before the WBRB was filed on May 20, 2009 but before the information was filed with the CCB.
9. It may be noted that the matter remains pending before the WBRB and the WBRB has only passed one order in the matter, as noted in Paragraph 11 of the Proposition.
10. There is no non-obstante clause in the WBRB Act.

THE SLUMP SALE AND THE MERGER

11. SPV is a subsidiary of NWC. Prior to its acquisition of WL’s widget filter division, SPV had no assets or turnover. It was a subsidiary created purely for the purpose of this acquisition.
12. The slump sale took place after 1 June 2011, and all agreements and final board resolutions regarding the slump sale are dated after 1 June 2011.
13. There has not been enough time since the completion of the transaction for NWC to arrive at any statistically meaningful conclusions regarding changes in prices of widget filters or widgets.
14. The currency of Bohemia and currency of India are equal in value, i.e. 1 BR = 1 INR.

Note: Questions not answered in the Clarifications have been deliberately ignored as they are either irrelevant/already answered in the Proposition or are substantive questions to which the participants have to find the answers.