



# XI<sup>th</sup> | JUSTICE HIDAYATULLAH MEMORIAL NATIONAL MOOT COURT COMPETITION

OCTOBER 18, 2019 - OCTOBER 20, 2019

## MOOT PROPOSITION



# Stark Industries v. Burgin & Burkes Inc. (Case No. 07 of 2019)

1. The Kingdom of Westeros is a vast state which had been a British colony for the last 200 years, before its declaration of independence in 1950. Westeros has a large population of close to 1.4 billion and has a diversified economy. As an independent state, Westeros adopted its own Constitution and constituted its own Parliament, which enacted several laws to govern the newly independent state, modeled along the lines of its imperial history. Many of Westeros' laws were modeled along the lines of English law. In the initial few decades of its statehood, Westeros had a closed economy which was opened to the rest of the world only in the early 1990's. With the advent of liberalization and the entry of Multi-National Corporations into its economic landscape, this period sparked an era of unprecedented economic and technological growth.

2. In 1995, the Westerosi Government introduced the World Wide Web to the general public. Although the Government had the monopoly over the internet services in the initial few years, the provision of internet and broadband services was privatized by 2000. With the privatization of internet services, the public's access to the internet was greatly enhanced. The Westerosi parliament was aware that Westeros needed stronger and more versatile laws to regulate its evolving economy. While Westerosi laws historically sanctioned monopolies and restrictive trade practices, the Westerosi Parliament, in 2002, enacted the Westerosi Competition Act, 2002 ("Competition Act"). The Competition Act was implemented in two phases: the provisions prohibiting anti-competitive agreements and abuse of dominance were brought into force in 2009; and the provisions regarding regulations of mergers, acquisitions and amalgamations were brought into force in 2011. The Competition Act also established the Competition Commission of Westeros ("CCW") to promote competition and prohibit anticompetitive practices by orders imposing suitable remedies.

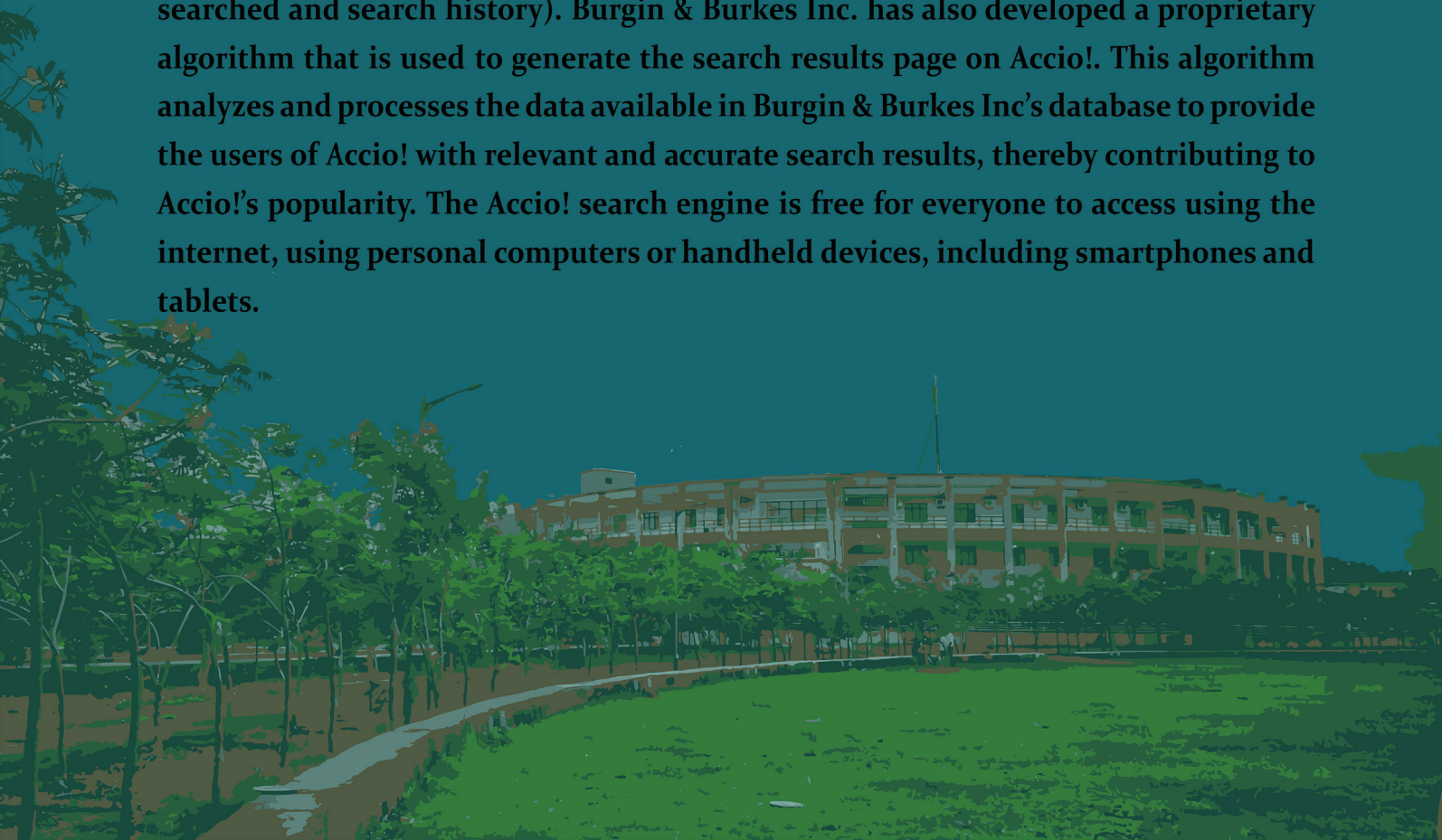




3. The CCW passes orders to direct its investigative arm, the Director-General (“DG”), to open investigations against perceived anti-competitive conduct based on references received from the government or its agencies, or information received from citizens, upon finding that a prima facie case is made out. The CCW then passes final orders (including penalties, where applicable) after conducting hearings. Aggrieved parties can appeal the CCW’s orders to the Westeros Competition Appellate Tribunal (“Tribunal”) and orders of the Tribunal can be appealed to the Westerosi Supreme Court.

4. Since the Westerosi competition regime is relatively nascent, the CCW and the Westerosi Courts hold the decisional practice of competition regulators in the European Union, United States of America and India in high regard. Given that the laws of Westeros, including its competition laws, are *pari materia* with the laws of India, the Westerosi competition authorities, Courts and Tribunals consider orders and judgments of Indian courts and tribunals to have high persuasive value.

5. Burgin & Burkes Inc. is a company based in the United States, which specializes in internet general search. Since the early 2000s, its search engine, Accio! has become by far the most used in the world (including Westeros), handling approximately three billion search queries every day on a global basis. Accio!’s global market share in the market for general internet search services is approximately 92%. In over 15 years of its operations, Burgin & Burkes has been able to gather an unprecedented database of data collected from the users of Accio! (including but not limited to keywords searched and search history). Burgin & Burkes Inc. has also developed a proprietary algorithm that is used to generate the search results page on Accio!. This algorithm analyzes and processes the data available in Burgin & Burkes Inc.’s database to provide the users of Accio! with relevant and accurate search results, thereby contributing to Accio!’s popularity. The Accio! search engine is free for everyone to access using the internet, using personal computers or handheld devices, including smartphones and tablets.

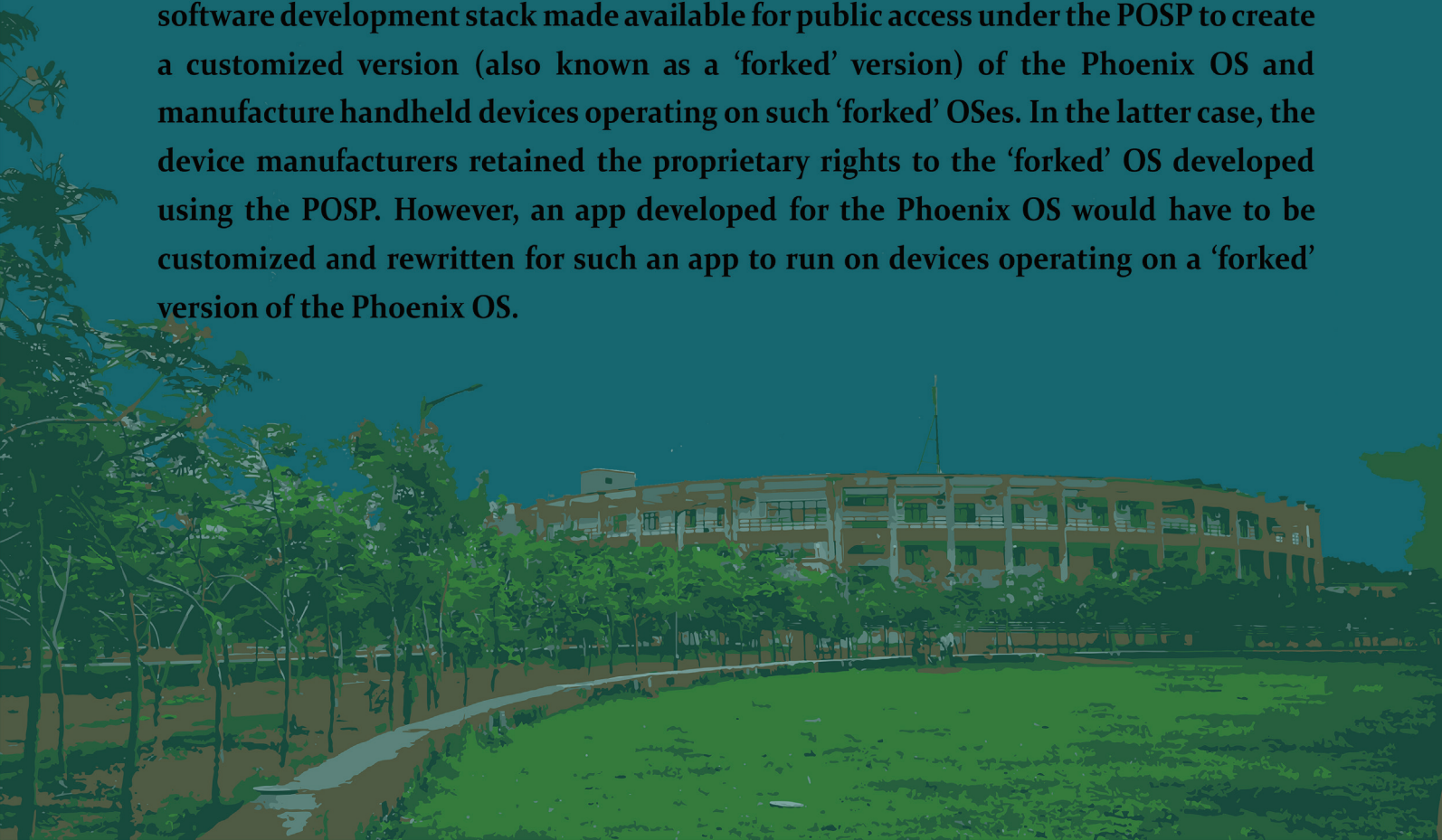




6. Within less than a decade of their introduction, the popularity and demand for handheld devices amongst users (over personal computers) increased exponentially on account of their portability and the enhanced variety of functionalities and applications (“apps”) offered on such devices. Baggins Corp. is a Canadian company that developed an operating system (“OS”) based on Linux, called Phoenix, for use in handheld devices. Phoenix was launched in 2005, as a competitor to yOS, one of the first OSes used on high-end personal computers and handheld devices. Within a couple of years of its launch, Phoenix was able to acquire 17% of the market share in the market for OSes developed for personal computers and handheld devices.

7. With the growth of its business, Baggins was acquired by Burgin & Burkes Inc. for a whopping USD 1.4 billion in 2007. Post the acquisition of Baggins Corp’s OS business, Burgin & Burkes Inc. decided that allowing third-party device manufacturers to customize and improvise on the Phoenix OS would allow the Phoenix OS ecosystem to grow further. In 2008, Burgin & Burkes released the source code and software development stack for Phoenix as part of the Phoenix Open Source Project (“POSP”) for free public access.

8. With the growing demand for handheld devices, this move was welcomed by the community of device manufacturers, who could either (a) enter into a licensing agreement with Burgin & Burkes to license the Phoenix OS and manufacture handheld devices operating on the Phoenix OS; or (b) use the source code and software development stack made available for public access under the POSP to create a customized version (also known as a ‘forked’ version) of the Phoenix OS and manufacture handheld devices operating on such ‘forked’ OSes. In the latter case, the device manufacturers retained the proprietary rights to the ‘forked’ OS developed using the POSP. However, an app developed for the Phoenix OS would have to be customized and rewritten for such an app to run on devices operating on a ‘forked’ version of the Phoenix OS.

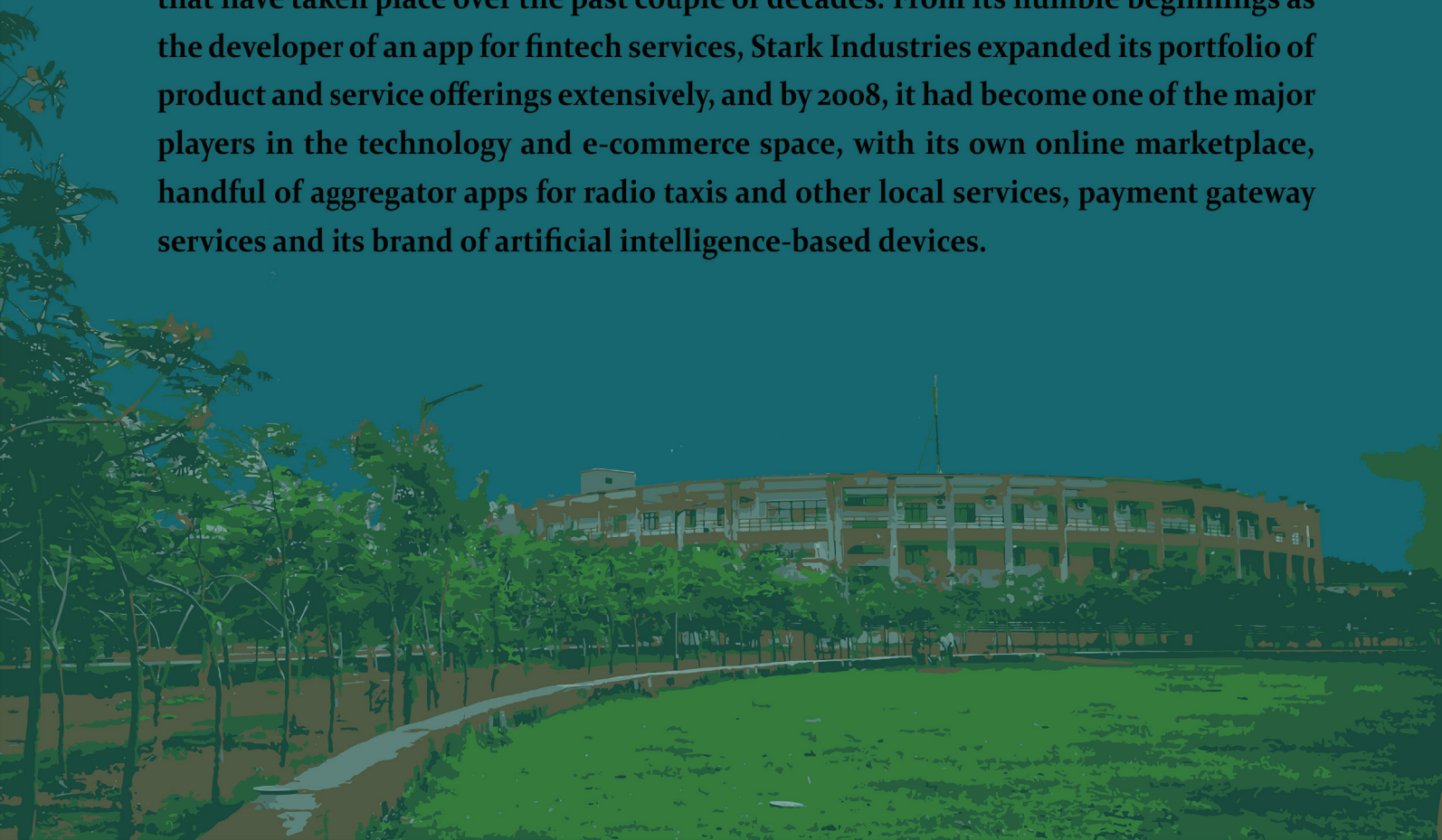




9. With the launch of the POSP, Phoenix soon became the most popular OS used in handheld devices. Variants of the Phoenix OS developed using the POSP went on to be used not only in handheld devices but also in gaming consoles, smart televisions, and wearables. As of 2018, 80% of the world's handheld devices, across various brands were running on the Phoenix OS while 90% of the handheld devices sold in Westeros were running on the Phoenix OS.

10. With the growing popularity of the Phoenix OS, Burgin & Burkes decided to develop an ecosystem of proprietary apps compatible with the Phoenix OS. In 2010, Burgin & Burkes launched its web mapping services (Marauders Maps) and audio-visual content streaming services (VuTube). In 2012, Burgin & Burkes introduced a scheme whereby device manufacturers who entered into an agreement with Burgin & Burkes for licensing the Phoenix OS would be able to pre-install a suite of Burgin & Burkes' proprietary apps on the devices manufactured by them. Marauders Maps, VuTube and Accio! were included as a part of the Burgin & Burkes Mobile Suite ("BBMS"), at no additional cost. This allowed device manufacturers to not only license the Phoenix OS but also to offer a fully functional handheld device with pre-installed basic functionalities at a low cost of production.

11. Stark Industries is another multinational tech conglomerate based out of the United States. Stark Industries is a pioneer in the various technological innovations that have taken place over the past couple of decades. From its humble beginnings as the developer of an app for fintech services, Stark Industries expanded its portfolio of product and service offerings extensively, and by 2008, it had become one of the major players in the technology and e-commerce space, with its own online marketplace, handful of aggregator apps for radio taxis and other local services, payment gateway services and its brand of artificial intelligence-based devices.

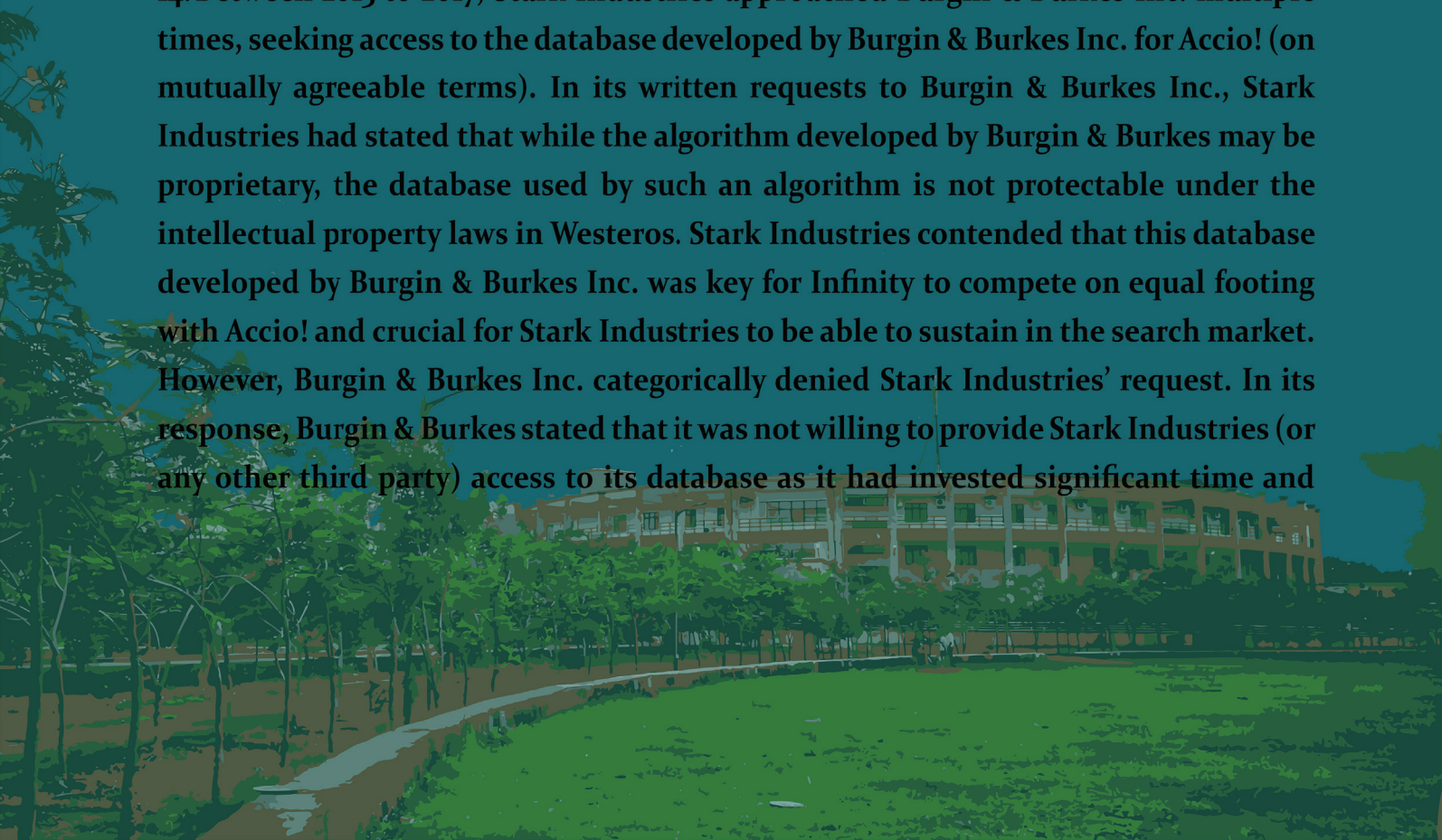




12. Following the launch of the POSP in 2008, Stark Industries decided to expand their portfolio of offerings and launched its own OS, Jarvis (for personal computers and handheld devices). Jarvis was developed using the POSP and Stark Industries launched its own Stark-branded handheld devices operating on Jarvis. Apart from its existing portfolio of apps, Stark Industries developed its own search engine (Infinity), web mapping services (J-Maps) and audio-visual content streaming services (JetFlix) for the Stark-branded devices running on Jarvis.

13. Despite the Stark Industries' capacities in hardware and software segments, the Jarvis OS failed to create its own ecosystem, and struggled to attract app developers or consumers. Given the popularity of the Phoenix OS, app developers mostly developed apps for yOS and Phoenix, as it helped them reach out to a wide customer base without incurring additional costs and time for developing another version of their apps for Jarvis or other 'forked' OSes. While J-Maps and JetFlix gradually became popular with users, the Infinity search engine, however, failed to attract a significant user base in light of the longstanding popularity of Accio! owing to the unmatched relevance and accuracy of its search results. After sustaining substantial losses and selling only 3000 devices over the previous financial year, Stark Industries was eventually forced to phase out their handheld devices business in the latter half of 2013. However, Stark Industries continued to offer its proprietary apps (including the Infinity search engine), for devices operating on the yOS and Phoenix OS.

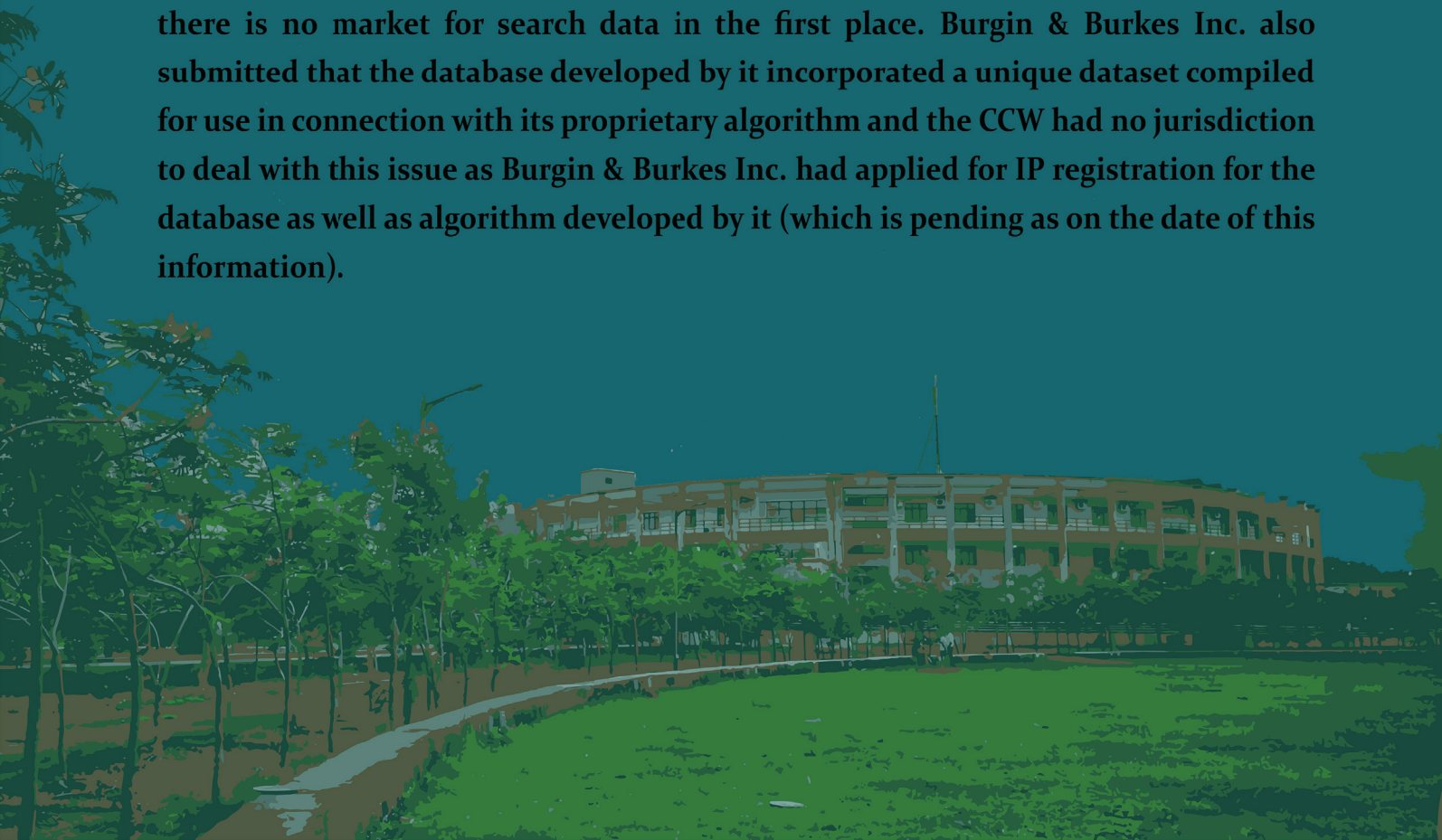
14. Between 2013 to 2017, Stark Industries approached Burgin & Burkes Inc. multiple times, seeking access to the database developed by Burgin & Burkes Inc. for Accio! (on mutually agreeable terms). In its written requests to Burgin & Burkes Inc., Stark Industries had stated that while the algorithm developed by Burgin & Burkes may be proprietary, the database used by such an algorithm is not protectable under the intellectual property laws in Westeros. Stark Industries contended that this database developed by Burgin & Burkes Inc. was key for Infinity to compete on equal footing with Accio! and crucial for Stark Industries to be able to sustain in the search market. However, Burgin & Burkes Inc. categorically denied Stark Industries' request. In its response, Burgin & Burkes stated that it was not willing to provide Stark Industries (or any other third party) access to its database as it had invested significant time and





15. In April, 2018, Stark Industries filed an information with the CCW, wherein it alleged that Burgin & Burkes Inc. was abusing its dominant position by leveraging the popularity of Phoenix to compel customers to use its other proprietary apps and services. The CCW passed a prima facie order directing the DG to investigate into the matter. The DG submitted its report to the CCW in September, 2018, wherein it found Burgin & Burkes Inc. to be dominant in the market for licensable operating systems for handheld devices, and found that Burgin & Burkes Inc. was leveraging its dominant position in the market for licensable OSes for handheld devices to strengthen its position in the market for apps and services for handheld devices. In its objections to the DG's report, Burgin & Burkes Inc. denied these allegations and contended that it had pioneered the development of low-cost handheld devices in Westeros with the objective of making handheld devices more easily available to consumers.

16. In addition, Stark Industries also alleged that Burgin & Burkes Inc.'s refusal to provide Stark Industries access to the database it had developed for Accio!, amounted to abuse of dominant position in the market for general internet search services. In this regard, Stark Industries argued that even though the database developed by Burgin & Burkes Inc. was not exactly impossible to replicate, it would take at least another 10 years for Stark Industries to obtain the same amount of data from the users of Infinity (assuming its growth rate remains stable). Burgin & Burkes, on the other hand, contended that there could be no abuse in refusing access to user search data as there is no market for search data in the first place. Burgin & Burkes Inc. also submitted that the database developed by it incorporated a unique dataset compiled for use in connection with its proprietary algorithm and the CCW had no jurisdiction to deal with this issue as Burgin & Burkes Inc. had applied for IP registration for the database as well as algorithm developed by it (which is pending as on the date of this information).



17. The CCW considered the findings in the DG's report and the objections and suggestions made by the parties and decided to proceed by itself with further enquiry in this matter. The CCW issued an order to list the matter for hearing on October 18, 2019. Accordingly, the participants are required to present written and oral arguments before the CCW on behalf of Stark Industries (the Informant) and Burgin & Burkes Inc. (the Opposite Party), addressing the following issues (in addition to any other issues identified):

(i) Has Burgin & Burkes Inc. abused its dominant position by tying its proprietary apps to the license for Phoenix OS?

(ii) Has Burgin & Burkes Inc. abused its dominant position by foreclosing access to the market for 'forked' OS developers?

(iii) Has Burgin & Burkes Inc. abused its dominant position by refusing to grant Stark Industries access to the database it has developed for Accio!?

(iv) Does the CCW have jurisdiction to decide on the issue of access to Burgin & Burkes Inc.'s database and algorithm?

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