



**4<sup>th</sup> TNNLU – CCI**  
**National Online Moot Court**  
**Competition, 2021**

**May 28<sup>th</sup> - 30<sup>th</sup>, 2021**

Organised by Tamil Nadu National Law University

*in collaboration with*

Competition Commission of India

## **4<sup>th</sup> TNNLU – CCI NATIONAL ONLINE MOOT COURT COMPETITION, 2021**

**{28<sup>th</sup> – 30<sup>th</sup> May 2021}**

### **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 an 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 was selected by the Competition Commission of India (CCI), New Delhi under the CCI (Competition Assessment of Economic Legislations and Policies) Guidelines, 2017 to act as an Empanelled Institution for the purposes of carrying out Competition Assessment of the Economic Legislation, Bills and Policies. TNNLU was one among the four Universities across India to be empanelled by CCI for this prestigious work. Subsequently, the Centre for Competition Law (CCL) was set up on 4<sup>th</sup> February 2018 to carry forward the empanelment work along with other research activities. The mission of CCL is to create awareness among the general public at large about the implications of Competition Law and to carry out focused research in the field of Competition and Commercial Laws. With a view to disseminate information on promoting competition in the market, we intend to conduct workshops, training programmes, publish newsletters/case summaries etc. 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 24<sup>th</sup> to 26<sup>th</sup> March 2017. In 2018, MCC collaborated with CCI for the first time to organise the 1<sup>st</sup> TNNLU-CCI National Moot Court Competition from 2<sup>nd</sup> to 4<sup>th</sup> February 2018, and successively 2<sup>nd</sup> edition of the TNNLU-CCI National Moot Court Competition from 6<sup>th</sup> to 8<sup>th</sup> of March 2019 and 3<sup>rd</sup> TNNLU-CCI National Moot court Competition from 6<sup>th</sup> to 8<sup>th</sup> of March 2020. All three editions saw large participation from law students all over India. This year we are happy to collaborate with CCI once again to organise the 4<sup>th</sup> TNNLU-CCI National Online Moot Court Competition, 2021.

## Organizing Committee

### Competition Administrator:

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**OFFICIAL SCHEDULE**

<b>Commencement of Provisional Registration</b>	<b>March 16, 2021</b>
<b>Release of Moot Problem &amp; Rules</b>	<b>April 6, 2021</b>
<b>Last Date for Final Registration</b>	<b>11:59 PM (IST), April 12, 2021</b>
<b>Last Date for Seeking Clarifications</b>	<b>11:59 PM (IST), April 16, 2021</b>
<b>Release of Clarifications</b>	<b>April 19, 2021</b>
<b>Deadline for submission of Soft Copy of the Memorials for Memorial Qualifier Round</b>	<b>11:59 PM (IST), May 5, 2021</b>
<b>Release of Results of the Memorial Qualifier Round</b>	<b>May 9, 2021</b>
<b>Final Submission of Qualified Memorials</b>	<b>11:59 PM (IST), May 21, 2021</b>
<b>Orientation and Memorial Exchange</b>	<b>May 28, 2021</b>
<b>Dates of the Competition</b>	<b>May 29 and 30, 2021</b>

## RULES OF THE 4<sup>TH</sup> TNNLU – CCI NATIONAL ONLINE MOOT COURT COMPETITION, 2021

### 1. DEFINITIONS

- 1.1. **Competition:** The Competition refers to all the aspects of the 4<sup>th</sup> TNNLU-CCI National Moot Court Competition, 2020
- 1.2. **Organizers:** It shall mean the Moot Court Committee of the Tamil Nadu National Law University, Tiruchirappalli
- 1.3. **Memorial:** It means the written arguments submitted, on behalf of both parties, according to the Rules of the Competition by each team.
- 1.4. **Memorial Qualifier Round:** In the Memorial Qualifier Round 16 teams will be selected out of the 24 teams registered for the competition for 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. **Oral Round Scores:** It refers to the average of the scores secured by both the Speakers in the Oral Rounds.
- 1.7. **Qualifying Rounds:** The Qualifying Rounds include the memorial qualifier round, and the preliminary round of the Competition consisting of two rounds wherein teams must argue each party once.
- 1.8. **Advanced Rounds:** It refers to the Quarter-finals, Semi-finals and Final rounds of the 4<sup>th</sup> TNNLU – CCI National Online Moot Court Competition, 2021.
- 1.9. **Power Match-up:** The fixtures for the Oral Rounds of the Competition will be done on the basis of a power match-up. For the first round of the Preliminary Round, power match-up will be based on the memorial ranks secured by the team. (Out of 16 Ranks, Rank 1 v. Rank 16, Rank 2 v. Rank 15...) For the Advanced Rounds, the power-up will be based on the Oral Round Scores secured by the teams.
- 1.10. **Slide match-up:** The fixtures for the second round of the Preliminary Round will be determined by the Organizers on the basis of a slide match-up (Out of 16 Ranks, Rank 1 v. Rank 9, Rank 2 v. Rank 10 ...) of the memorial ranks secured by the teams.
- 1.11. **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.

## **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. In this edition of the competition, the registration will be restricted to only 24 Teams of which 16 teams will qualify for the preliminary round through the memorial qualifier round. All the Teams desirous of participating in the Competition should provisionally register themselves by sending an email to [nmcc@tnnlu.ac.in](mailto:nmcc@tnnlu.ac.in) through the Moot Court Committee of their Institution/College/University or the Faculty Coordinator of the Moot Court Committee. Final registration formalities should be completed by the Team only after receiving an affirmative reply from the OC to the provisional registration email.

- 3.1.2. Institutions may provisionally register and reserve a slot in accordance to the procedure prescribed in Rule 3.2. However, the slot will be revoked if the team fails to complete the registration process prescribed in Rule 3.3.

### 3.2. Provisional Registration

- 3.2.1. Provisional Registration for the Competition shall open on 16<sup>th</sup> March 2021. Institutions can temporarily block a slot by writing to the Organizers at [nmcc@tnnlu.ac.in](mailto:nmcc@tnnlu.ac.in). Institutions will receive a response immediately regarding the availability of slots and reservation of the same.
- 3.2.2. Institutions who have provisionally registered must complete the Registration process described in Rule 3.3 by April 12, 2021.

### 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), 12 April, 2021**. 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 A to [nmcc@tnnlu.ac.in](mailto:nmcc@tnnlu.ac.in) with the subject '**Registration for 4<sup>th</sup> TNNLU-CCI NMCC 2021**'.
- 3.3.3. A fee of Rs. 1500/- (One Thousand Five Hundred only) is payable towards registration. The registration fee must be paid via NEFT (See Rule 3.3.4) or BHIM UPI by scanning the QR code annexed with this Brochure at page latest by 11:59 PM (IST), 12 April, 2021. Confirmation of payment of registration fee must also be attached with registration form.
- 3.3.4. Details of the Bank Account:
- Name of the Account Holder: Registrar (MCC)
- Name of the Branch: UCO Bank TNNLS Branch
- Account Number: 30030110033470
- IFSC Code: UCBA0003003

## 4. CLARIFICATIONS ON THE MOOT PROBLEM

- 4.1. Clarifications regarding the Moot Problem may be sought by the teams till **11:59 PM (IST), April 16, 2021** via an email to [nmcc@tnnlu.ac.in](mailto:nmcc@tnnlu.ac.in) with the subject '**4<sup>th</sup> TNNLU-CCI NMCC, 2021-Clarifications**.' The Clarifications sought by the teams will be published and circulated to the teams via email by April 19, 2021.



## 5. MEMORIAL RULES

### 5.1. General Rules for Memorials

- 5.1.1. All the teams must submit the soft copy of the memorial for the Memorial Qualifier Round to the Organizers on or before **11:59 PM (IST), May 5, 2021**, in the Google Form circulated via email by the Organizers to the teams who have registered.
- 5.1.2. The soft copy of memorials once submitted cannot be revised or resubmitted.
- 5.1.3. The Results of the Memorial Qualifier Round will be released on May 9, 2021. The qualified teams must submit their revised memorial by **11:59 PM (IST), May 21, 2021**, in the Google form circulated via email by the Organizers to the teams who have qualified.
- 5.1.4. Memorials submitted 24 hours after the deadline prescribed above will not be accepted.
- 5.1.5. The memorials shall not contain any annexure, photograph, graph, diagram or any other representation of like nature.

### 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 on the Content and Formatting Specifications of Memorials

#### 5.3.1. 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)

5.3.2. 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

5.3.3. 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

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

- i. 20<sup>th</sup> 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.

5.3.5. 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.

#### 5.4. 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

### 5.5. 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

## **5.6. 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. Memorial qualifier round:**

- 6.1.1. For the Memorial Qualifier round, each Team is required to prepare Written Submissions for both sides, i.e., the Informant(s) and the Opposite Party(s) of the case and submit by **11:59 pm, May 5, 2021**.
- 6.1.2. After evaluation of Memorials, the top 16 teams based on their memorial scores shall be selected for the preliminary rounds. The results of the Memorial Qualifier Round shall be intimated to the registered teams by **May 9, 2021**.

### **6.2. ORAL ROUND PROCEDURES**

- 6.2.1. The oral rounds will be conducted online through Cisco Webex platform. The meeting links and guidelines for the same shall be sent to the participants via email.
- 6.2.2. The oral rounds shall comprise of preliminary rounds, quarter finals, semi-finals and final rounds. There shall be two preliminary rounds.
- 6.2.3. The time split between the speakers must be communicated to the Court Clerks prior to the commencement of each round.
- 6.2.4. 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.
- 6.2.5. There shall be no oral communication between team members and the speaker delivering oral submissions.
- 6.2.6. 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.
- 6.2.7. Sur-rebuttals maybe allowed at the discretion of the judges.
- 6.2.8. 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.

### 6.3. Preliminary Rounds

- 6.3.1 Each team will argue in two (2) Rounds, once for each party.
- 6.3.2 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 and slide match-up of ranks for the first and second rounds respectively.
- 6.3.3 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.
- 6.3.4 The ranking of the teams in the Preliminary Rounds will be based on both Memorial Scores and the Oral Round Scores. The scores of the Preliminary Rounds 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 and the average for the oral rounds is y, then the aggregate score will be a combination of 30% of x and 70% of y.
- 6.3.5 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.
- 6.3.6 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

### 6.4 Advanced Rounds

- 6.4.1 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.
- 6.4.2 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.
- 6.4.3 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.

## 6.5 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

## 6.6 Researcher's Test

6.6.1 The Researcher's Test will be conducted online on May 29, 2021.

6.6.2 Only a participant designated as the Researcher at the time of Final Registration shall be eligible to participate in the Researcher's Test.

6.6.3 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.

## 7 AWARDS

7.1. The Competition includes the following awards:

Awards	Prize Money
Winners	Rs. 40, 000/-
Runners Up	Rs. 30, 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.

**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. All participants shall adhere to the online meeting guidelines, notified by Organizers via email, from time to time throughout the period of competition.
- 8.3. Any attempt to contact the framers of the Moot Problem will result in immediate disqualification.
- 8.4. The identities of the teams shall not be disclosed in any form in the memorials or the compendiums.
- 8.5. 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.
- 8.6. Scouting of a team's future opponent is strictly prohibited. Violation of this rule will result in immediate disqualification.
- 8.7. 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.
- 8.8. The Dress Code for the participants shall be formals. Men are expected to wear Western Formals only (Black Blazer, Black tie, 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).
- 8.9. 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 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 The civil aviation industry in Imarti has emerged as one of the fastest growing industries in the country during the last ten years. Worth over USD 100 billion, it is an intensely competitive space with several indigenous carriers being established in the country. The major market players are AirImarti, PurpleAir, YesAir, Vina Airways and CarinaJet known collectively as the “Big 5”. Together, they generally hold nearly 80% of the market share, with CarinaJet being the market leader at around 36%.
- 3 The civil aviation industry has consistently shown to be on an uptick with the number of passengers growing at a rate of 11.3 percent annually over the last five years. It is estimated that Imarti will need 1100 planes by 2027 to meet the demand as opposed to the 800 in its arsenal as of 2017. The Big 5, which are primarily passenger carriers, have therefore been growing aggressively to match that rise, constantly making purchases of planes to meet the demand.
- 4 The civil aviation industry also has a freight component which essentially transports cargo around the country. Imarti has dedicated cargo carriers such as StatePro, DLP, and RedArrow. These three companies, collectively known as “CoreCar” have traditionally been the most popular carriers in the country, with over 40 years of experience. Together they capture about 72% of the air cargo market.
- 5 Recently, in April 2017, to offset operation costs, every cargo carrier has introduced an additional charge to their basic shipping rates called the Fuel Surcharge (FSC). These charges are designed to help carriers cover rising costs associated with Aviation Turbine Fuel (ATF). The FSC is calculated in proportion to the ATF prices. Resultantly with a hike in prices for ATF, the Fuel Surcharge is usually expected to increase as well. Traditionally, about 15 to 20% of cargo revenue is attributable to FSC rates.



- 6 The Big 5 also undertake cargo operations, and each of them introduced their FSC rates in June 2018. However since almost 80% of their revenue comes from passenger operations, the Big 5 have focussed all their business development on the passenger segment of their business.
- 7 In November 2018, the CCI received a letter from the Parliament of Imarti, requesting it to investigate the Big 5 for cartelization, alleging that they had been maintaining a degree of stability in their market shares during both peak and lean seasons over the last year. It was further alleged that the end fares for shipping in their cargo segment, especially the FSC were not only similar but constant, irrespective of the fluctuation in ATF prices. This letter was in keeping with the practice of jurisdictions around the world tightening their grip on cartels, taking increasingly ‘no - tolerance’ positions towards cartelisation by expanding enforcement capabilities, reducing exemptions, and stiffening penalties for breaking of laws. At the time the Parliament sent the letter, the FSC rates of the Big 5 as fixed by each of them were as follows:

Table 1

Airlines	FSC Rate per kg
CarinaJet	Rs.8
Vina Airways	Rs.6
PurpleAir	Rs. 6
AirImarti	Rs. 6
YesAir	Rs. 6.25

- 8 The Director General (DG), the investigation wing of the CCI, analysed the complaint brought and determined that though there was some evidence of stability in the shares and the price, there was no evidence of collusion and that price parallelism was a natural outcome of the structure of the market. The CCI accepted the DG report and made an additional observation on the complaint being premature and dismissed it in January 2019.
- 9 In November 2019, a curious development began in the Republic of Chinar, a country far from Imarti. A new, unrecognisable virus was detected and seemed to be armed with an alarming rate of infection. Within just two months, the virus, named Tikok-20, spread like wildfire throughout the world as a result of the international movement of people.

- 10 Confronting what was declared to be a pandemic, and with no vaccine or understanding of how the virus worked, countries began to impose lockdown measures, which essentially imposed a strict no-travel rule for people, whether by air, water, rail or road among other measures. In order to contain the spread of the virus among its 1.3 billion strong population, Imarti imposed a complete lockdown on 1st February 2020. All domestic and international transport was halted, inter-state movement frozen, and all of its residents were mandated to stay indoors.
- 11 With a complete shutdown of crucial economic activity, Imarti and many other countries plunged into the worst economic crisis since the Great Depression of the 1930s. The Republic of Khamiri and United States of Pitta - developed, highly industrialised neighbouring nations, as well as a number of other countries responded to the crisis by offering subsidies as well as using their banking systems to advance loans to failing businesses. On the other hand, the Government of Imarti, which was dealing with a tremendous inter-state migrant crisis was slow to respond to bailout requests and was able to offer little to no subsidies.
- 12 The lockdown and recession also triggered regulatory authorities to reconsider their policies on competition/antitrust issues, especially on the point of ‘crisis cartels’, a situation seen often during economic downturns. Taking note of the unprecedented shock to economic activity, the CCI, like many competition regulatory authorities around the world, issued its own advisory dated 15th March 2020:

### COMMUNICATION FROM THE COMMISSION

*Dated 15.03.2020*

*The Tikok-20 pandemic has affected the whole economy through different channels and in different ways. Among them is the shock resulting from the disruption of supply chains, combined with a radical demand shock caused either by an abrupt decline in consumer demand in certain products and services, or a steep rise in demand for other products and services including those of critical healthcare products and other essential commodities/services. In keeping with this development the CCI issues the following advisory:*

1. *The exceptional circumstances may trigger the need for undertakings to cooperate with each other to take joint measures including actions such as:*
  - i. *sharing of data on stock levels,*
  - ii. *timings of operation or,*
  - iii. *sharing of distribution network and infrastructure and*
  - iv. *research and development (R & D)*

2. *These sorts of joint measures in normal circumstances are problematic under Section 3(3) of the Imarti Competition Act 2002. Nevertheless these measures, limited in duration and to meet the exigent circumstances to assist patients, consumers, and communities affected by Tikok-20 and provide the people of Imarti with products or services that might not be available otherwise due to shortages, would not give rise to an enforcement priority for the CCI.*
  3. *Coordinated activity of the nature mentioned above will be permitted to the extent they are necessary, proportionate, and increase efficiency in the production, supply, distribution, storage and acquisition or control of goods or provision of services as noted in Section 19(3) of the Act.*
  4. *The CCI is committed to providing individuals and businesses in any sector of the economy that are responding to the exigent circumstances expeditious guidance about how to ensure compliance with the Act. Individuals and businesses may contact the agency for instructions and guidance if they are uncertain about the permissibility of cooperation.*
  5. *The above principles are subject to the understanding that even during this crisis, the CCI will resolutely intervene in cartels between companies which aim to raise prices to the detriment of consumers. The same will apply to the abuse of a dominant position, which a company uses to exclude competitors or to charge manifestly unfair prices.*
- 13 Following the issuance of the Advisory, the CCI began to decide pending cases of cartelization before it. Amongst these was a supposed cartel of manufacturers of auto parts, that had indulged in bid rigging in their dealings with the railways between 2017 - 2019. The CCI also dealt with another case, here, concerning a cartel in the automotive bearings market between December 2019 and June 2020, where the companies had coordinated with each other on sharing information about practices that would help preserve their revenue and workforce during the pandemic.
- 14 In both these cases, the CCI found affirmative evidence of cartelization. However, with a reference to the Advisory dated 15th March 2020, the CCI held in regard to the issue of penalty in both cases vide orders issued on 21st September 2020 as follows:

*“The Commission is cognizant of the prevailing economic situation arising due to the outbreak of the global pandemic. We also note that the Opposite Parties have fully cooperated during the investigation by not denying material asked for by the DG. In this backdrop, considering the matter holistically, the Commission in the interest of justice, refrains from imposing any monetary penalty on the parties and directs the parties to cease such cartel behaviour and desist from indulging in it in the future. The parties*

*are cautioned to ensure that their future conduct is strictly in accordance with the provisions of the Act, failing which any such future behaviour would be viewed seriously with attendant consequences.”*

- 15 Meanwhile, the natural consequence of the lockdown was that the entire passenger aviation industry came to a complete standstill. There was an unprecedented loss of revenue which was followed by the exit of several new entrants in the market, with some larger companies filing for bankruptcy within a few months. The Big 5 also suffered greatly, with their revenues plummeting by up to 85%. . They however, had somehow barely managed to keep their heads above water because of their limited cargo operations. On the other hand, dedicated cargo carriers such as StatePro, DLP, and RedArrow flourished as the lockdown had resulted in a dramatic increase in the demand and dependency on the movement of goods through air. The increased demand was a direct result of the lockdown period -severely limiting all movement through train lines, roads and waterways due to their dependency on man power.
- 16 On 2nd June 2020, CarinaJet announced that it was converting 10 of its passenger aircrafts and 3 of its newly acquired planes into freighters. Within the next two weeks, the rest of the Big 5 also announced the conversion of several of their passenger planes into freighters. Explaining the move, the CEOs of the airlines in separate interviews stated that the cargo segment of their operations was the only bright spot for them during the lockdown period. They further stated that with no end to the pandemic in sight, it was necessary to contribute to the supply of cargo services as the capacity of the existing cargo carriers was bound to eventually fall short of the constantly increasing demand for their services.
- 17 Each of the Big 5 marketed this move heavily. They appealed to their customers to trust their ‘newly introduced’ services, harnessing their excellent reputation and goodwill in passenger services. At the time of the introduction, the citizens of Imarti had been rallying to send supplies from and to every part of the country to help those critically affected by the pandemic and left with no essential supplies - medical items such as sanitizers, masks, feminine hygiene products and food. Consequently, the introduction of the cargo services by the Big 5 was welcomed and availed of in record numbers.
- 18 By September 2020, the Big 5 had managed to mitigate their financial losses to an extent by becoming some of the most sought after cargo carriers. The full-fledged entry of the Big 5 into cargo operations had a significant impact on the combined market shares of StatePro, DLP and RedArrow, with it falling to around 59%.

- 19 In December 2020, the Aviation Collective of Imarti, a non-profit company having its main object to secure the welfare of the express industry and its consumers in all respects, began to receive complaints about a steady and common increase in prices, especially the FSC rates of the Big 5. Enterprises and individuals alike, who had grown to rely on the services provided by the companies, complained that a higher FSC rate was adding up to higher prices to be paid by consumers, and in the context of the pandemic where it was imperative to be able to use these services, consumers had no option but to adhere to these prices, and that even a slight increase in the FSC charges, impacted their financial capacity as well.
- 20 Shortly thereafter the Aviation Collective of Imarti approached the CCI and filed an information dated 4th January 2021, under Section 19 of the Imarti Competition Act, alleging cartelization among the Big 5, stating that the FSC was merely a tool being used by them to overcharge cargo tariff and exploit the dependency of consumers on air cargo companies during the Tikok-20 pandemics, as opposed to it being a cushion for ATF prices.
- 21 Upon receipt of the information the DG began its investigation, only for the CCI to receive a leniency application from Vina Airways handing over email, text and memo correspondences as well as a record of meetings with regard to FSC rates between the Big 5. In the first set of correspondences between February and May 2020, it was divulged that top management of the Big 5 had regularly communicated with each other discussing how to mitigate the impact of the pandemic on their businesses. They also inquired whether each of them had been contemplating taking on cargo services, while exchanging technical know-how about these operations that would help them make decisions.
- 22 In the second set between June and December 2020, the DG also found that the correspondences between June to December 2020 highlighted that with the uncertainty of the situation, the onset of a recession, and negligible demand for passenger carriers, the ATF prices were constantly dropping with marginal upward fluctuations extremely rare and short lived. As a result of this, maintaining revenues from cargo operations was also difficult. In relation to this, the FSC rates of the dedicated cargo carriers were also discussed as fluctuating between Rs. 7/kg to Rs. 14/kg as a result of ATF price changes
- 23 Further in the course of its investigation, the DG also found the date of implementation of revised FSC rates across the Big 5 as follows:

Table 2

Date of Revision	FSC Rate per kg
13.07.20	8
15.08.20	9
Varied dates in September 2020	8
10.10.20	10
Varied dates in November 2020	11
26.12.2020	13

- 24 In its report dated 20th March 2021, the DG found that the Big 5 had formed a cartel to fix the FSC rates to augment their revenue. This was the result of concerted practices, evidenced by repeated bilateral and multilateral contacts, which the Big 5 had decided, intended or contemplated to adopt with regard to the FSC rates. The DG also noted that the practices adopted by the Big 5, were not of the nature as exempted by the Communication dated 15.03.2020.
- 25 Further, the DG also found that the anti-competitive impact of the cartel was exacerbated by the position and strength of the Big 5 in the civil aviation market. Finally, the DG also made a note of the earlier letter of the Parliament in November 2018, inferring that there was evidence of collusive behaviour even before the pandemic began.
- 26 The Big 5 denied all the allegations and argued that there was no cartelization of the FSC rate. There was no evidence produced that proved collusion, or meeting of minds, or the existence of any anti-competitive agreement between the airlines that operated to the detriment of consumers. Further, even if there be any finding of cartelization, that activity was protected by the Communication of 15th March 2020 as a response to the Tikok-20 Pandemic. Finally the companies also stated that in any case, they should not be penalised given their financial situation and the previous orders of the CCI.
- 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 29.05.2021. Accordingly, written and oral arguments before the CCI are invited on behalf of the Informants, the Aviation Collective of Imarti and the Opposite Parties (OPs) - CarinaJet, Vina Airways, PurpleAir, AirImarti and YesAir (Big 5).

### 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 The “Advisory to Businesses in Time of Covid-19” issued by the Competition Commission of India dated 19th April 2020 only has persuasive value in Imarti.
- 3 Participants are at liberty to identify and frame issues as they deem fit.
- 4 Participants may make reasonable assumptions about the functioning of the civil airlines industry in the context of the problem.
- 5 The authenticity of the market share reports and rates are not to be questioned.
- 6 Please do not presume or insert any other parties than the ones mentioned in the supply chain.
- 7 For the purposes of this Moot Proposition, participants are advised to not go beyond the definitional understanding of the terms ‘Fuel Surcharge’ and ‘Aviation Turbine Fuel’ as given in the proposition.
- 8 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.
- 9 Please do not attempt to contact the author of the moot proposition, any attempt to do so will result in disqualification.

**4<sup>TH</sup> TNNLU – CCI NATIONAL ONLINE MOOT COURT COMPETITION, 2021****MAY 28 – 30 , 2021****REGISTRATION FORM****DETAILS OF THE INSTITUTION**

Name and Address of the Institution

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Contact Number \_\_\_\_\_

Email Address \_\_\_\_\_

**DETAILS OF THE PARTICIPANTS**

<b>Participant</b>	<b>Name And Year Of Study</b>	<b>Gender</b>	<b>Mobile No. And Email ID</b>	<b>Photograph</b>
Speaker 1				
Speaker 2				
Researcher				



**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 &amp; Signature)

\_\_\_\_\_  
Speaker 2

(Name &amp; Signature)

\_\_\_\_\_  
Researcher


(Name &amp; Signature)

Date: \_\_\_\_\_

\_\_\_\_\_  
Seal and Signature of the Head of the Institution

यूको बैंक

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