

MOOT PROPOSITION



CCI - HNLU 13TH JUSTICE HIDAYATULLAH NATIONAL MOOT COURT COMPETITION

IN COLLABORATION WITH

AZB & PARTNERS



KNOWLEDGE PARTNER



1. The Union of Eyzar is a state which was a British colony for 200 years before its declaration of independence in 1947, resulting in the formation of the state of Eyzar. Eyzar has a large population of about 1.5 billion and has a diversified economy. As an independent state, Eyzar adopted its own constitution and constituted its own Parliament, which enacted several laws to govern the newly independent state. In the initial few decades of its statehood, Eyzar had a closed economy which was opened to the rest of the world 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 in Eyzar.

2. The Eyzarian parliament passed stronger and more versatile laws to regulate its evolving economy. For instance, while its laws historically sanctioned monopolies and restrictive trade practices, the Eyzarian Parliament, in 2002, enacted the Competition Act, 2002 ("**Competition Act**") to foster and encourage market competition. The Competition Act of Eyzar 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 regulation of mergers, acquisitions and amalgamations were brought into force only in 2011.

3. The Competition Act further established the Competition Commission of Eyzar ("**CCE**") to *inter-alia* prevent practices causing adverse effect on competition, promote and sustain competition in markets, protect the interests of consumers and ensure freedom of trade, in Eyzar.

4. The CCE has also been empowered to enquire into any alleged violation of the provision of the Competition Act *suo moto* or on the basis of information received from any person, consumer or trade association or on references received from the government or any statutory authority, or information received from citizens. Basis the information received, it also possesses authority to direct investigation through its investigative arm, the Office of the Director General ("**DG**") against any perceived anti-competitive conduct if it is of the opinion that there exists a *prima facie* case warranting a detailed investigation.

5. After the receipt of the investigation report by DG, the CCE passes final orders (including penalties, where applicable) after considering the objections or suggestions of the parties involved {including by way of oral hearing(s)}. An appeal against the CCE order can be filed with the Eyzarian Competition Law Appellate Tribunal ("ECLAT") and orders from the ECLAT can further be appealed before the Supreme Court of Eyzar.

6. Since the Eyzarian competition regime is relatively nascent, the CCE, ECLAT and the Eyzarian Courts hold the decisional practice of competition regulators in the European Union ("EU") and United States of America ("U.S.A.") in high regard. Given that the laws of Eyzar, including its competition laws, are in *pari-materia* with the laws of India, the Eyzarian competition authorities, Courts and Tribunals consider orders and judgments of Indian courts and tribunals to have high persuasive value. Further, the Indian currency, i.e., the Indian National Rupee ("INR") is the official currency of the republic of Eyzar.

7. Playflix Entertainment Incorporation Private Limited ("Playflix") is an online audio-video streaming ("OAVS") platform which was incorporated in 2005. It offers services related to streaming of movies, music, sports events, web series, documentaries and other audio-video entertainment content. In order to use its services, a customer has to create an account with Playflix using a unique user ID and password, along with payment of subscription charges. A user has a choice to pay subscription charges on a monthly, quarterly or annual basis. Payment of subscription charges can be made through two modes only – (a) payment through online payment gateway system services provided by VPay-Uplay Payment Limited Company ("VPay-Uplay"); and (b) e-wallet owned by Playflix. Users do not have option to make payment through Unified Payments Interface ("UPI") or any other mode.

8. At the time of signing up for Playflix, the user has to agree with the Data Access and Data Protection ("DADP") policy of Playflix which among other things restricts users from sharing their credentials with any unauthorized person. It also makes the user allow Playflix access to storage data of the user's device. If the user refuses to grant such storage access, the application crashes.

9. Subscription charges at the time of beginning of Playflix's operations were:

	Monthly	Quarterly	Annual
480p resolution	INR 200	INR 500	INR 1800
720p resolution	INR 500	INR 1000	INR 3500
1080p resolution	INR 1000	INR 2000	INR 6000

Table 1

10. Playflix's popularity soared in 2007, when it won the rights to stream the inaugural T-20 Cricket League ("TCL") event from Board of Cricket Control of Eyzar, through an open bidding process. During this period, Playflix witnessed tremendous growth in its user base. The number of users increased from 1.2 million to 8 million users in just a span of 3 months.

11. Increase in the popularity of Playflix attracted the attention of various film production houses in Eyzar. Dyewood Production House ("Dyewood"), the oldest and biggest movie producer in Eyzar, and has over the years released a number of blockbuster movies. Dyewood approached Playflix for the release of their movie, *The Absconder*. Dyewood's chairman and managing director Mr. Hems also heads the Eyzarian Entertainment Association, which is an association of film and music producers in Eyzar.

12. Playflix privately negotiated a deal with Dyewood for release of *The Absconder* and purchased the exhibition rights on 45% premium on cost of production. With regards to intellectual property rights, Dyewood retained the exclusive rights over all the characters, storyline and the entire cinematic universe. *The Absconder* was a huge success and consequently, Playflix's popularity rose even further. Following the trend set by Dyewood, other production houses also started entering into agreements with Playflix for release of their digital content on OAVS platform. At the end of 2008, Playflix had 12 million subscribers and the company's net worth was INR 2200 crores.

13. Following the success of Playflix in OAVS platform industry, Eyzar witnessed entry of six new players in this market. Bigshow Prime Entertainment Incorporation ("**Bigshow Prime**") and Sporty Media Entertainment Private Limited ("**Sporty**") were the two major international companies that entered the market through their wholly owned subsidiaries, Bigshow and Sports Play respectively.

14. The entry of new players made the market more competitive. In particular, Bigshow and Sporty quickly gained popularity in the OAVS space. Bigshow marketed itself as a premium streaming platform and offered streaming of 4k resolution video quality digital content. Bigshow's subscription charges were higher than the average subscription charged by other players. On the other hand, Sports Play projected itself as a OAVS platform for the youth and sports enthusiasts by providing exclusive sports content in 4k resolution, free of charge for the initial six months of subscription.

15. Over a period of time, Bigshow and Sports Play witnessed a rise in their demand owing to their business strategies. According to a market report published in the year 2011 by High-Five magazine, the market share of various players in the OAVS market stood as follows:

Enterprise	Market Share
Playflix	36%
Bigshow	24%
Sports Play	20%
Prime Watch	10%
I-Stream	7%
Others	3%

Table 2

16. According to Filmywood Times ("**F-Times**"), a reputed magazine of the Eyzarian film industry, Playflix was found to be the most popular and sought-after OAVS platform for film producers. The magazine also conducted a public survey which indicated that the people of Eyzar were more interested in science fiction and superhero action movies with a continuing story line through sequels or mixing multiple cinematic universes.

17. After the success of *The Absconder*, Dyewood commenced production of a sequel titled *The Absconder Returns*. However, this time it negotiated a deal with Bigshow to provide enhanced experience to users through 4k resolution streaming.

18. In late 2016, post the release of *The Absconder Returns*, while Bigshow was enjoying the success and popularity, Playflix market share and revenue were on a decline. Playflix observed that the user base had been stagnant since 2015 and has in fact seen a 10% drop in user base after the release of *The Absconder Returns*. Notably, they were still considered the most popular OAVS platform in the latest report of High-Five Magazine.

19. In 2017, Montech Holdings Incorporation ("**Montech**"), a financial investment company, agreed to invest USD 90 million in Playflix, to assist it during this financial instability. Pursuant to the fundraiser from Montech, Playflix also entered into a collaborative arrangement with Caltel Telecom Ltd ("**Caltel**"), a major player in telecommunication services. According to the arrangement, Playflix agreed to offer 3 months free subscription to postpaid customers of Caltel. In return, Caltel agreed to provide free sim card and 10 GB mobile data for 3 months to new users of Playflix. Further, in an attempt to regain its market share, Playflix also decided to cut down its subscription charges by 50%.

20. After implementing such changes, Playflix witnessed a growth in the user base and market share. During this period, Playflix also conducted market research and concluded that as of July 2017, although there were 62 million people watching its online content, only about 27 million were its subscribers. The marketing team of Playflix also concluded that primary reason for this difference was the practice of rampant Id-password sharing by their subscribers. It was found that on an average, every 2nd subscriber shared his/her password with at least 2-3 people. At this time, all other OAVS platforms were equally worried about the problem of password sharing and were struggling to find a solution.

21. In an effort to counter this problem, Playflix established an in-house research and development wing ("**R&D Wing**") which was entrusted to resolve the issue at the earliest. In October 2019, the CEO of Playflix, Mr. Zeoberg, met Ms. Eliza, the CEO and founder of the SecPass Technology Incorporation ("**SecPass**") during a business trip to California. SecPass is a leading market player in the password and privacy protection service industry, having strong presence in various parts of the globe. It also provides password encryption and authentication services through its wholly owned subsidiary SP International Incorporation ("**SPI**"). SPI has significant presence in Eyzar and provides its services to major governmental bodies, including Department of Railways and Income Tax Department. During their conversation, Mr. Zeoberg noted that SecPass offers a specialized software that restricts password sharing by linking the user id with the geolocation of the device.

22. As of 31 March 2019, SPI had assets worth INR 2592 crores and an annual turnover of INR 8532 crores. For the same period, Playflix recorded a turnover of INR 9,652 crore while it had assets worth 3600 crores.

23. On returning from the tour, Mr. Zeoberg shut down the R&D Wing and entered into an agreement to acquire 50.01% stake in SecPass. This offer was accepted by SecPass and accordingly a notice was filled pursuant to Rule 5A of the CCE (Procedure in regard to the transaction of Business relating to Combinations) Regulations, 2011 in the specified format along with the declaration specified in the Schedule IV. The transaction was closed immediately upon the receipt of acknowledgment of the filing of the notice.

24. On completion of the deal, SecPass established an office in India to assist Playflix in its operation. On 1 April 2020, post integration of SecPass tool, Playflix updated its software application and user policy whereby it required users to link their device with their user ID. A user was permitted to link multiple devices for an increased subscription price. For users with single device subscription, changing of the device linked with another device could be done by making an application to customer support, where such change would be affected within 1-2 business days.

25. Playflix, also started making agreements with producers, whereby the producers were asked to sell streaming rights for all their digital content on Playflix exclusively. Producers who didn't accept exclusivity were offered a comparatively lower proportion of premium on the cost of production. Dyewood was the first production house that entered into an exclusive arrangement for the release of its documentary, *Warrior in White* and agreed not to release its content on any other platform. In an interview with F-Times, Mr. Hems praised the CEO of Playflix for making Playflix a more secure platform by effectively countering the password sharing issue. He also asserted that for the sake of fair business and protection of artistic integrity, the producers should encourage those OAVS platforms which have been attempting to address issues of password sharing.

26. In 2021, Dyewood decided to co-produce a multiverse movie titled *The Absconder Caught* through a crossover between the cinematic universes of Dyewood's highest grossing and most popular movie *The Absconder* (including *The Absconder Returns*) and *The Criminal Catcher*, a movie produced by Tarvel Cinema (Tarvel) which is a prominent Hollywood production house. After this announcement, Bigshow approached Dyewood and Tarvel, hoping to reap the benefits of its earlier collaboration with Dyewood. However, Dyewood expressed its inability to Bigshow citing business and strategic reasons, while Tarvel denied the offer stating that they would have to follow the footsteps of Dyewood for commercial reasons (as they were collaborating for the release of *The Absconder Caught*). Playflix's release of *The Absconder Caught* turned out to be a great success.

27. Around the same time, Neptune Movies (**Neptune**), a newly setup movie production company, contacted Playflix to discuss the release of one of their movies. However, despite three months of negotiation, Neptune struggled to come to an understanding over the financial and commercial conditions offered by Playflix. Despite continuous and regular follow-ups by Neptune, Playflix took almost six months to restart negotiations. However, frustrated by the delayed response from Playflix, Neptune entered into an agreement with NeoMedtek, as Playflix failed to respond to their offer in reasonable time.

28. Neptune informed Eyzar Producers Association ("EPA") regarding Playflix's conduct and demanded that EPA should take immediate action against them. EPA observed that Playflix had adopted discriminatory practice against the low budget movies by offering comparatively less price than the price offered for high budget movies. Additionally, it was found that Playflix demanded exclusive release of their next 10 content on its platform at a discount of 10% on cost of production ("COP"). No such condition was put to big production houses.

29. EPA on the basis of an internal survey among production houses, concluded that Playflix has also deployed tactics to delay the negotiation with small producers, costing them their preferred and commercially suited time frame for releasing their movies. The survey further revealed that few small producers, to expedite the negotiation and make timely release, had to agree with the unfair and arbitrary conditions imposed upon them. They were forced to sell the exhibition rights to Playflix at a discounted price which were well-below the industry standard.

30. Contemporarily, a F-Times market report was published which showed that Bigshow had lost the top spot as it had failed to meet the popular demand of its audience and Sports Play also lost its market share as a result of scrapping its free streaming policy.

31. During this period, the practice of password-sharing continued to wreak havoc on all other OAVS platforms. Bigshow and Sports Play had their R&D wing working day and night to find a solution, without much success. Sports Play, which had won the rights for streaming of the upcoming TCL, was worried that if the password sharing problem was not addressed, it would not be able to recoup the loss of revenue incurred while providing free streaming services, and the loss of user base inflicted from the scrapping of the policy. At this stage, a fired Playflix employee disclosed that Playflix's acquisition of SecPass had given Playflix a cutting-edge tool which largely curbs the menace of password sharing.

32. When other companies approached SecPass, it refused to share the tool, stating that under the terms of deal with Playflix, neither Playflix nor SecPass is permitted to share or provide the integrated security system (*i.e., integration of the SecPass tool with Playflix's in-house password securing service, used to prevent password sharing by implementing one-time-password system*) to any other person or enterprise.

33. Aggrieved by this, Bigshow and Sports Play approached CCE and informed them that the acquisition of SecPass is illegal and it should be declared *void ab-initio*. They also claimed that the parties to combination have disregarded the laws, rules and regulations set out by the CCE. They also alleged that the collaboration agreement entered into between Playflix and Caltel was anti-competitive and Playflix has abused its dominant position by resorting to predatory pricing, post procuring investment from Montech.

34. On the other hand, EPA calls a meeting of producers of the association, pursuant to which all producers (excluding Dyewood and Tarvel), agree to move to CCE for addressal of their grievances, in particular, the small producers who were allegedly arm-twisted by Playflix to accept unfair and discriminatory terms. Consequently, an information was filed with the CCE. In parallel, members of EPA also decided to go on a 7-day protest against Playflix and resolved to not release any new content on Playflix during this period.

35. The CCE, on receipt of the information by various parties, passed an *ex-parte* decision forming prima facie opinion that the agreement between Playflix and Dyewood is anti-competitive as it has or is likely to cause appreciable adverse effect on competition in Eyzar. CEE thereby directed the DG to cause an investigation into the matter and submit its report in due time

36. The DG while conducting its investigation, defined the relevant market as the "*market for OAVS platforms for high-end full-length movies in Eyzar*", and found Playflix to be dominant in such market. With respect to Dyewood, it defined the relevant market as "*market for production and distribution of audio-visual content in Eyzar*".

37. For SecPass, DG delineated the relevant market as the *"market for providing user ID & password security services in Eyzar."* For SPI the relevant market was considered to be the *"market for password storing and authentication service in Eyzar."*

38. The DG *suo-moto* expanded the investigation to cover abuse of dominance by Dyewood and found Dyewood dominant in the relevant market. In addition to that, the DG report contained certain other findings:

- That the agreement between Playflix and Dyewood was anti-competitive and that Playflix had abused its dominant position in the relevant market.
- Post the Montech investment, Playflix's conduct, including offering of deep discounts was anti-competitive.
- On investigation of the deal between Caltel and Playflix, it was concluded that Montech was a minority shareholder in Caltel. It was also observed that Caltel had a 46% market share in the telecommunication sector.
- It was observed that acquisition of SecPass made Playflix technically superior to any other OAVS platform, which fueled its dominant position.
- Till 2020, Playflix used to provide 25% premium on COP, if COP was less than 100 crores and 50 % premium on COP for releases with COP above 100 crores. However, post-2020, the premium was 10% and 40% respectively.

39. After receiving the investigation report from the DG, the CCE forwarded a copy to each of the parties, and notified the parties to appear for a hearing on 18th March, 2023 where the following issues will be discussed and decided:

1. Whether the acquisition of SecPass by Playflix is legally valid under rule 5A of the Combination Regulation.
2. Whether the arrangement between Playflix and Dyewood is anti-competitive.

3. Whether the collaborative arrangement entered into between Playflix and Caltel is anti-competitive.
 4. Whether Playflix has abused its dominant position in the market.
- Parties are also allowed to include any other relevant issues.

Note :

- The text of Eyzarian Competition Act, Rules and Regulation is verbatim as the Indian Competition Act, Rules and Regulation.
- The decisional practice of Europe, United Kingdom and U.S.A. has significant value in Eyzar.

Annexure 1

Market Report on OAVS Platform Published by E-News in 2016

Enterprise	Market Share
Playflix	29%
Bigshow	28%
Sports Play	24%
Prime Watch	7%
I-Stream	6%
Others	6%

Table 3

Market Report on Production Houses Published by F-Times in 2016

Enterprise	Market Share
Dyewood	32%
Karma	28%
Wigly	22%
Tarvel	10%
Gazol	3%
Tixel	2%
Other	2%

Table 4

Market Report on OAVS Platform Published by Eyzar Infotics¹ in 2019

Enterprise	Market Share
Bigshow	30%
Playflix	27%
Sports Play	24%
Prime Watch	7%
I-Stream	6%
Others	6%

Table 5

Market Report on Production Houses Published by F-Times in 2019

Enterprise	Market Share
Karma	30%
Dyewood	29%
Wigly	23%
Tarvel	10%
Gazol	4%
Tixel	2%
Others	2%

Table 6

Market Report by Eyzar National Association for Commerce on OAVS Platform Published in 2022

Enterprise	Market Share
Playflix	39%
Bigshow	20%
Sports Play	15%
Prime Watch	10%
I-Stream	7%
NeoMedtek	5%
Others	4%

Table 7

¹ Private Infotainment Magazine of Eyzar

Enterprise	Market Share
Dyewood	42%
Tarvel	25%
Karma	21%
Wigly	10%
Others	2%

Table 8

¹ Governmental body for regulation Film Industry in Eyzar