



**6th DAMODARAM SANJIVAYYA
NATIONAL MOOT COURT
COMPETITION
&
2nd DAMODARAM SANJIVAYYA
NATIONAL JUDGEMENT WRITING
COMPETITION**

**MOOT
PROPOSITION**

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1. Sokovia is a republic with 28 states and 9 union territories and is one of the fastest emerging economies in the world. The laws of Sokovia are in *pari materia* with the laws of India, with the limited exceptions created in this problem (although Sokovian laws are drafted in their native language – Crystazylak). Sokovian courts often refer to decisions of courts, tribunals, and commissions in India which have high persuasive value in Sokovia.
2. In 2002, the Government of Sokovia opened up its market to distract from recent social disruptions and in order to address any emergent issues, Sokovia immediately enacted its competition law, the Sokovian Konkurentsiya Yazon (the “**Competition Act / SKY**”), in 2002. However, due to various policy considerations and judicial challenges, SKY was brought into force in phases, with the first tranche of substantive provisions coming into force on 20 May 2009. SKY replaced the obsolete Substantive Action against Non-competitive Deeds Act, 1969 (“**SAND**”).
3. The National Authority for Competition in Sokovia (the “**NACS**”) regards the decisions of the Competition Commission of India as well as other decisions of Indian courts on the Indian Competition Act, 2002, as having high persuasive value. The NACS also gives due regard to the competition regulators of the European Union and the United States, and relies on precedent from these jurisdictions as well.
4. Due to the rapid expansion of the economy and with significant push from the Government, some enterprises forayed into digital markets. This included indigenous Sokovian companies such as FlipMart, and BuyTM, as well as global market leaders such as Kree. Kree is a multinational company which owns and operates the world’s largest e-commerce marketplace since 2003. In 2015, Kree decided to launch its e-commerce portal www.quicksilver.sok - in Sokovia (“**QuickSilver**”) as the Government of Sokovia was incentivising global players in the digital markets to start operations in Sokovia through tax holidays, single window regulatory clearance and subsidised land. Kree’s entry into the market was a ‘game-changer’ for the digital economy in Sokovia, the consumer preferences swung in favour of the digital marketplaces. A large number of traders operating through conventional shops and showrooms started listing their products on QuickSilver. There was also an increase of traders and shopkeepers selling their products through their own online portals.



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5. Soon after its launch, Kree acquired FlipMart, and its portal was characterised by impressive delivery times, interactive user interface, and huge catalogue of products. This acquisition resulted in QuickSilver's market share rising to 41.89% in the e-commerce market in 2018.
6. Sokovia is one of the largest markets for smartphones in the world, only second to China in yearly shipments of smartphones. Recognizing the huge consumption potential in the market for portable consumer electronics, the Government of Sokovia, led by the National Development Alliance ("NDA"), announced a subsidy of 10% to all smartphone manufacturers who sell at least 65% of their inventory of phones online. The NDA hailed this as a significant step towards Digital Sokovia. Consequently, it was estimated that 60% of the smartphones in Sokovia were bought through the online medium in 2018-19. Out of all the smartphones purchased online in Sokovia in 2018-19, approximately 68.27% were sold through QuickSilver.
7. ThreePlus ("3+") is the leading smartphone manufacturer in Sokovia. It accounts for 58% of all smartphones sales in Sokovia. 3+ sells its smartphones through online channels (including all e-commerce platforms), as well as through its conventional offline distributors and channel partners. Notably, 3+ also started its own online portal where it initially sold exclusive 3+ products but has started selling all smartphones and accessories. A large number of sellers that list their products on 3+ website are the resellers, who buy products from other channels and list on the 3+ Web Store for selling. Approximately 23% of all smartphones purchased online were bought through the 3+ Web Store. The flagship smartphone of 3+ – Orian X Pro (2018) – is the most popular premium smartphone in Sokovia due to its high 8000Mah battery life and superior 30 megapixel camera.
8. In early 2019, Kree decided to launch its own premium smartphone, Genus in Sokovia. The Genus is available for sale only through the platform of QuickSilver and 3+ Web Store, where it competes with other smartphones. The Genus accounts for about 3.5% market share in Sokovia in the market for smartphones.
9. In the run up to the festive season in Sokovia (October 12-20), 3+ offered a heavy discount of 15% on its flagship Orian X Pro when bought on the 3+ Web Store. Additionally, 3+ offered 3 years free



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warranty including liquid damage protection, along with free screen and body protectors for the phone on all purchases made on its website. In the same vein, 3+ also announced to partner with QuickSilver and BuyTM for the sale of Orian X Pro to offer certain benefits including a discount of 10% when bought from their online marketplaces during the festive season. For its offline distributors and channel partners, 3+ undertook to do the promotion of its products at their stores and offered volume discounts to its distributors.

10. The Confederation of Mobile Phone Sellers and Retailers (“**COMPSAR**”) is the largest union of offline mobile and portable electronics vendors and retailers in Sokovia. The COMPSAR felt aggrieved by the discriminatory policies adopted by 3+ and decided to file an information with the NACS alleging predatory conduct and ‘refusal to deal’ under the SKY. COMPSAR alleged that 3+ was creating uneven playing field in the market by favouring its own online portal (3+ Web Store) to the exclusion of the offline vendors.
11. During the festive season, other e-commerce platforms including QuickSilver and BuyTM as well as smartphone manufacturers in Sokovia also announced special discounts applicable on smartphones in the range of 10,000 Sokovian Coins (“**SKC**”) to 90,000 SKC. In retaliation, the COMPSAR issued a nation-wide threat to not stock any smartphone manufacturers’ phones which sells at deeply discounted prices online. The offline vendors took to the streets and burned effigies of the CEOs of the smartphone companies. The offline vendors also petitioned to the Government to take action against the online market places including QuickSilver.
12. In the ensuing tensions between the smartphone companies and the COMPSAR, Kree decided not to sell any smartphones on QuickSilver but the Genus for a period of 8 days. During this period, Kree sold a record number of Genus phones in those 8 days, 3+ retaliated by deciding not to sell the Genus on its Web Store. After taking stock of its sales figures for the festive months (September – October), 3+ noticed a steep decline in sales and decided to approach NACS against QuickSilver. 3+ filed an information under the SKY alleging that QuickSilver's decision to favour the sale of its parent company’s smartphone for 8 days on its platform was anti-competitive and in violation of Sections 3 and 4 of the SKY.



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13. The NACS took cognizance of the matter and due to commonality of the parties, decided to club the informations filed by COMPSAR and 3+. NACS passed an order under Section 26(1) of the SKY and directed the Director General for Investigation (“**DG**”) to submit its investigation report (“**DG Report**”) to look into the conduct of 3+ and Kree.
14. The DG conducted a detailed investigation and sought written responses from 3+, QuickSiver, COMPSAR and other stakeholders including the competitors of these parties and consumer representative bodies. The DG also recorded oral statements of the representatives of the companies involved and accessed the emails of the key representatives of 3+ and QuickSiver. The DG’s investigation revealed that market for smartphones in Sokovia was highly volatile, a large number of players had entered and exited the market in 3 - 4 years. The consumer surveys conducted by the DG demonstrated that price is one of the key determinants for a consumer to decide on the smartphone to buy. Consumers also look for other features including processor, size, screen resolution, weight, battery life, memory, etc. when deciding on the smartphone. The DG also reviewed the market studies conducted by ‘Gadget Store’ and noted that smartphones sale in Sokovia was increasingly tilted towards the online sales. The DG however mentioned in its report that while the number of smartphones bought online was increasing, the preference of the consumer was still to buy smartphones from offline stores, which was apparent from the results of the consumer survey conducted by the DG.
15. 3+ and other smartphone manufacturers submitted in their responses that in light of the policy change of the Government to incentivize the sale of a sizable portion of their production online, the sales strategy, and marketing plans; the prices for smartphones sold through online and offline channels are sometimes tailored separately. 3+ specifically mentioned in its response that it believed that the consumer has many media to buy the same product and online sales have provided an easy alternate for the consumers. 3+ sought to emphasise the importance of online sales channels through its own example where the 3+ Web Store was slowly increasing its market share in online sale of smartphones.
16. While analysing the market for e-commerce, i.e. B2C sales online, the DG relied on a number of industry reports to arrive at the conclusion that QuickSilver was the market leader in terms of number of transactions made as well as in terms of the number of traders listing their products on online



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marketplaces. BuyTm was the second largest competitor with a market share of 23%. The DG in its report concluded that QuickSilver was a dominant player in the market for e-commerce. Regarding the conduct, the DG rejected QuickSilver's justification for not selling the smartphones of any manufacturer during the festive season as a commercial decision. While the DG acknowledged that COMPSAR had started a negative social media campaign against QuickSilver with calls to boycott QuickSilver, it did not find merit in QuickSilver's argument that since it feared for its loss of reputation, it decided to not sell smartphones on its marketplace. The DG concluded that by selling only Genus during the festive season, QuickSilver was using its dominant position in the e-commerce market to consolidate its market position in the market for smartphones in Sokovia.

17. While analysing the market for smartphones, the DG agreed with the submissions of the COMPSAR and held that 3+ was a dominant player in the market for smartphones in Sokovia. The DG had accessed the internal emails of head of sales which revealed that 3+ wanted to capture the premium phone segment and Orian X Pro even if sold at low margins in the beginning, in the longer run would be a high selling product. The DG in its findings observed that the 3+ had abused its dominant position by imposing discriminatory conditions between the online and offline sellers. Further, its conduct amounted to anti-competitive refusal to deal with offline players.
18. The NACS forwarded the DG Report to all parties and granted an opportunity to file written objections to the DG's Report. 3+ challenged the DG's approach in defining the relevant market and submitted that in the market for sale of smartphones through online channels, it does not have any strength. In fact, it is a small player facing competition from a number of bigger players. Thus, its conduct cannot amount to an abuse of dominant position. 3+ went on to submit that the DG failed to consider the justifications submitted by 3+ for different terms of sale between online and offline distributors/sellers. 3+ also submitted data released by the Sokovian Government on sale of smartphones for Quarter of October-December 2019, which demonstrated 18% YoY growth of sale of smartphones in that quarter. Interestingly, the Governmental data was only limited to registered offline shops and showrooms. 3+ submitted that there was no anti-competitive harm to the offline stores due to any of its alleged anti-competitive conduct. 3+ supported the findings of the DG holding QuickSilver in a dominant position and abuse of dominant position by QuickSilver.



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19. QuickSilver also objected to the definition of the relevant market and submitted that for a consumer, there is no distinction between online and offline sales. Accordingly, its market position should be assessed in the market for smartphones in Sokovia. QuickSilver submitted that its market share in the market for sale of smartphones in Sokovia was approximately 30% as such it was not in a dominant position. QuickSilver also submitted that in the market for e-commerce sales, while its market share was around 40%, it was facing high competitive constraints. Quicksilver submitted that on the Sokovian Government's directive it had to list all the traders with an annual income of less than 500,000 SKC on its platform on a non-commission basis. Further, QuickSilver always reacted to the demands of its customers, including cancelling sales of smartphones during the festive season which resulted in loss of revenue. Regarding sale of Genus during the festive season, QuickSilver submitted that Genus was relatively a new entrant to the smartphone market and its sales did not cause any harm to the competitors.
20. In its order dated 31st December 2019 (Order), NACS directed the parties to appear before it for an oral hearing on 16th February 2020 to address their comments and objections to the DG Report. The Order also directs the parties to make submissions on the calculation of penalty in this case. Further, the Order notes that 3+ must present arguments pertaining to the effects of its 'dominance' and QuickSilver must present objective justifications for its conduct.

Note to participants:

- a. For the purposes of the moot court competition, counsel for the Opposite Party will argue on behalf of 3+ in both the cases, i.e. against the information filed by COMPSAR and the information filed by it against QuickSilver. Accordingly, COMPSAR and Kree will be represented by a common counsel.
- b. Counsels representing both sides are encouraged to explore additional arguments in addition to the issues that have been specifically identified in the Moot Proposition, including arguments on principles of natural justice.