



THE FOURTEENTH NLU ANTTITRUST LAW MOOT COURT COMPETITION, 2023

National Law University, Jodhpur

in association with

Cyril Amarchand Mangaldas



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KNOWLEDGE & RESEARCH PARTNERS



PROPOSITION

Background facts:

1. Florin, a democratic, socialist republic that gained independence in 1950, is the largest democracy in South Asia. From being a heavily agriculture-dependent state in the 1950s, Florin's economy grew manifold after liberalisation was introduced in the 1970s. The Government of Florin, in an attempt to introduce free trade policies, loosened its control on international trade and capital investments, boosting the country's growth in consonance with the world trade economy.
2. In order to ensure fair competition in the economy, the Parliament of Florin enacted the Competition Act, 2002 ("**Act**"). The 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 Act established the Competition Commission of Florin ("**CCF**") to promote free and fair competition and prohibit anti-competitive practices.
3. By the early 2000s, the advent of and easy access to the internet gave rise to various online businesses, creating an online economy that not only allowed commercial transactions to be conducted virtually, but also gave rise to new industries such as social media and search engines. Amongst the many sectors that saw significant expansion, the entertainment industry was one of the primary beneficiaries, largely as a result of majority of Florin's population falling within the 16 to 30-year age bracket which was observed to be engaging in a new cultural phenomenon called 'binge-watching'. In fact, the rise of new age movies and shows in the online space was so prevalent that people made groups and identified themselves as 'stans'. A show titled 'Breaking Bread' produced by Florin's famous producer duo Jigneshbhai Patel and Manye East was the top ranked show in Florin in 2021.
4. Florin's digital economy witnessed the introduction of a gamut of new age technologies, as companies across the country made their products and services available online *via* the world wide web as well as through the introduction of mobile applications ("**Apps**"). These new-age Apps catered to a variety of consumer needs such as news and literature, e-commerce and the purchase of fast-moving consumer goods, spirituality, sports, entertainment, digital payments etc. In fact, all 402 episodes of Breaking Bread were launched via an over-the-top ("**OTT**") streaming service called 'Malplix'.

5. By 2010, movies, plays, concerts and other forms of entertainment, gained prominence not only with youngsters and stans but amongst all age groups. In order to capitalize on the booming entertainment industry and the cultural phenomenon of ‘standom’, online platforms were launched for ease of access in booking tickets for events and movies. These platforms provided consumers easy access to a wide range of events at a single location and also allowed them to book tickets for various events from their computers, laptops or even their smartphones. Further, the flexibility offered by online booking platforms not only allowed consumers to browse events and movies by genre, date and location, it also allowed them to search for specific events around them.
6. Due to the convenience and wide range of features on offer, the population of Florin quickly took to these online booking platforms. In parallel, event organisers and multiplex operators flocked to these online platforms, to conduct marketing and promotional campaigns for their movies and events. Multiplex operators and theatre owners intended to rival the rise of OTT Apps such as Malplix to ensure constant footfall as well as generate unprecedented revenues by capitalizing on the high fiscally imprudent decisions of the ‘stans’ in consuming all media and content of the celebrities they ‘stan’ for.
7. While the online movie ticketing space was initially characterised by a few players, more and more platforms began to break into the market with innovative business models and unique features. Newer players used inventive features and business models such as attractive user interfaces, tie-ups with single screen cinemas that sold cheaper movie tickets and running attractive promotions from time to time to break into the market.
8. Trickster.com (“**Trickster**”) is one such online platform that facilitates online ticket bookings for movies, plays, concerts, and sports events across Florin through its mobile App as well as its website. It competes with other online platforms for the sale of movie tickets, as well as sales made through box offices of multiplexes and single screens alike. Trickster is one of the most popular platforms for online movie bookings and has established itself as a household name in the online movie booking space, and more so in the ‘stan’ community by way of a specific catalogue of movies and events for them alongside promotional offers. Market reports suggest that Trickster is the first choice for online movie bookings for at least 30-35% of the consumer base.
9. Ibracadabra.com (“**Ibracadabra**”), another online booking platform that was introduced in Florin shortly after Trickster, has also gained significant brand value and popularity amongst

consumers. Ibracadabra established itself with its catchy tagline “*booking tickets like it’s magic*”. In a nation-wide survey, 15-20% of consumers (including but not limited to ‘stans’) suggested that they prefer the Ibracadabra platform over Trickster. Trickster and Ibracadabra are two of the most prominent online platforms in Florin for movie bookings. The remaining market share is held by various smaller players operating in this space, none of whom hold more than 5% share, individually.

10. In March 2021, Trickster also penetrated the online payments market by launching their payments app called Rodeo Pay (“**Rodeo**”). Rodeo offered consumers an efficient and convenient means to make online payments, as its integration with Trickster allowed faster payment processing compared to other modes of online payment such as net banking and online debit/credit card payments. Initially, Trickster encouraged consumers to make purchases on their platform via Rodeo by running cashback schemes.
11. Within a few months of Rodeo’s launch, Trickster mandated that all tickets purchased on its platform would have to be paid for using the Rodeo payment service. Further, consumers were required to accept the terms and conditions of both Trickster and Rodeo, such as sharing of personal details like name, address, phone number and email IDs with third parties. Trickster also required consumers to create an account in order to use the platform, wherein consumers would have to specify their preferred genres and languages, provide movie reviews and allow data sharing with third parties.
12. Trickster’s App also required consumers to enable GPS-tracking on their devices while using the Apps, as this helped them provide real-time information of events and shows available in the consumers’ vicinity, provide relevant movie suggestions, and make attractive offers based on consumers’ interests. Trickster spent years collaborating with tech-incubators and invested millions in research and development to introduce real-time updates and feedback about movies and events.
13. As per media reports, Trickster was rapidly gaining popularity as an online platform and becoming the most preferred and reliable source for information related to movies, plays, sports events etc. Florin’s population marvelled at the benefits of tailored suggestions and real-time updates that the Trickster platform provided. Further, it was widely reported that the revenue generated by Trickster had drastically increased in the last financial quarter. While the stan community significantly contributed to Trickster’s revenues, they were also

able to double the number of stans in Florin, as a result of the ease of access to movies that Trickster brought.

14. Trickster has also entered into a Memorandum of Understanding (“**MoU**”) with various cinema theatres and multiplexes wherein they granted zero interest monetary loans, on the condition that the theatres and multiplexes will sell at least 50% of their inventory via the Trickster platform. The remaining inventory could only be sold on the theatre / multiplex’s own platform (including its own app, website or offline). It thus prevented theatres and multiplexes from selling tickets via Ibracadabra or any other third party online booking platform. Trickster also had a feedback mechanism that allotted ratings to theatres and multiplexes, which would be visible to consumers at the time of browsing or booking movies. However, to be on the rating list, theatres and multiplexes had to enter into the MoU with Trickster and agree to its conditions.
15. Additionally, Clause 5 of Trickster’s MoU stated that “*No multiplex can sell tickets offline or on their own website for better prices or give better offers than those offered on the Trickster platform.*” In response, several theatre and multiplex owners publicly spoke out against the unfair conditions imposed by Trickster. These statements were reported across social media websites such as Flitter.com and prominent newspapers like the Florin Times. Trickster defended itself by saying that these price parity clauses were standard industry practice for online booking platforms across various industries and not just the entertainment space, and that the multiplexes agreed to sign their MoU because of the superior platform features and other benefits accruing from their broad consumer base.

Information filed in Case No. 3 of 2022 and Appeal No. 1 of 2023

16. In October 2022, Ibracadabra filed an information before the CCF alleging that Trickster is indulging in anti-competitive conduct by making the use of Rodeo mandatory for consumers availing their online booking services. It was also alleged that by way of this arrangement, Trickster is using its strong foothold in one market to strengthen its position in another market.
17. Ibracadabra also alleged that Trickster was charging exorbitant fees from other booking platforms and multiplex / theatre owners for the datasets gathered by its platform and Rodeo. This as per Ibracadabra, results in denial of market access by Trickster by foreclosing access to consumer data that is crucial for customer acquisitions in the online ticketing space.

18. Aggrieved by the conditions prescribed under Trickster's MoU, Ibracadabra also alleged that the MoU allowed Trickster to abuse its dominant position and impose price parity conditions on theatres and multiplexes. As a result of Trickster's MoU, various theatres and multiplexes refused to sell their tickets to Ibracadabra, causing severe loss of revenue and popularity.
19. The CCF, in its ordinary meeting held on 2 November 2022, considered the information filed by Ibracadabra and heard oral submissions of the parties on the allegations raised by Ibracadabra against Trickster under Section 3(4) and 4 of the Act. Subsequently, vide its order dated 17 November 2022, the CCF formed a prima facie opinion and dismissed the allegations against Trickster. Its order under Section 26(2) noted that the Informant had failed to establish that the conduct of Trickster caused or was likely to cause AAEC in the relevant market(s).
20. Aggrieved by this order of the CCF, Ibracadabra filed an appeal before the Florian Competition Appellate Tribunal ("**FCAT**") bearing Appeal No. 1 of 2023.

Combination No. C-2022/11/47523 and Appeal No. 3 of 2023

21. As per a press release dated 15 November 2022, Trickster announced its acquisition of another online platform called ThunderBird ("**ThunderBird**"). Trickster notified this combination before the CCF on 18 November 2022 bearing Combination Registration No: C-2022/11/47523. The combination ("**Combination**") related to 100% transfer of business, assets and operations of ThunderBird which had an 8% market share in the online movie booking sector, pre-acquisition. In its order approving the Combination, the CCF noted that the business transfer arrangement for Trickster's acquisition of ThunderBird required "*prior intimation and consultation*" of Trickster, in order for ThunderBird to enter into any commercial arrangements for (a) digital payments on its online booking platform, and (b) listing of new multiplexes and theatres on its platform.
22. The CCF issued a Show Cause Notice ("**SCN**") bearing Ref. No. M-2022/0107/CD/1 and initiated proceedings under Section 43A of the Act against Trickster, for failure to disclose all aspects of the Combination in accordance with Section 6(2) of the Act. Despite arguments made by Trickster during oral hearings before the CCF that this clause was solely in the nature of investor protection and did not amount to ThunderBird ceasing to act independently prior to the CCF's approval, in its order under Section 43A dated 5 January

2023, the CCF imposed a penalty of Florian Rupees 2 million against Trickster. Subsequently, Trickster paid the penalty imposed against it.

23. Ibracadabra has also approached the FCAT in appeal against the order of the CCF approving Trickster's acquisition of ThunderBird, bearing Appeal No. 3 of 2023. Ibracadabra alleged that the increased market share of Trickster, after the acquisition of ThunderBird, would allow it to act independently of market forces. Further, combined with the alleged anti-competitive practices of Trickster, the Combination of ThunderBird and Trickster would cause AAEC in the relevant market.

Proceedings before the FCAT

24. In the interests of adjudicatory efficiency and considering both appeals filed by Ibracadabra against the CCF and Trickster are interlinked, the FCAT has clubbed Appeal Nos. 1 and 3 of 2023 for oral hearings.
25. Therefore, the FCAT will hear oral submissions on 19 February 2023 relating to the following issues:
- a. The CCF has erred in dismissing the allegations that Trickster has leveraged its position in the sale of movie tickets to enter the market for online payments, and that it has indulged in the tying of services by making the use of Rodeo mandatory to avail ticketing services on its platform.
 - b. The CCF has erred in dismissing the allegation of denial of market access to online booking platforms and theatres / multiplexes caused by Trickster's foreclosure of access to consumer data.
 - c. The CCF erred in dismissing the allegations that Trickster has imposed unfair conditions on multiplexes including price parity clauses and exclusive arrangements that prevented dealings with other booking platforms.
 - d. The CCF erred in approving Trickster's acquisition of ThunderBird.

Notes:

1. The laws of Florin are *pari materia* with the laws of India. Florin passed its competition law statute, the Competition Act of Florin, 2002, or the Act (as defined above) in 2002, which was enforced in a phased manner, with its enforcement provisions enforced in 2009 and its last provisions came into force in 2011.
2. Appeals from the CCF lie to the Florian Competition Appellate Tribunal, and further to the Supreme Court of Florin. The CCF regards the decisions of the Competition Commission of India, as well as appellate tribunals and courts to have high persuasive value. Further, the CCF also regards the decisions of foreign competition regulators highly, and regularly places reliance on established precedents and principles from other jurisdictions.
3. Counsels for both sides are required to address the issues and arguments specifically mentioned in the Proposition. However, they are free to frame sub-issues and make other arguments. Further, the counsels are at liberty to place reliance on the relevant sub-provisions of Sections 3, 4, 5 and 6 as well as other provisions under the Act and regulations framed thereunder, for their arguments.
4. Issues pertaining to maintainability of the clubbed proceedings and jurisdiction must not be argued. Counsels representing the appellant will present arguments on all issues on behalf of Ibracadabra. Counsels representing the respondents will present arguments on all issues on behalf of the CCF and Trickster. Accordingly, written submissions by Ibracadabra will be filed against both, the CCF and Trickster and this ought to be reflected in the cause title description in the written submissions.