

Shri NJ Yasaswy Memorial 5th National Moot Court Competition - 2020 Moot Problem 1

Catch Big

In this era of technology, telecommunications have become an important part of everyone's life. Himasthan is the world's third largest market of Internet Users and is also ranked second in terms of the number of mobiles working. The Himasthann telecom sector is majorly dominated by mobile companies like Stark Enterprise, Asgard Telecommunications and Marvelous Telecom Ltd. While other players such as Tocomo, Swamy Telecom etc are struggling to find their footing.

Infinity Pvt. Ltd. was a company established in March, 1957 by Mr. Harjeet Singh. This company has ventured into various sectors such as petroleum, electricity, mining and transport etc. In January 2019, Mr. Harjeet Singh ventured into the field of telecommunication by establishing a subsidiary company and launched its services on the 1st January, 2019 under the name and style of Infinity Telecom.

As per some famous news portals, Mr Harjeet Singh had made huge investments while launching the Infinity Telecom services. It was alleged that approximately INR 50,000 crore were invested by Mr. Harjeet Singh in this company. Mr. Harjeet Singh in his launching speech mentioned that he is hopeful that Infinity Telecom will get 100 million subscribers in the shortest period of time. This initiative was said to be one of the biggest start-up investments in the world.

During his launching speech, Mr. Harjeet Singh also announced an introductory offer for INR 49 as SIM charges whereby all the new subscribers of Infinity Telecom were to get all telecommunication services including voice call,

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internet data, roaming etc without any additional cost/recharge for next three months till March 2019.

Infinity Telecom emerged as the first telecom operator which started offering fully data centric services, entirely based on voice over long-term evolution (VoLTE) technology, which enables voice to carry over an internet protocol (IP) network at a higher speed than earlier 2G and 3G traditional networks at a lower cost. However, to avail these services, the users must have a smartphone which supports 4G network. In furtherance to the telecom services, Infinity Telecom also started offering 4G compatible mobile handsets at a nominal cost of Rupees 5000 per handset only.

As per a news article, the base rate of internet services is rupees 5000 per GB whereas Infinity Telecom was offering the services free of cost for first 3 months of subscription. On being questioned, Mr. Harjeet Singh in another news interview stated that the Company manages to stay afloat in the market even after providing free telecom services through the sale of smartphones.

Due to Infinity Telecom's introductory offer the other players in the market, such as Swamy Telecom, suffered huge loss in the number of subscribers and revenue. Allegations were made by Swamy Telecom on social media stating that the actions of Infinity Telecom are nothing less than predatory pricing. It was also pointed out that how infinity telecom has made a huge investment of 50,000 crore and offered to provide all services free of cost for 3 months.

It was said that offering free services was nothing more than a demonstration of position of strength by Infinity Telecom which also compelled every competitive service provider to reduce their prices for a short period.

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While this whole upheaval in the market was going on, on April 1st 2019, Infinity Telecom launched another offer for its new and existing subscribers by the name of “Double Dhamaal” wherein, it offered free telecom services, with a cap of 5Gb per user per day for three subsequent months i.e. till June 30, 2019.

As per the recent reports published by the Telecom Regulatory Authority of Himasthan released on 31st April, 2019, the subscriber base of telecom companies in Himasthan was reported as Asgard Telecommunications stood first at 285 million followed by Marvellous Telecom Ltd. at 208 million, Stark Enterprise Cellular at 191 million, and Infinity Telecom at 114.9 million making Infinity Telecom the fourth largest telecom operator in Himasthan within a short span of time. On the other hand, other players lost 50 Million subscribers and INR 300 Crores revenue. Mr. Raghav Daxi, a famous economist in his case study on Infinity Telecom stated on the basis of his analysis that the subscribers are switching from their previous service providers to infinity telecom because of later’s attractive price policy.

Aggrieved by the actions of Infinity Telecom, Swamy Telecom filed a case against Infinity Telecom in the Competition Commission of Himasthan (Hereinafter referred as ‘*CCI/Commission*’) on 20th May, 2019 alleging that Infinity Telecom has abused its dominant position since its inception which lead to huge loss of revenue suffered by the emerging telecom companies including Swamy Telecom itself. In furtherance to this, the case was listed in the Commission on 10th June, 2019.

Rejecting the allegations put forth by other key players, Mr. Harjeet Singh stated in an open press conference that Infinity Telecom is not a dominant but a

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nascent entrant in the market, which is already ruled by big giants such as Stark Enterprise, Asgard Telecommunications, Marvellous Telecom Ltd. and Swamy Telecom etc. and their free services are merely an attempt to attract customer for establish their footing in the market.

Further, on 30th May, 2019 Infinity Telecom surged its price for its services by 100% and started providing a mere 2GB data per day per user for INR 600. Interestingly, on 30th May, 2019 other three giant service providers such as Marvellous Telecom Ltd., Asgard Telecommunications and Stark Enterprise also surged their prices which they had initially reduced during the month of March.

At the time of hearing, the informant alleged that the actions of Infinity Telecom amounted to predatory pricing and abuse of dominance. It was further alleged that this combined action by key dominant players in the market such as MarvelousTelecom Ltd, Stark Enterprise and Asgard Telecommunications amounts to cartel under the Competition Act, 2002.

In Light of given facts, the CCI passed a decision in favour of Infinity Telecom and held that it was neither in a dominant position nor there was a cartel in existence. Aggrieved by the order passed by the Commission, the Swamy Telecom filed an appeal before the Competent Authority that Infinity Telecom is providing telecom services below the average variable cost with the sole intention of eliminating emerging competitors like it (Swamy Telecom). Hence, appropriate actions must be taken to promote competition in the market.

Submit your arguments.

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For the purpose of this moot problem –

1. The Constitution of Himasthan adopts the Constitution of India verbatim and all the provisions of the Constitution of India are incorporated as the provisions of Himasthan Constitution.
2. The powers and the jurisdiction of the Apex Court of Himasthan are the same as the powers and the jurisdiction of the Supreme Court of India.
3. The provisions of The Himasthan Competition Act, 2002 are same as that of The Competition Act, 2002 passed in India.
4. The rest of the laws of Himasthan, including Corporate and Commercial laws and Procedural laws are in parimateria with the laws of the Republic of India.

Disclaimer:

The facts stated in the present case are fictitious and have been drafted solely for the purpose of the competition. The facts, names, locations and dates bear no resemblance to any person, event or happening whether dead or alive. Any resemblance, if any found is purely coincidental. This problem does not intend to hurt the feelings of any section of society or to offend any person.