

BEFORE THE COMPETITION COMMISSION OF INDIA

CASE NO. _____ OF 2014

MEMO OF PARTIES

[Under Regulation 10(1) of CCI (General) Regulations, 2009]

iJustice – A Public Interest Law Initiative of Centre for
Civil Society]
Through its President – Parth J Shah]...Informant
A-69, Hauz Khas, New Delhi 110016
Ph. 011-26521882; 26512347 | Email: parth@ccs.in

Versus

Common Law Admission Test Committee (“CLAT”),]...Opposite Party
Through its Convener - Prof. (Dr.) Bimal N. Patel
Attalika Avenue, Knowledge Corridor, Koba,
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Preferred mode of service: courier or speed post

Delhi

Dated:.....

Filed by:

Prashant Narang and Shefali Malhotra

COUNSELS FOR THE INFORMANT

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 Civil Society]...Informant
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**INFORMATION UNDER SECTION 4 READ WITH
 SECTION 19(1)(A) OF THE COMPETITION ACT, 2002**

MOST RESPECTFULLY SHEWETH:

1. This information is filed by iJustice – a public interest legal advocacy initiative of Centre for Civil Society under S.19(1) read with S.4 of the Competition Act, 2002 against the unfair practice of charging very high registration fee of Rs. 4000 and an exorbitant pre-admission advance deposit of Rs one lakh by the opposite party CLAT committee from candidates aspiring to join the prestigious top National Law Universities (NLUs) in India. The Informant submits that the opposite party has been abusing its dominant position by imposing unfair and discriminatory conditions in provision of law admission test and also imposes supplementary unconnected obligations on candidates appearing for the law admission test conducted by the opposite party. The Informant seeks relief from the Hon’ble Commission in form of (i) a restraint

order against the opposite party to stop charging any pre-admission advance deposit and charge only a reasonable amount as exam registration fee as well as a penalty against the opposite party; and (ii) penalty to be imposed on the opposite party for abusing its dominant position.

2. The legal name of the Informant is Centre for Civil Society and it is registered as a trust. The information is being filed through its President Parth J Shah who is authorized to do so being the President of the Trust.

3. The complete postal address of the informant is:

iJustice – A Public Interest Law Initiative of Centre for Civil Society

Through its President Parth J Shah

A-69, Hauz Khas, New Delhi 110016

Ph. 011-26521882; 26512347 | Email: parth@ccs.in

4. The informant prefers speed post or courier as mode of service.

5. The legal name and address of the opposite party is:

Common Law Admission Test Committee (“CLAT”),

Through its Convener - Prof. (Dr.) Bimal N. Patel

Attalika Avenue, Knowledge Corridor, Koba, Gandhinagar – 382007, Gujarat.

Ph. 079-23276971/72, 079-66701391

Fax: +917878185055 | Email: helpdesk@clat.ac.in

6. That the name and address of counsels authorized by the informant are:

Prashant Narang (D 1907/2010) and Shefali Malhotra
(D4161/2010)

A-69, Hauz Khas, New Delhi-110016

Ph. 26521882; 26512347; 26517456

Email: prashant@ijustice.in ; shefali@ijustice.in

A. STATEMENT OF FACTS:

7. That the Informant - iJustice is a public interest legal advocacy initiative of Centre for Civil Society (CCS). It represents and assists individuals and groups across India to challenge violations of fundamental rights and the Rule of Law.
8. That the Centre for Civil Society (hereinafter referred to as 'CCS') is a public policy think tank (registered as a Trust) advancing personal, social, economic and political freedoms. It aims to usher in an intellectual revolution that encourages people to look beyond the obvious, think beyond good intentions and act beyond activism. A true copy of the Trust deed/Constitution of the petitioner along with a copy of webpages of www.ccs.in and www.ijustice.in (as accessed on Feb.6, 2013) are annexed herewith and marked as **Annexure C-1 (COLLY)**.
9. That some of the prominent members of the organization are: Shri Ashish Dhawan (Founder and CEO of Central Square Foundation), Shri Amit Kaushik (Former Director of Ministry of Human Resource Development), Shri Gurcharan Das (Former CEO of Procter and Gamble India), Dr. (Shri) Parth J. Shah

(President and Founding Trustee of CCS) and Ms. Premila Nazareth (Independent Consultant on Governance and Research). Board of Advisor includes Luis Miranda (former Chairman, IDFC Private Equity), Ankur Shah (Interim India Director, Acumen Fund), Iris Madeira (COO, Madhav Desai Consulting), John Blundell (Ralph Harris Fellow, Institute of Economic Affairs), Leland Yeager (Professor Emeritus, Auburn University and the University of Virginia), Nitai Mehta (Founder and Managing Trustee, Praja Foundation), Praveen Chakravarty (Eisenhower Fellow and CEO, Anand Rathi Financial Services), Rakesh Wadhwa (author and entrepreneur), Reuben Abraham (Assistant Professor, Indian School of Business). CCS Board of Scholars includes Ajay Shah (Professor, National Institute for Public Finance and Policy), Deepak Lal (Professor, IDC, California), Isher J Ahluwalia (Chairperson, Board of Governors, ICRIER in New Delhi), Jagdish Bhagwati (professor/ Senior Fellow, Columbia University/ International Economics at CFR), Kirit Parikh (Emeritus Professor and Founder Director, IGIDR, Mumbai), Lord Meghnad Desai (Professor, London School of Economics), Nirvikar Singh (Co-director, SC Institute of IE), Shreekant Gupta (Professor, Delhi School of Economics), Surjit Bhalla (Managing Director, OXUS Research and Investments), Swaminathan Aiyer (Consulting Editor/ Research Scholar, Economic times/ Cato institute), Urjit Patel (Expert, Economics and Public Finance in India).

10. That CCS was ranked among the top 50 think tanks in the world in a study conducted by the Think Tanks and Civil Societies Program at the University of Pennsylvania. CCS received this award for its multi-sector, multi-disciplinary approach, spanning research and analysis, policy reform, proofs of concept, and advocacy to fight for economic, social and political freedom.

11. That CCS has been involved in number of education and governance related litigation before this Hon'ble Court, Hon'ble Supreme Court of India and several High Courts across India.

Other cases

Case details	Court	Issue
WP (C) No. 95 of 2010 Society for Un-aided Private Schools of Rajasthan v. U.O.I. & Anr. (decided on 12.04.2012)	Hon'ble Supreme Court of India	Whether 25% reservation under s.12 of RTE Act is constitutional
SLP (c) no. 17305 of 2012 Federation of Public Schools & Ors. V. State of GNCT of Delhi (ongoing)	Hon'ble Supreme Court of India	Whether there should be any distance criteria for admission of economically weaker and disadvantaged section children

W P (c) 6623 of 2012 Centre for Civil Society v State of Rajasthan	High Court of Rajasthan at Jaipur	Challenging random eviction drives by Jaipur Police and implementation of Rajasthan Street Vendors
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12. That CCS has number of publications on education, namely “Reservation in Private Schools under the Right to Education Act – Model for implementation” by Shekhar Mittal and Parth J Shah, “Private school serving the poor” by James Tooley and Pauline Dixon, “expanding educational opportunities: Delhi’s SC/ST tuition fee reimbursement scheme” by Parul Sharma, “Education vouchers: Global experience and India’s promise” by Parth J Shah and Corinna Braun-Munzinger.

13. That the applicant organisation has conducted a number of researches in the field of education in past 12 years and published several papers on various education related topics on its website. A list of some of these papers along with authors and year of publications is given below:

S. NO.	RESEARCH PAPER	AUTHOR	Year
1.	Of Opening Colleges and Obtaining Licenses	Shailly Arora and Sruthijith K K	2002
2.	Why Central Exams At All	M. Gopinath and Hari Krishna	2003

3.	Funding by University Grants Commission	Shiva Mishra	2003
4.	Education Laws Through The Ages In A Few Pages	Prashant Roy	2004
5.	Higher Education For The Poor: Its Funding	Bhaskar Roy and Saransh Sugandh	2004
6.	Liberalisation, Literacy And Economic Growth: Beyond The Visible	Deepak Dewani	2004
7.	Education Expenditure by Government and Academic Outcomes in the State of Tamil Nadu	V Benedict Santosh	2005
8.	Amending The Delhi School Act And Rules, 1973	Shruti Saxena	2005
9.	An Overview of the Educational System in Sangam Vihar, Delhi	Saurabh Sati	2005
10.	Exploration Of Contours Of Education In Delhi Using Case Studies	Kanika Mahajan & Yugank Goel	2005
11.	A critical assessment of minority educational institutions in India	Molishree	2006
12.	Primary and Secondary Education in Bangalore	Anusha Pai	2006
13.	A study of the National Open Schooling System in India	Venu Agarwal	2007

14.	A voucher scheme for Bangalore: How to design a voucher pilot?	Soumya Chakravarthy	2007
15.	Education Handbook: Maharashtra	Saurav Neel Patyal	2007
16.	A critical study of the Swedish Model of Education	Abhinaba Chatterjee	2007
17.	Education Mapping in a Slum Area: An Analysis of the Dynamics and Demand Supply	Mansi Shah and Sreyashi Sen	2008
18.	Special Needs Education: Are They Really Getting All The Help They Need	Rustam A. Aiyer	2009
19.	Teachers Unions: Who, Where and What They Think	Devkanya Chakravarty	2010
20.	Muslim Education- A Study Of Madrasas	Devna Soni	2010
21.	Rehabilitation through Education for Juveniles in Conflict with Law	Meghna Dasgupta	2010
22.	An Assessment Of The Technical Education Community Outreach Scheme	Aniket Tathagata Chetry	2012
23.	Are Incentives 'Game-Changers' in Education Reforms?	Urvashi Kapuria	2012

24.	Can Minimally Invasive Education (MIE) be an Alternative System of Education?	Shantam Goyal	2012
25.	An Evaluation of the Foreign Education Institutions Bill (2010)	Deeksha Gehlot	2012
26.	A Case Against Public Private Partnerships in Higher Education in India	Sudhanshu Neema	2012

14. That the applicant is acting in a bona fide manner, and does not have any direct or indirect interest in the present Litigation, and acting entirely in public interest.

ABOUT THE OPPOSITE PARTY

15. The Opposite Party - Common Law Admission Test (CLAT) Committee is a body constituted by a Memorandum of Understanding (MoU) between 14 participating National Law Universities (NLU) in the conducting of and providing admission to eligible candidates in institutes imparting legal education. The Opposite Party CLAT Committee has control over the conducting of the Common Law Admission Test, 2014, an all-India admissions test for participating NLUs across India. The Opposite Party enforces its directives through the Common Law Admission Test Committee comprising of representatives from each participating NLU. Since its inception in 2008, CLAT has

been instrumental in setting up and administrating quality legal education in India. Gujarat National Law University, Gandhinagar (GNLU), is the university in charge of conducting the Common Law Admission Test for the year 2014. A copy of relevant page on the official website of CLAT confirming that GNLU is the CLAT organising university for 2014 is annexed herewith and marked as **Annexure C-2.**

16. CLAT involves the conducting of annual competitive entrance examination for admission in recognised premier NLUs across India to pursue legal studies at the undergraduate and postgraduate levels. A total of 14 NLUs are currently participating in CLAT, for a total of 1,660 undergraduate seats and 490 postgraduate seats, divided between general and reserved categories. The current participating NLUs include National Law School of India University, Bangalore; NALSAR University of Law, Hyderabad; The West Bengal National University of Juridical Sciences, Kolkata; National Law Institute University, Bhopal; National Law University, Jodhpur; Rajiv Gandhi National University of Law, Patiala; Hidayatullah National Law University, Raipur; Gujarat National Law University, Gandhinagar; Dr. Ram Manohar Lohia National Law University, Lucknow; Chanakya National Law University, Patna; National University of Advanced Legal Studies, Kochi; National University of Study and Research in Law, Ranchi; and National Law University, Orissa, Cuttack. The National Law University,

Delhi and various state universities conduct their own entrance examinations. The Examinations are prepared and conducted by participating NLUs each year on a rotational basis, although the rules regarding the examination, counseling, granting of seats, final admission, fee matters and other administrative aspects are established upon the consensus of the CLAT Committee.

17. The CLAT Committee was established upon the advice of the Supreme Court of India, with assistance from the Ministry of Human Resource Development and the University Grants Commission, through a Memorandum of Understanding arrived at between the then participating National Law Universities.

18. By virtue of the inherent dominance that the CLAT Committee and participating NLUs enjoy in the legal education market, there has been a consistent increase in the examination fees and the pre-admission advance deposit to be made at the time of counseling. The examination fee for the 2014 examination has been drastically increased to Rs. 4,000 and the reservation deposit has been increased to Rs. 100,000. This unfair practice of increasing these fees unilaterally without consideration of the candidates' financial statuses is an abuse of the dominant position that the Opposite Party enjoys in the market.

The facts giving rise to filing of this information by the Informant are as follows:

19. As per the officially issued CLAT Brochure/ CLAT website for 2014, at the time of filling the online application for registration for the examination, a fee of Rs. 4,000/- is to be remitted for General/OBC/PWD categories and Rs. 3,500/- for SC/ST categories of candidates. This is a steep increase of Rs. 1,000 from the prior years' registration fee of Rs. 3,000/-. A true copy of the relevant pages from the CLAT website is annexed herewith and marked as **Annexure C-3**.

20. The brochure/ website further states that the candidates who qualify for counseling as part of the merit list will be allowed to participate in the online counselling against the seats available with the participating NLUs only upon depositing the an adjustable fees of Rs. 1,00,000/-, intended to reserve the seat for that candidate as a means of provisional admission. Candidates so failing to deposit the required fee by the specified date will forfeit their right to be considered for admission for that year and their names will be dropped from the CLAT Merit List, and may only be considered for counselling in that year if the list of candidates is entirely exhausted and vacancies still remain. This fee has been doubled to rupees one lakh; it was Rs. 50,000 last year when the examination was conducted by Hidayatullah National Law University, Raipur.

B. CONTRAVENTION OF COMPETITION ACT 2002.

The Opposite Party is an “enterprise” under the Act

21. Section 2(h) of the Act defines an “enterprise” to mean “ a person or a department of the Government, who or which is, or has been, engaged in any activity, relating to the production, storage, supply, distribution, acquisition or control of articles or goods, or the provision of services, of any kind...” An “activity” includes any profession or occupation. Under Section 2 (u), “service” includes “service of any description which is made available to potential users”, specifically including “education” within its ambit. This would also include an examination conducted for a fee for the purpose of admission to educational institutions. The CLAT Committee is thereby an “enterprise” under Section 2 (h) and provides services in connection to the business of education. In Union Of India v. Competition Commission of India (W.P.(C) No. 5770/2011), it was held that government bodies or departments that exercise any welfare, commercial or economic functions become amenable to the CCI in the same way that any private entity discharging the same functions would be immune from such government bodies from the status of “enterprise” would only be allowed for sovereign functions. The Opposite Party performs a function of a commercial nature in conducting the entrance exams and releasing the results as a service for the payment of consideration through registration fees, fulfilling the requisites of an “enterprise”.

Administering and conducting the Law Admission Test for the top three NLUs in India is the relevant market

22. That it has been established that the Opposite Party is providing the service of conducting and administering the Common Law Admission Test, which is the sole way to get admission into the participating National Law Universities. It is contended that these services provided by the Opposite Party are of a distinct nature by reason of their characteristics and their intended use, as, among other things, stipulated by Section 2(t) of the Act, due to which they form a market in themselves which is distinct from the market of providing the service of conducting and administering admission tests to other law schools, colleges, institutions and universities of legal education in India.
23. The delineation of the relevant market for the purpose of competition law requires assessment of factors like consumer behaviour and their underlying preferences, demand and supply substitutability, the existence of specialized producers, and the nature and end-use of the service being offered by the Opposite Party.
24. That at the outset it is submitted that the market for the service offered by the Opposite Party is for entry into the five year integrated law course, which is distinct from the three year law course offered by most institutions of legal education in India. This is because the three-year law courses operate at the

graduate level, and only such candidates who hold an undergraduate degree are eligible for such courses. They, therefore, cannot be availed of by students who have just finished school. The only option available to such students who want to obtain a degree in law immediately after school is to enroll in a five year integrated course, such as the one offered by the participating NLUs. Hence, it is patently clear that institutions offering three-year law degrees do not operate in the same market as the universities into which admission can be secured by availing of the service offered by the Opposite Party, and crucially, there is no inter-substitutability in the services offered by both kinds of institutions.

25. It is submitted that in the context of the five year law course, the most unique, recognised and defining characteristic of the service offered by the Opposite Party is that it is the only test in the country that offers aspiring law students the opportunity of gaining admission into the best of the premier Indian institutions offering the integrated five-year law course: the National Law School of India University, Bangalore (NLSIU), the National Academy of Legal Studies and Research, Hyderabad (NALSAR), and the West Bengal National University of Juridical Sciences, Kolkata (WBNUJS). These are widely considered among the elite national law schools built on the five year law degree model proposed and implemented by the Hon'ble Bar Council of India, and these law schools have been consistently

ranked among the very best centers of legal education in India by various national and international publications. While there are several institutions of legal education across India that also provide a five year integrated law course, they are not substitutable with the integrated law course offered by the National Law Universities listed above.

26. That additionally, it is also advanced that NLSIU, NALSAR and WBNUJS are considered the three best law schools in India, and the quality of education in these law schools is considered comparable with the best universities in the world. A true copy of law school rankings and journal articles stating the same are annexed herewith and marked as **Annexure C-4 (COLLY)**. It must be noted that law school rankings are compiled on the basis of an objective assessment of criteria such as (a) brand value, (b) quality of education, (c) facilities, (d) infrastructure, (e) faculty, and (f) job opportunities available after the course. The rankings clearly demonstrate that there is a substantial and inescapable difference in terms of all these criteria between NLSIU, NALSAR and WBNUJS on one hand, and other five year law colleges on the other. This characteristic contributes substantially to the consumer preference in favor of the service offered by the Opposite Party, and makes it functionally dissimilar to any other higher education entrance admission examinations in the country. Thus, although all five year undergraduate legal courses formally entitle students to take the

Bar Examination to be eligible for practice in courts under the Advocates Act, 1961, this basic commonality does not place them in the same market due to the substantial, real and qualitative differences between National Law Universities, especially the Tier-I Law Universities: NLSIU, NALSAR and WBNUJS, and other colleges providing five year law degrees that make the cross-elasticity of demand nil, and establish that the services are interchangeable. A true copy of an article in Halsbury's Law Monthly recognising NLSIU, NALSAR and WBNUJS as India's 'Tier-I law schools' is annexed herewith and marked as **Annexure C-5**.

27. It is also contended that consumer preference is maximum for NLSIU, NALSAR and WBNUJS in decreasing order. In support of the same, a perusal of the cut-off CLAT marks accepted by these three universities in the past three years for general category candidates, along with their average Super-30 ranks (a measure of each national law school's preference among students conceptualized by the legal news website Legally India, which is calculated by averaging the all India ranks of the Top 30 CLAT rankers choosing each college in the general list), must be made.

YEAR	UNIVERSITY	CUT-OFF CLAT SCORE	SUPER-30 RANK

2011	NLSIU	147	15.5
2011	NALSAR	142	80.4
2011	WBNUJS	137	110
2012	NLSIU	145	16.6
2012	NALSAR	142	70.2
2012	WBNUJS	138	116.5
2013	NLSIU	140.5	15.5
2013	NALSAR	137.5	71.7
2013	WBNUJS	130.75	120.7

28. The data in the above table makes it clear that NLSIU, NALSAR and WBNUJS are the top three universities preferred by the top rankers in CLAT each year. These are the universities that are demanded by the consumers of the Opposite Party's service, and there is no other similar service in the market which can provide the consumers with the same. True copies of articles on Legally India containing the data used in the above table, along with analysis for the same, are annexed herewith and marked as **Annexure C-6 (COLLY)**.

29. That instead of looking at the form of the matter, the relevant market must be judged by its substance. While the degree

awarded by all five year undergraduate law courses is the same, there are real and substantial differences between among them that make the services of the institutions offering them qualitatively different. The relevant market is not the market for admission tests for five year integrated undergraduate courses, but for those entrance tests that help one procure the degree, brand value, and opportunities afforded by the five year integrated law course at the National Law Universities, especially NLSIU, NALSAR and WBNUJS.

30. That the brand value of National Law Universities, especially NLSIU, NALSAR and WBNUJS, is a qualitative factor in itself that sets them apart as a market in themselves. Brand value is a relevant factor that creates a different market, due to the subjective preference of consumers towards that brand to the exclusion of others despite some functional similarity.

31. That it is submitted that the demand substitutability of the service offered by the Opposite Party is highly inelastic. This is evident from a perusal of the number of students who have appeared for CLAT ever since its inception in 2008, along with the corresponding registration fees for general candidates and adjustable amount required from candidates for admission.

YEAR	NUMBER OF APPLICANTS	REGISTRATION FEE (GENERAL CANDIDATES)	ADJUSTABLE DEPOSIT AMOUNT
2008	10773	Rs. 2000	-
2009	15000	Rs. 2500	Rs. 10000
2010	17300	Rs. 2500	Rs. 25000
2011	23875	Rs. 2500	Rs. 25000
2012	25732	Rs. 3000	Rs. 25000
2013	29530	Rs. 3000	Rs. 50000
2014	31231	Rs. 4000	Rs. 100000

True copies of articles from Legally India containing the data for total CLAT applications since 2008 used in the above table are annexed hereto and marked as **Annexure C-7 (COLLY)**.

32. The data given above shows that in spite of the rising cost of the service offered by the Opposite Party, both in terms of the registration fee and the sum of adjustable amount required to secure a seat, the number of registrants for the service has been growing each year. It is contended that this suggests that changes in price do not act as competitive constraints for the Opposite Party's service.

33. That the difference in the education services provided is clear and inevitable from a historical perspective with regard to the circumstances in which National Law Universities were brought into existence. NLSIU was created in 1987 in Bangalore by the Bar Council of India in order to create an institution of legal excellence through the five year integrated course model, given the falling legal standards in legal education in India at that time. The establishment of NLSIU itself can be traced to a vacuum in quality legal education, leading to the 'experiment' of creating an unprecedented five year integrated course through a national level institution (as envisaged in the Statement of Objects and Reasons of the National Law School of India University Act, 1987 itself). This successful 'experiment' was then replicated through NALSAR and WBNUJS. The historical background thus makes it clear that the vacuum in the legal education services sector that existed prior to 1987, which the Opposite Party currently occupies. Thus, the relevant market for the National Law Universities, especially the Tier-I bracket, is distinct from other undergraduate law courses.

34. That, as opposed to the renowned quality of education, infrastructure and opportunities provided by the National Law Universities, especially the ones placed in Tier-I, the "diminishing standards of professional legal education provided at various Law Colleges across the country, and, in particular ... the quality and standard of infrastructure, library and faculty" has

been recognised by the Hon'ble Supreme Court of India in Bar Council of India v. Bonnie FOI Law College and Ors., SLP (C) No. 22337/2008. The order of the court in this regard, dated June 29, 2009, admitted that "[i]t is a matter of common knowledge that before granting affiliation proper exercise is not carried out. No serious efforts have been made by the concerned authority to learn about the Infrastructure, Library, faculty before granting affiliation or recognition." This has been recognised by the Final Report of the three-member Committee on Reform of Legal Education appointed by the Hon'ble Supreme Court and approved by the Bar Council of India. A true copy of the report has been annexed herewith and marked as **Annexure C-8**.

35. It is contended that the members of the Opposite Party have, by agreement, accept only CLAT scores and thus exclude every other examination service provider other than the Opposite Party from gaining market access, thereby creating a barrier to entry in the provision of the service. This results in the Opposite Party becoming the sole producer of the service of administering and conducting CLAT.

36. It is averred that as per established principles in this regard, similar services cannot be grouped under the same relevant market just because of their near-homogeneity, and that ideally, services shouldn't be grouped on the basis of very broad

generalizations. This is because services are likely to be tailor-made to conform to their customers' interests, which is why the difference in services must be judged by consumer preference. The Supreme Court of United States held in the case of *Brown Shoe Co. V. United States*, 370 U.S. 294 (1962) at 325, has held that the "practical indicia" of how the products or services were sold and perceived by consumers is a crucial part of the analysis in determining the relevant market. In the instant case, the consumers availing the service offered by the Opposite Party are aspiring law students who wish to gain admission into the premier legal institutions of the country, and there is no other producer that provides a similar service in the market.

37. That to summarize, due to the functional difference between the services provided by the Opposite Party in comparison the other entrance examinations for undergraduate law courses in India resulting in no cross-elasticity in demand for both since the students don't receive the same services (in functional terms) nor do their preferences indicate that they are interchangeable, it is contended that the market for the Opposite Party, which is the provision of the service of administering and conducting the Law Admission Test for the top three national law universities in India offering five year law degree, is the relevant product market in this case.

Whether CLAT enjoys Dominance in the Relevant Market

Natural position of dominance:

38. That CLAT is the only examination whose scores are accepted by fourteen out of fifteen NLUs. Except NLU Delhi, all other NLUs accept CLAT scores only. Further, as far as top three NLUs are concerned, there is no law school in the country – private or government which is comparable to NLIU, NALSAR and WBNUJS.
39. That this strength in terms of quality, consumer preference and exclusivity allows the Opposite Party to enjoy a position of dominance in the sector i.e. it is capable of operating independently of competitive forces in the market, and that such a position enables it to affect its competitors or consumers in its favour. The Opposite Party has no other competitors in the market with respect to admission into the top three NLUs.
40. That as the only overseeing authority for the CLAT examinations, the Opposite Party is capable of operating independently and controlling all facets of admission of candidates into the participating NLUs. Firstly, the significant market share of the Opposite Party with respect to the three best ranked NLUs in the legal education sector contributes to the overwhelming degree of abuse of dominance leading to price fixing and arbitrary fee imposition. Secondly, the dependence of consumers on the enterprise is evident as CLAT is the only entrance examination through which prospective

students can gain admission into the participating NLUs. Since the market is defined in terms of the service of administering of an examination by the Opposite Party for the purpose of securing admission into the NLUs, especially the top three NLUs, Opposite Party's market share is almost absolute, leading to an uncontested position of dominance in the hands of the Opposite Party in terms of controlling the admission conditions, especially the fees and other financial requirements. No comparable alternative institution with the capacity of the Tier-I NLUs, let alone an alternative at a lesser monetary value, is available among five year undergraduate law courses. As there is no choice for the consumers preferring Tier-I NLUs, who must either 'take it or leave it', Opposite Party can affect the consumers in their favor by imposing any condition, without any alternative competing in the market.

41. The Opposite Party, along with the nodal university that is in charge of conducting the examination for that year, enjoys dominance in the market and can directly determine "purchase or sale prices" by arbitrarily increasing and fixing the registration fees and reservation deposit.

Further, that dominance, even if legitimate, is still dominance:

42. That, the Informant recognizes that the idea of CLAT arose out of the suggestion of the Supreme Court in Varun Bhagat v. Union of India, W.P. No. 68/2006. However, it is noteworthy that

CLAT is created under a voluntary memorandum of understanding between the participating NLUs. CLAT is the sole means of admission into the participant NLUs not by law, but by this voluntary memorandum of understanding. There is no statutory mandate anywhere for all NLUs to streamline their student intake through CLAT, which is why National Law University, Delhi, conducts its own entrance examination called the All India Law Entrance Test. Moreover, the existence of an enterprise in a position of dominance is not per se illegal, as long as no abuse of such dominance occurs. There are regulatory bodies which must operate to the exclusion of other entities by virtue of which they attain dominance in the relevant market; however, they cannot abuse that dominant position.

43. That, additionally, the fact that the Opposite Party is the only service provider is a relevant factor to determine whether an abuse of that position has taken place or not, but does not exclude them from the scope of the Competition Act, 2002 completely.

Has CLAT abused its dominant position?

44. Section 4 of the Act states that no enterprise or group shall abuse its dominant position in the relevant market. The relevant portion of Section 4 is reproduced below for ready reference:

4. Abuse of dominant position.-(1) No enterprise or group shall abuse its dominant position.

(2) There shall be an abuse of dominant position under subsection(1), if an enterprise or a group, -

(a) directly or indirectly, imposes unfair or discriminatory-

(i) condition in purchase or sale of goods or services; or

(ii) price in purchase or sale (including predatory price) of goods or service.

[...]

(b) ...

(c) indulges in practice or practices resulting in denial of market access in any manner; or

(d) makes conclusion of contracts subject to acceptance by other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts; or

(e) ...

The section defines “abuse of dominant position” to mean, with respect to this complaint, either where the enterprise or group, directly or indirectly, imposes unfair or discriminatory conditions or prices in purchase or sale of goods or services, or it indulges in practice or practices resulting in denial of market access in any manner, or it makes conclusion of contracts subject to acceptance by other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts. It is submitted that

the Opposite Party in the present case is guilty of all three such types of abuses. The opposite party has

- Imposed unfair and discriminatory condition in fee payment for CLAT in form of pre-admission advance deposit;
- Imposed unfair exorbitant sum for the exam registration fee as well as pre-admission advance deposit;
- Denied market access to other law entrance exam providers by not accepting any other exam scores;
- Made pre-admission advance deposit binding on the candidates by implication which according to prevalent usage in the sector has no connection with the admission.

45. That Section 19(4) of the Act requires this Hon'ble Commission to look into several factors for determining whether abuse of dominance has occurred by the activities of an enterprise. Despite various state and central government grants as well as private endowments, the CLAT and participating NLUs impose fees which is: (a) much above the cost; (b) the highest in the country, in comparison to other law entrance examinations and other disciplinary entrance examinations such as JEE, AIPMT and CAT; and (c) pre-admission advance deposit of Rs. One lakh is payable before a candidate is eligible for education loan. This qualifies as an unfair and exploitative condition for the provision of a service. The higher financial status attained by the participating NLUs increases the economic power of CLAT and causes a commercial advantage over its consumers as well.

The activities of the Opposite Party are therefore patently an abuse of its dominant position in the market.

Exorbitant registration fee and pre-admission advance deposit is patently unfair

46. That the raised registration fee and pre-admission advance deposit being charged for CLAT by the respondent from its consumers is patently unfair. This is because these prices are excessive in relation to the economic value of the service being supplied. In the case of Napp Pharmaceutical Holdings Limited v Director General of Fair Trading from 2002, the U.K. Competition Appeal Tribunal had held that in order to show that prices are excessive, it must be demonstrated that (i) prices are higher than would be expected in a competitive market, and (ii) there is no effective competitor pressure to bring them down to competitive levels, nor is there likely to be. The second condition has already been established in the course of this complaint by demonstrating that the market for conducting the entrance test for admission into Tier-I undergraduate law schools in India is entirely captured by the respondent by way of the MoU among all the member-national law schools of the respondent committee, by way of which only the respondent committee is permitted to conduct CLAT every year and the member-NLUs do not accept any other score(s), ensuring that the respondent is not going to face competition in the relevant market.

Regarding the first condition, it is admitted that measuring whether a price is above the level that would exist in a competitive market is rarely an easy task. While there are many methods that could be availed for the same, a reasonable approach to establish excessive prices would be comparing the prices of the respondent with analogous national-level entrance examinations.

47. That it is pertinent to mention that the All India Bar Exam conducted by Rainmaker on behalf of the Bar Council of India charged a fee of Rs. 1,300 in 2010-11.
48. That such a disparate and grossly unfair charging of registration and pre-admission advance deposit has not been noted in other higher education entrance examination for other academic fields across the country. The Joint Entrance Examination (JEE) conducted annually for engineering courses including B. Tech, B.E, B. Arch and B. Planning charged a maximum registration fee of Rs. 1,800 (for male candidates, general category) and Rs. 900 (for female candidates, general category) for appearing for both papers in the 2014 examination. No fee was required for the purpose of post-result counselling in the JEE. The All India Pre-Medical / Pre-Dental Entrance Test (AIPMT) charged a maximum of Rs. 1,000 (general category), with only a late registration fee of Rs. 1,000 and no fee for post-result counseling for the 2014 examination. The Indian Institutes of Management's Common Admission Test (CAT) charged a

maximum of Rs. 1,600 (general category), with an additional application fee of 1.10% and service tax of 12.36%, and no fee for post-result counselling. True copies of some of these brochures are annexed herewith and marked as **Annexure C-9**. It must be noted that the Committees that conduct these examinations dominate the higher education provider market of their respective fields but do not abuse that position by charging candidates exorbitant fees or preventing eligible candidates from appearing for the examination or receiving admission counseling after the results. CLAT should follow this precedent of being accessible to all classes of candidates as it aims to promote quality legal education among the current young scholars of India, much like how the JEE, AIPMT and CAT hope to achieve the same in their fields. It must also be noted that there has been no transparency by the respondent in terms of revealing commercial logic such as increased costs to justify the regular steep hikes in the registration fees and pre-admission advance deposit every year. Hence, the irresistible conclusion is that the respondent is charging prices that are higher than what would be expected in a competitive market, due to which they have no connection with the inherent value of the service being offered and are hence, unfair.

Both the fees are discriminatory to those candidates who can afford to pay for the education service with scholarships or loan, if selected and admitted

49. That the imposition of fee hikes thereby denotes a denial of market access to candidates who are otherwise eligible to appear for the examination. A dominant enterprise that prohibits certain activities to the detriment of the consumers is clearly an abuse of its dominant position in the market.
50. That the requirement of provisional deposit of one lakh rupees is unfair and discriminatory also; because as per the CLAT website in order to be eligible for the counseling process, and thus, admission to the Tier-I NLUs, the provisional deposit must be made as a pre-condition before the counseling begins. This amounts to an unfair condition for two reasons:
- i. First, it is admitted that each of the Tier-I NLUs has scholarship programmes for people who cannot afford the fees. Several scholarships are available to students from economically weaker sections of society who cannot afford the fees. All such scholarships, whether from the NLUs themselves or government or private sources, can naturally only be tenable after a student is offered a seat in an institution.
 - ii. Secondly, the pre-condition mandates payment before even counseling has begun, no such scholarship can possibly be availed by such students.

The resultant effect of the condition imposed by the Opposite Party is thus to introduce, in effect, a blanket exclusion on those from economically weaker sections of society. This condition leaves consumers from economically weak backgrounds with no option to possibly gain admission, and is unfair in relation to them. Further, it discriminates against them in relation to those who can afford to pay the advance deposit even if the latter secured a lower rank in CLAT.

51. That, further, the unfairness of the term is clear from the contradictory stance of the Opposite Party and its participant NLUs with regard to such consumers: NLUs have published policies of waiver of fees and scholarship programmes for students from economically weak sections of society. However, these cannot be availed even provisionally before the counseling process starts, by which time the advance deposit is to be made. The waiver and scholarship fees of the NLUs themselves, thus, are made redundant by this condition.

52. It is also submitted that the magnitude of the pre-admission advance deposit is not justified and proportionate to its objectives. As per the dictum of the Court of Justice of the European Communities in *United Brands v. Commission of the European Communities* ([1978] ECR 207), while all enterprises have the right to take any action to protect their commercial interest, in the case of dominant firms, such action should be strictly proportionate to the legitimate commercial objectives

pursued. In the instant case, the respondent is charging the pre-admission advance deposit of one lakh rupees ostensibly for the purpose of ensuring that only those candidates who are seriously interested in taking admission into a national law school within the ambit of CLAT will participate in the online counselling. The charge of such a large sum is not proportionate as it goes beyond the objective to be attained. The participation of serious candidates in the online counselling can be ensured by charging a smaller sum as the pre-admission advance deposit. Moreover, such a large sum cannot be justified in light of the fact that it limits the respondent's market to the prejudice of consumers that belong to economically weaker sections of society and thus such fees are discriminatory. Hence, this too amounts to abuse of its dominant position in the market by the respondent.

53. It is submitted that the condition of payment of pre-admission advance deposit of one lakh rupees as a necessary condition for participation in online counselling by the respondent is inherently discriminatory in nature as it treats different categories of its consumers - the CLAT applicants belonging to economically well-off sections of society, and those belonging to the economically disadvantaged sections of society, as the same by applying the same condition to them. This has the effect of virtually excluding the consumers from economically disadvantaged sections of society to enjoy the benefit of the

respondent's service. In a country like India where the annual per capita income is expected to reach Rs. 74,920 in 2013-14, such an exorbitant payment condition is an undue hardship for a considerable proportion of CLAT applicants.

Opposite Party has imposed an unconnected supplementary obligation, i.e. pre-admission advance deposit

54. That the requirement for a pre-admission advance deposit of one lakh rupees in order to enter the counseling mechanism is an abuse of dominance in terms of section 4(2)(d) of the Competition Act, 2002. This is because the contract between a prospective student for a Tier-I NLU and the Opposite Party imposes a supplementary and unconnected obligation to pay the pre-admission advance deposit. The contract, at this stage, is to enter the counseling stage in order to gain admission on the basis of the rank generated in the CLAT examination and the applicant's preference. The contract to enter the counseling process on the basis of an applicant's CLAT rank, as opposed to the subsequent contract with an NLU to gain admission finally, has no relation to a monetary payment. A student wishing to gain admission to an NLU must pay the fees in return for an inclusion of his or her name on the roll for the educational services provided by the NLU in that academic year. The counselling process, however, does not provide any service, or merits in any way the demand for payment of one lakh rupees.

Student entering the counselling process is not admitted to an NLU, or guaranteed admission to any particular NLU. The obligation to pay one lakh rupees is an unrelated condition to enter the counselling process itself, since no reciprocal services are provided or contemplated at this stage. The admissions and counselling processes for other areas of education such as JEE, AIPMT and CAT also do not charge any provisional fees, and this demonstrate that no such “commercial usage” exists to justify such a supplementary obligation, which holds the applicants hostage in order to ultimately be admitted to, and conclude the contract, with an NLU at a later stage.

55. That it is pertinent to mention that candidates are not eligible for education loan before admissions and therefore, it is an undue hardship on the candidates from lower middle and low-income background. The drastic hike in these fees will hamper a number of students otherwise eligible for admission. The reasons for such a drastic increase in these fees over just one year have not been explained and the severe lack of transparency is apparent by the facts at hand.

56. That there is no rationale for charging any amount of pre-admission deposit at all. Such a process has no basis, logic or rationale except to make money for the Opposite Party.

57. That the Informant states that in similar cases before this Hon'ble Commission as well as the Courts, various government bodies, agencies and authorities have been restrained from

abusing their dominant position in the relevant market. Parties engaging in anti-competitive agreements and abusing their dominant position in the market have been directed to cease all activities that impose any restriction, direct and indirect, preventing healthy competition in the sector in the past.

58. The Informant submits that it is apparent from the aforesaid that the Opposite Party is abusing its position of strength and dominance in the territory of competitive examinations for admission into the participating premier law schools, which they regulate by imposing undue and unfair restrictions on the candidates based on the examination fee requirements and by not allowing its eligible candidates to sit for counseling without payment of the requisite fee for reserving their seats. Such abuse of dominant position by the Opposite Party will cause significant and irreparable loss to the candidates, who are consumers in this respect, as they provide a fee for the purpose of rendering of the service of conducting and declaring the results of an examination by the Opposite Party. This attitude of the Opposite Party cannot be permitted by this Hon'ble Commission and the Opposite Party ought to be restrained from imposing any unfair restrictions on through anti-competitive agreements and abuse of dominant position. It is apparent that the intention of the Opposite Party is to abuse its dominant position in a manner to somehow undermine eligible candidates'

rights to appear for the CLAT examination and reserve seats for counseling without the payment of exorbitant preliminary fees.

59. That the Opposite Party cannot misuse its dominant position of being able to dictate the fees. This act itself would be against fair practices since it would result in skewing of competition which is prohibited by law.

60. The Informant states that by imposing unfair and unjustified restrictions in the manner indicated above, the Opposite Party is in contravention of the Competition Act, 2002.

61. That Section 18 of the Act specifies that it is the duty of this Hon'ble Commission to "eliminate practices having adverse effect on competition, promote and sustain competition, protect the interests of consumers and ensure freedom of trade carried on by other participants, in markets in India." In *Consumer Online Foundation v. Tata Sky Ltd. & Other Parties* (Case 2/2009 before this Hon'ble Commission), it was held that this Commission would have jurisdiction over all cases that raise competition concerns, even if other regulatory bodies are vested with the jurisdiction and responsibility to govern that sector or industry. The Opposite Party can be thereby summoned under the jurisdiction of this Hon'ble Commission.

C. SUCCINCT NATURE OF PRESENT COMPLAINT AND CAUSE OF ACTION.

62. That the cause of action for filing the present complaint first arose when the Opposite Party released the rules of registration for the CLAT examination and admission for the year 2014, containing the details regarding the registration fee and provisional admission deposit hikes.

63. The cause of action is a continuing one because the CLAT examination was held on 11 May 2014, for which the registration process is currently underway. The publication of results and counseling follows soon after by when eligible candidates will be required to make the provisional admission deposit prior to sitting for counseling.

64. This illegal and malafide conduct of the Opposite Party is prohibited by the Competition Act 2002 as being the anti-competitive agreements and an abuse of the dominant position. The Opposite Party enjoys a position of strength and dominance in the market.

PRAYER:

In view of the above the Informant most respectfully and humbly prays that

- a) The Opposite Party be restrained and be ordered to cease and desist from: (i) compelling CLAT examination candidates from paying any amount of the pre-admission advance deposit this year and in future; (ii) not allowing eligible candidates to appear for counseling if they have not paid the pre-admission advance deposit; (iii) imposing any unfair and unjustified restrictions on eligible candidates who are unable to pay the pre-admission advance deposit in order to secure a seat at the participating NLUs.
- b) The Opposite Party be directed to decrease the registration fee in line with the cost for the current year and for future, registration fee be linked with Consumer-Price Index;
- c) The Opposite Party be imposed with a penalty of 10% of the average of the turnover for the last three preceding financial years for abusing its dominant position to the prejudice of candidates.
- d) Pass such other and further order as this Hon'ble Commission may deem fit and proper in the circumstances of the case.

Delhi

Dated:.....

Filed by:

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