

**10<sup>TH</sup> FYLC – RANKA NATIONAL MOOT COURT  
COMPETITION, 2021**

BY  
UNIVERSITY FIVE YEAR LAW COLLEGE, UNIVERSITY OF RAJASTHAN  
and  
RANKA PUBLIC CHARITABLE TRUST

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**IN THE HON'BLE NATIONAL COMPANY LAW APPELLATE  
TRIBUNAL OF JINLAND**

**COMPETITION APPEAL NO. 1 OF 2021**

**IN THE MATTER OF:-**

**IN THE MATTER OF:**

MR. PRICKLEPANTS PVT. LTD

...APPELLANT

VERSUS

ANTITRUST COMMISSION OF JINLAND & ORS.

...RESPONDENTS

**MOOT PROBLEM**

*“Our role is to maintain & monitor a framework in which fair competition can flourish”*

**By-Arthur Levitt**

*“People of the same trade seldom meet together, even for merriment and diversion, but the conversation ends in a conspiracy against the public, or in some contrivance to raise prices.”*

**By-Adam Smith**

**ABOUT JINLAND:-**

The Jinland is a multicultural nation equipped with a cultural outlook with civilization, where the inhabitants belong to different ethical backgrounds, speak different languages and practice different religious faiths. The Jinland is located in the South Asian Region, which has 28 States and 8 Union Territories. At present, Jinland is ranked the seventh largest economy, and third largest in terms of Purchasing Power Parity (PPP). The Jinland economy's GDP is pegged at \$ 3 tn. Guided by unwavering democratic credentials and strong government leadership, Jinland is an emerging superpower with a vibrant economic climate.

**ABOUT ANTITRUST COMMISSION OF JINLAND:-**

*Antitrust Commission of Jinland* (hereinafter referred as “Commission” in short) is an

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Authority established under the Competition Act, 2002 with the goal of ensuring that the consumer has access to the broadest range of goods and services at the most competitive prices. With increased competition, producers will have maximum incentive to innovate and specialize. This would result in reduced costs and wider choice to consumers. A fair competition in market is essential to achieve this objective. Goal of the Commission is to create and sustain fair competition in the economy that will provide a 'level playing field' to the producers and make the markets work for the welfare of the consumers. The objectives of the Act are sought to be achieved through the Commission. It is the duty of the Commission to eliminate practices having adverse effect on competition, promote and sustain competition, protect the interests of consumers and ensure freedom of trade in the markets of Jinland. The Commission is also required to give opinion on competition issues on a reference received from a statutory authority established under any law and to undertake competition advocacy, create public awareness and impart training on competition issues.

**FACTS:-**

Jinland as a developing nation at the international platform has become the hub for out-sourcing the various services in the field of IT, medical, marketing, production etc. between the countries, MNCs and various organizations. Due to the busy schedule and odd working hours, parents of Jinland are not able to give proper time and care to their children. There has been an increased dependence on newly *high-tech electrical toys* for their children to show their love and affection in place of spending time with them for their good physical and mental growth.

In Jinland, *Mr. Pricklepants Pvt Ltd., Slinky Pvt. Ltd., Sheriff Woody Pvt. Ltd. And #Fantuooos Pvt. Ltd.* occupies a major share in the market as toys manufacturers. Due to their influence in the market, they can easily affect the prices of toys in the market of Jinland. Being a major shareholder in the toys market the aforesaid companies formed a cartelization for fixing the prices with a goal of gaining maximum profit and to out the small manufactures from the toys market.

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On 1.01.2021, the *Antitrust Commission of Jinland* initiated a *Suo Motu* investigation based on a leniency application (LPA) filed by *Mr. Pricklepants Pvt. Ltd.* under, the *Antitrust Commission of Jinland (Lesser Penalty) Regulation, 2015*. By way of the LPA, *Mr. Pricklepants Pvt. Ltd.* submitted that there were exchanges of information relating to sales, production and marketing of the *high-tech electrical toys* among itself and *Slinky Pvt. Ltd.*, *Sheriff Woody Pvt. Ltd.* and *#Fantuooos Pvt. Ltd.* Subsequently, *Sheriff Woody Pvt. Ltd.* and other companies also filed an LPA disclosing further evidence of information exchange. The details of information furnished by the aforesaid companies are herein below:-

Mr. Pricklepants Pvt. Ltd. 1 LPA Filed	Slinky Pvt. Ltd. 2 LPA Filed	Sheriff Woody Pvt. Ltd. 3 LPA Filed	#Fantuooos Pvt. Ltd. 4 LPA Filed
Simple Information	Documents showing gain after cartelization	Emails and communication details	Messages

The DG conducted an investigation and concluded that *Mr. Pricklepants Pvt Ltd.*, *Slinky Pvt. Ltd.*, *Sheriff Woody Pvt. Ltd.* And *#Fantuooos Pvt. Ltd.* through association used to share sales, production and marketing data of all types of *high-tech electrical toys* on a half yearly basis, which enabled them to monitor *inter se* market share in the organized market of *high-tech electrical toys* in Jinland. The DG also came across instances of exchange of commercially sensitive information, including in relation to pricing, wholesale pricing, margins, promotional schemes and launch of new products. The DG also came across various drafts of proposed press releases which contemplated price increase measures by *Mr. Pricklepants Pvt Ltd.*, *Slinky Pvt. Ltd.*, *Sheriff Woody Pvt. Ltd.* And *#Fantuooos Pvt. Ltd.*

However, contrary to the DG's findings, the *Antitrust Commission of Jinland* observed that the exchange of data relating to sales, production and marketing of *high-tech electrical toys* indicated a possibility of collusion and could, at best, be considered as a 'plus factor'. The *Antitrust Commission of Jinland* observed that the mere fact that certain information was exchanged does not by itself constitute enough evidence to conclude that these firms were acting in a coordinated manner.

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Interestingly, the Antitrust Commission of Jinland observed that while the evidence collected by the DG suggested exchange of commercially sensitive information, it did not establish that the Opposite Parties agreed upon the actual terms of increasing or determining prices. As such, the Antitrust Commission of Jinland observed that even the price discussion among the Opposite Parties did not categorically establish that they fixed prices.

Accordingly, the *Antitrust Commission of Jinland* concluded that while there was evidence of exchange of sales, production and marketing data, draft press release, price information, commercially sensitive information amongst the concerned parties, indicating a possibility of collusion, there was insufficient evidence to establish that such activities resulted in price fixing which reduces strategic uncertainty, independence of competitors' conduct on the market and diminishes their incentives to compete, thereby facilitating collusion.

On 1<sup>st</sup> May, 2021, the *Antitrust Commission of Jinland* by way of its order found *Mr. Pricklepants Pvt Ltd., Slinky Pvt. Ltd., Sheriff Woody Pvt. Ltd.* and *#Fantuooos Pvt. Ltd.* alleged for cartelization in the *high-tech electrical toys* and imposed following penalties on the aforesaid companies which has to be deposited within one month from the date of order to the Registrar of the *Antitrust Commission of Jinland*:-

Mr. Pricklepants Pvt. Ltd.	Slinky Pvt. Ltd.	Shriff Woody Pvt. Ltd.	#Fantuooos Pvt. Ltd.
1 Crore	1 Lakhs	Nil	5 Lakhs

Hence, aggrieved by the order dated 01.05.2021 passed by the *Antitrust Commission of Jinland*, appeal is filed by the Petitioner before the *Hon'ble National Company Law Appellate Tribunal of Jinland* for the adjudication of the issues raised in pursuance of the scheme laid down by the legislature with respect to the lesser penalty provision in the statute.

Taking into consideration the issues raised by the Petitioner in the present appeal the *Hon'ble National Company Law Appellate Tribunal of Jinland* issued notice to the respondents.

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Meanwhile, operation of the impugned order dated 01.02.2021 passed by the *Antitrust Commission of Jinland* be stay.

The *Hon'ble National Company Law Appellate Tribunal of Jinland* also directed the registry to list the matter again on 1<sup>st</sup> June, 2021 for final disposal. Parties are requested to remain present through VC for final hearing.

**In the present appeal following question of law are before the *Hon'ble National Company Law Appellate Tribunal of Jinland* for adjudication:-**

- 1) Whether the present appeal filed by the Petitioner before the *Hon'ble National Company Law Appellate Tribunal of Jinland* is maintainable?
  - 2) Whether the penalty imposed by the *Antitrust Commission of Jinland* under the scheme of lesser penalty provision is justified or not?
  - 3) Whether the evidence(s) provided to the DG for investigation of the cartelization between the Petitioner and other companies make the Petitioner company entitled for lesser penalty or not?
- **Both parties (Petitioner and Respondents) are required to raise one additional issue of their choice (Compulsory).**

**NOTE:-**

- Participants are requested to argue on the side of the Petitioner as well as on the side of the Respondents before the “*Hon'ble National Company Law Appellate Tribunal of Jinland*” pertaining to the above case and further elucidate the arguments with appropriate case laws and inputs.
- The laws of Jinland are *pari materia* with laws of India. The Jinland considers the leading common law precedents as being highly persuasive. Hence, all the relevant ancient, modern texts of Indian law may be referred for arguing the case.

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- This Moot Problem has been formulated solely for the purpose of this competition for furthering the academic exercise only.