



7TH AURO NATIONAL MOOT COURT COMPETITION, 2021

**AURO LITIGIOSUS COMMITTEE,
SCHOOL OF LAW,
AURO UNIVERSITY, SURAT.**

In Association with

THE COMPETITION COMMISSION OF INDIA

MOOT PROPOSITION

1. The Republic of Fortuna is an emerging economy which gained its independence from colonialism in the mid-twentieth century in 1947, prior to which it had been an agrarian economy. A number of economic reforms in the industrial sector post liberalization of the economy in 1991 has resulted in increased foreign investments in the country. The privatization of nationalized banks in 1990s spurred rapid development in the banking sector in terms of better operational efficiency and specialized board governance. In fact, the Government of Fortuna demonetized currency denominations of Rs. 500 and Rs. 1,000 with the aim of bringing a larger share of the informal economy into the formal sector through better digitization.
2. Industrial Credit Corporation Bank (“**ICC Bank**”) was registered as a banking company in 2005 under the Banking Regulation Act, 1949 by the promoter family of Shah Group. Having its registered office located in the Capitol City, ICC Bank performed operations similar to those of a commercial bank including acceptance of deposits, advancing industrial and personal credit, trading in foreign exchange etc. Due to its technologically efficient services, in a short span of time, ICC Bank established itself as one of the market leaders in the sector.

3. Realizing the shifting trend towards digital payments, ICC Bank established the Industrial Credit e-Wallet Payments Bank (“**ICP Bank**”) as an online payment platform in 2014 with 65% shareholding after obtaining license for operation from the Central Bank of Fortuna. Resultantly, the ICP bank obtained first mover advantage as record number of users got themselves registered for enjoying e-wallet payment services. The Memorandum of Association allowed ICP Bank to provide digital wallet services, in addition to advancing short-term credit and accepting limited amount of deposits. Customers have to mandatorily register themselves on the platform through their social media credentials. The Privacy Policy of the ICP Bank stated that all relevant banking and payments information of the customer may be obtained and shared with the group entities in a pseudonymized and non-anonymised manner to authenticate their identity and to enhance customers’ experience. The Bank also had access of customer behavioral data, telecommunication contacts data and social media footprints for better interoperability and of different financial services offered by the group entities.

4. Further, commercial banks registered with the Central Bank could affiliate with the ICP Bank for availing their digital wallet services, operationalized by way of blockchain technology through Near-Field Communications (NFC)-enabled technology and QR code. Despite having significant

commercial advantage over other existing banks in the sector, ICP Bank was still not the market leader. In order to understand and overcome the prevailing shortcomings, it conducted 'Customer Satisfaction' survey, and found that as many as 90% of the surveyed customers were happy with the financial services offered by the bank. Incidentally, an article titled "*The Augmentation of Digital Banking in Fortuna*" surfaced on the Fortuna Daily compared the market position of leaders and concluded that the market leader – the Rural Credit Bank's ("**RC Bank's**") local reach to underbanked regions provided it competitive advantage over existing competitors.

5. The ICC Bank, to expand its fintech activities, in 2019 registered another subsidiary namely the Industrial Credit Digital Bank ("**ICD Bank**") with the Registrar of Companies, Capitol City to offer digital-only banking services without any administrative branches. The ICD Bank offered micro credit to such classes of people whom most of the existing competitors abstained from offering, due to their poor credit scoring, based on the companies scoring algorithms and advanced financial inclusion. Customers of ICD Bank were offered discounts and vouchers for making payments through the digital wallet of the ICP Bank. To meet the technical and legal requirements, the ICD Bank determined creditworthiness of their customers, based on details received from ICP Bank which included transaction history, payment balance, inflow and outflow of cash on online commerce platforms, SMS and internet browsing preferences, expenses

patterns, pre or post-paid phone connection, psychometric data among other information.

6. Reuters Group Ltd. which had its dominant presence in all major sectors, ranging from FMCG to electronic software, ventured into the banking sector through its subsidiary – Reuters Bank. In a short span of time, it captured significant market share by providing financial services at relatively low transaction cost than its competitors, and by leveraging its goodwill across various different sectors. Following the trend, Reuters Bank intended to integrate with the ICP Bank to provide digital wallet services to its customers; and it was foreseen by the analysts that such an integration would provide Reuters bank cutting edge opportunity to grow beyond its wings. Accordingly, Reuters Bank applied for digital wallet services through the prescribed application process of the ICP Bank. However, the application was left in abeyance beyond the average time-period; thus, Reuters Bank sought correspondence from ICP Bank regarding the delay, which was duly acknowledged by the latter. Interestingly, ICP Bank always adopted proficient approach in approving such applications, and consequently in registering any new member into its network. Despite several emails and personal meetings with the officials of ICP Bank, Reuters Bank failed to receive membership with the network, leading to potential revenue loss, customer loss and dissatisfaction among existing set of depositors. The share price of Reuters Bank gradually started reducing and

aggrieved by this, it filed complaint against the ICP Bank before the Fortuna Antitrust Commission (“**FAC**”) for violation of Sections 3 and 4 of the Fortuna Antitrust Act, 2002.

7. The ICD Bank, in the meantime, became the leader with a market share of 66% in an already limited competition sector and started offering unique financial products and services, based upon its research and development vertical. The RC Bank aggrieved by the penetrative competition strategies, adopted by the ICD Bank, complained to the Association for Harmonization of Fair Banking Competition (“**AHFBC**”) against the ICC Bank for indulging in anti-trust activities. The Legal Counsel at the AHFBC saw merit in the complaint, and filed a petition before the FAC for holding the ICC Bank liable for abuse of dominance under the Fortuna Antitrust Act, 2002.
8. The FAC found that the group entity was acting in concert as a single economic entity, and abused the Fortuna Antitrust Act, 2002 by misusing consumer personal and non-personal data. Aggrieved by the order of the FAC, the group entity appealed before the Fortuna Antitrust Appellate Tribunal (“**FAAT**”) on the grounds that the FAC doesn’t have the jurisdiction to regulate as none of the group entities is dominant, and that they must be treated as separate legal entities having distinct corporate personality. Further, it submitted that there was no abuse of the Fortuna Antitrust Act, 2002 as all the entities operate in distinct relevant markets,

and the regulation of personal data falls within the purview of the Fortuna Personal Data Protection Authority.

9. On the basis of the Director General Report, the FAC dismissed the complaint filed by the Reuters Bank holding that the ICP Bank was not dominant in the relevant market, and that there was no evidence for establishing anti-competitive agreement. Aggrieved by the order, the Reuters Bank filed an appeal before the FAAT and also impleaded the ICC Bank as respondents. The FAAT, in the interest of the parties involved, consolidated the appeal proceedings to hear the matter together on 02.04.2021.

Issues for the Tribunal's consideration:

- (a) Whether the FAAT has the jurisdiction to consolidate the antitrust proceedings?
- (b) Whether the FAC has the jurisdiction to regulate and consequently adjudicate on consumer personal and non-personal data?
- (c) Whether the basic characteristics of the blockchain are anti-competitive in nature?
- (d) Whether the ICC Bank, ICP Bank and the ICD Bank can be treated as a single economic unit?
- (e) Whether the ICC Bank and its subsidiaries are in contravention of Sections 3 and 4 of the Fortuna Antitrust Act, 2002?

The list of issues provided is not exhaustive in nature and the participants have the

liberty to include further issues as they desire.

Note:

1. The market share of the ICC Bank, ICP Bank and the RC Bank is 23%, 15% and 35% respectively.
2. The laws of the Republic of Fortuna are in *pari materia* to the laws of the Union of India. For the purposes of the moot proposition, the (Indian) Personal Data Protection Bill, 2019 was enacted as the (Fortuna) Personal Data Protection Act, 2004 by the Parliament of the Republic of Fortuna in accordance with the Constitution of Fortuna, 1949.
3. For the purposes of the moot proposition, Fortuna Antitrust Commission is Competition Commission of India (**CCI**) and Fortuna Antitrust Appellate Tribunal is National Company Law Appellate Tribunal (**NCLAT**).

