



CHANAKYA NATIONAL LAW UNIVERSITY, PATNA  
IN COLLABORATION WITH  
COMPETITION COMMISSION OF INDIA, NEW DELHI  
PRESENTS

SECOND EDITION

# CNLU-CCI NATIONAL MOOT COURT COMPETITION

IN ASSOCIATION WITH



MOOT PROPOSITION

Knowledge Partners



Media Partner



# ABOUT THE PROPOSITION DRAFTERS



Founded in 1991, JSA is one of the leading full-service national law firms in India with over 400 legal professionals operating from its seven offices. As the go-to firm for the new transformative and digital Indian economy, JSA is regularly involved in many of the first-to-market and complex transactions and plays an integral role in advocacy and policy matters impacting the various sectors.

For over 30 years, JSA has been at the forefront of providing dedicated legal services to many of the world's leading global corporations, domestic corporations and state-owned enterprises, banks, financial institutions, funds, governmental and statutory authorities, multilateral, and bilateral institutions.

JSA has built a reputation for its client-centric approach, quality of service, domain knowledge including insights across sectors, and for delivering innovative solutions to complex legal and commercial issues for the benefit of its clients. This has led to JSA being consistently recognized as a top-tier firm for its capabilities and expertise across practices and sectors by leading legal directories, league tables and industry journals.



17 Practices and  
24 Ranked Lawyers



Among Top 7 Best Overall  
Law Firms in India and  
10 Ranked Practices

-----  
13 winning Deals in  
IBLJ Deals of the Year

-----  
10 A List Lawyers in  
IBLJ Top 100 Lawyer List



Ranked #1  
The Vahura Best Law Firms  
to Work Report, 2022

-----  
Top 10 Best Law Firms for  
Women, 2022

1. *Vale* is a developing country with a decent growth rate and is considered as one of the fastest growing economies of the world. After the launch 4G technology in 2016, internet penetration in Vale has increased manifolds during 2016-2022.
2. The laws of Vale are *pari materia* with the laws of India, with the limited exceptions mentioned in this Moot Proposition. Vale enacted its competition act, the Valian Competition Act, 2002 (**Competition Act**) which came into force in the year 2009.
3. The Competition Commission of Vale (**CCV**) including other Valian Courts treat decisions of the Competition Commission of India as well as other decisions of Indian courts on the Indian Competition Act, 2002, along with other laws as having high persuasive value. The CCV also regards the competition regulators of the European Union and the United States highly and relies on the precedent from these jurisdictions as well.
4. Internet penetration, along with the substantial increase in demand for tourism in Vale has significantly contributed to the overall demand for Online Travel Agencies (**OTAs**). More specifically, OTAs are one-stop-shop for end- consumers as it enables them to perform multiple tasks such as flight bookings, hotels booking, car rental etc. under one platform. Moreover, OTAs also offer certain value-added services such as search, compare, and book service, which further facilitate end- consumers to make more effective and targeted search. In the recent past, several mergers have taken place in the OTA market, which has made the market more consolidated. Other national and international OTAs who have entered the market are still struggling to compete effectively in the market.
5. Stark Limited (**Stark**) is an OTA engaged in the business of offering tourism and other travel related services across Vale. It is listed on the Vale Stock Exchange. Stark offers host of services such as booking of: (i) air tickets; (ii) hotels and holiday packages; (iii) bus tickets; (iv) rail ticket; and (v) car rentals.
6. In 2020, Stark acquired 100% shareholding in Dorne Private Limited which is also an OTA engaged in the business of tourism and other travel related services across Vale (**Dorne Acquisition**).

7. The Dorne Acquisition was notified to the CCV by Stark in November 2019 under Section 6(2) of the Competition Act. In January 2020, the CCV passed an order whereby it approved the Dorne Acquisition and *inter-alia* noted that the Dorne Acquisition is not likely to raise any competition concerns as the combined market share of the parties in the ‘market for sale of travel and travel related service in Vale’ (**Travel Market**) is below 10%.
8. The market share of Stark, prior to the consummation of the Dorne Acquisition in the online intermediation services for hotel booking market in Vale (**Hotels OTA Market**) was around 32%. However, pursuant to the consummation of the Dorne Acquisition, the market share of Stark increased to around 60%. Moreover, Stark in its own investor presentation, which was published on its website in January 2021, mentioned that it is the largest OTA of Vale with a market share of 60% in Hotels OTA Market.
9. Other major competitors who are also an OTAs and engaged in offering tourism and other travel related services across Vale are Pyke.com, GreatWyk.com, Blacktyde.com, Saltcliffe.com. The market share of the competitors of Stark is captured in the table below:

S. No.	Name of the Company	Market Share
1.	Pyke.com,	20%
2.	GreatWyk.com	7%
3.	Blacktyde.com	5%
4.	Saltcliffe.com	3%
5.	Others	5%

10. In Vale, the hotels market is highly regulated. The roles and responsibilities of hotels and OTAs (on whose platform the hotels are listed), are governed by the Valian Hotels Act, 2004 (**Hotels Act**), and rules and regulations framed thereunder. The Hotels Act also provides for the establishment of Hotels Board of Vale (**Hotels Regulator**), which is the specialised regulator, regulating the hotels and OTAs in Vale.

11. The Hotels Act is a complete code in itself, with the capability of addressing all concerns including but not limited to: (i) listing fee/commission charged by OTAs from hotel partners; (ii) room tariff rates charged by hotels; (iii) unfair trade practices undertaken either by hotels or OTAs such as charging excessive prices, imposing arbitrary conditions etc.
12. In 2020, pursuant to the consummation of the Dorne Acquisition, Stark amended its agreement with hotel partners whereby it imposed a condition on them that the hotel partners are not allowed to sell their rooms on their own website at a price which is below the price charged by these hotels on Stark's platform. Stark also imposed a condition on hotel partners whereby they are not allowed to sell their rooms on Pyke.com at a price which is below the price charged by these hotels on Stark's platform (collectively referred to as '**Parity Clause**'). For example, if a hotel partner charges INR 1,000/ night for a room on Stark's platform then, it cannot offer the same room below INR 1000/ night on its own website or on the platform of Pyke.com. The said condition also gives power to Stark to delist any hotel who is found to be not complying with the Parity Clause, after giving one written warning
13. Given that Stark has strong presence in the Hotels OTA Market and hotel partners are dependent on Stark for visibility, the hotel partners agreed to the conditions imposed by Stark as delisting them from the Stark's platform, would adversely affect their business.
14. Meanwhile, between 2020-2021, several hotels were de-listed from Stark's platform due to breach of the Parity Clause. However, even after de-listing, the said hotels were shown as sold out on its platform. The issue was raised by the hotels with Stark several times, but Stark did not heed to their request and the said hotels were continuing to be shown as sold-out on Stark's platform (referred to as '**Misrepresentation**').
15. On 2 April 2021, being aggrieved by the Parity Clause and Misrepresentation, the Hotels Association of Vale filed a complaint with the Hotels Regulator alleging that Stark is engaging in unfair trade practices and abusing its dominant position in the Hotels OTA Market by imposing the Parity Clause on hotel partners and also misrepresenting certain information about several hotels partners on its platform.

16. While the complaint filed before the Hotels Regulator was pending adjudication, on 15 April 2021, the Hotels Association of Vale also filed an information under Section 19(1)(a) of the Competition Act before the CCV (**Information**) wherein it contended that Stark:

- (i) is dominant in the Hotels OTA Market with a market share of 60%;
- (ii) abused its dominant position by imposing unfair and arbitrary conditions, in the form of imposing the Parity Clause on hotel partners, in violation of Section 4(2)(a)(i) read with Section 4(1) of the Competition Act; and
- (iii) is attempting to mislead the end-consumers by indulging in Misrepresentation, in violation of Section 4(2) of the Competition Act.

17. After receiving the Information, on 3 June 2021, the CCV forwarded a copy of the Information to Stark and directed them to file their response by 30 June 2021. In the meantime, on 7 June 2021, Stark submitted a letter to Hotels Regulator wherein it apprised them about the Information and further requested to intervene in the matter.

18. On 30 June 2021, Stark filed its detailed response to the Information whereby it submitted as follows:

- (i) The CCV does not have the jurisdiction to adjudicate upon the Information as the roles and responsibilities of Stark are squarely governed under the Hotels Act and the rules and regulations framed thereunder.
- (ii) Assuming without admitting that the CCV has jurisdiction to adjudicate upon the Information, the Hotels Association of Vale has wrongly defined the relevant market. The relevant market in the present case is the Travel Market;
- (iii) Stark is not dominant in the Travel Market as its market share is less than 10% in the said market;

- (iv) Assuming without admitting that Stark is dominant in the Hotels OTA Market, Stark has not abused its dominant position by imposing the Parity Clause on hotel partners as hotel partners can sell their room at a price lower on other OTAs (except Pyke.com) than what is being offered on the Stark platform.
- (v) The CCV does not have the jurisdiction to adjudicate upon the issue of Misrepresentation as it is outside the scope of Section 4(2) of the Competition Act.
19. On 1 August 2021, the CCV passed an order under Section 26(1) of the Competition Act and referred the matter to the Director General (**DG**), the investigative wing of the CCV, to conduct an investigation in the said matter.
20. Subsequently, the Hotels Regulator submitted separate letters to the CCV and the DG, apprising them that Hotels Association of Vale has filed a complaint dated 2 April 2021 before it raising similar allegations as raised in the Information. Accordingly, the Hotels Regulator requested the CCV and the DG to keep the matter in abeyance as it being the sectoral regulator is already cognisant of the matter. In this regard, the Hotels Regulator also highlighted the judgment passed the Indian Supreme Court in case of *CCI vs Bharti Airtel Ltd.*, (2019) 2 SCC 521 (**Bharti Airtel Judgment**) in relation to overlapping jurisdiction between sectoral regulators.
21. Aggrieved by the decision of the CCV, on 30 August 2021, Stark filed a writ petition before the Hon'ble High Court, whereby it challenged the jurisdiction of the CCV to adjudicate on the Information in light of the fact that the sectoral regulator i.e., Hotels Regulator is already cognisant of the matter. It was also contended that the decision of the CCV to assume jurisdiction on the Information, is against the principles laid down by the Hon'ble Indian Supreme Court in the *Bharti Airtel Judgment*. Stark further requested the Hon'ble High Court to grant a stay on the proceedings before the CCV until the disposal of the present writ petition.
22. After hearing the submissions made by all parties, the Hon'ble High Court admitted the appeal however, it did not grant a stay on the ongoing proceedings before the CCI/DG. The Hon'ble High Court further directed the Hotels Regulator to also investigate the alleged conduct of Stark and submit its examination report within one month.

23. On 30 September 2021, the Hotels Regulator, after examining the alleged conduct of Stark under the Hotels Act and rules and regulations framed thereunder submitted its examination report whereby it concluded that Stark is not guilty of engaging in any anti-competitive conduct.
24. In parallel, the DG, after conducting detailed investigation, submitted its investigation report (**DG Report**) to the CCV and concluded that, Stark has abused its dominant position in the Hotels OTA Market, thereby contravening Section 4 of the Competition Act.
25. The DG Report was forwarded to all the parties and after analysing the objections to the DG Report filed by the parties and conducting detailed final hearing, on 5 January 2022, the CCV passed an order under Section 27 of the Competition Act wherein it agreed with the findings of the DG and held that:
- (i) The relevant market in the present matter is Hotels OTA Market after considering several factors as set-out below:
    - a) Online and offline channels of distribution are not substitutable with each other; and
    - b) OTAs are not substitutable with other online channels of distribution such as social media platforms, direct booking through hotel websites, meta search services such as Google etc.
  - (ii) Stark is dominant in the Hotels OTA Market with a market share of 60%;
  - (iii) Stark abused its dominant position in the Hotels OTA Market by:
    - a) imposing the Parity Clause, which restricted the ability of hotel partners to offer better deals to end- consumers from their own website or on the website of its next biggest competitor i.e., Pyke.com and the said conduct is in violation of Section 4(2)(a)(i) read with Section 4(1) of the Competition Act; and
    - b) indulging in Misrepresentation, which adversely affected the business of hotel partners as the end- consumers did not look for these hotels on another OTAs as these

hotels were shown as sold out on Stark's platform, which is a dominant OTA and the said conduct is in violation of Section 4(2) of the Competition Act.

26. Accordingly, the CCV imposed a monetary penalty @ 4% of Stark's total turnover. The CCV also imposed the following directions under Section 27 of the Competition Act and the same are set-out below:

- (i) Stark is directed to suitably modify its agreements with the hotels partners, to remove the Parity Clause within 3 months from the receipt of this order.
- (ii) Stark is directed to provide transparent disclosures on its platform as regards the properties not available on its platform, and not show those properties as 'sold out'.

The CCV order dated 5 January 2022 is referred to as the '**CCV Order**'.

27. Aggrieved by the CCV Order, Stark filed an appeal before the Vale's Competition Appellate Tribunal (**COMPAT**), requesting the COMPAT to quash the CCV Order. On 6 December 2022, the COMPAT upheld the CCV Order and dismissed the appeal (**COMPAT Order**).

28. In the meanwhile, on 10 December 2022, basis the Bharati Airtel Judgement, the High Court passed the judgment whereby it disposed off the writ petition filed by Stark and held that the CCV does not have the jurisdiction to adjudicate on the Information and the Hotels Board is the appropriate regulator to examine the alleged conduct of Stark (**High Court Judgment**).

29. Aggrieved by the COMPAT Order, on 10 January 2023, Stark filed a civil appeal before the Hon'ble Supreme Court of Vale (**Supreme Court**), challenging the COMPAT Order.

30. Subsequently, on 25 January 2023, CCV filed a separate civil appeal before the Hon'ble Supreme Court challenging the High Court Judgment.

31. The Hon'ble Supreme Court admitted both the civil appeals and directed that all the related matters be listed for final hearing together.

32. The Hon'ble Supreme Court will now listen to all the arguments in relation to several broad legal/factual issues as set-out below:

- (i) Whether the CCV has jurisdiction to adjudicate on the Information and pass the CCV Order in light of the principles laid down by the Indian Supreme Court in the Bharati Airtel Judgement?
- (ii) If the answer to the above is yes, whether the CCV has correctly defined the relevant market as the Hotels OTA Market?
- (iii) Whether the CCV is bound by its own decision in the Dorne Transaction where it defined the relevant market as the Travel Market?
- (iv) Whether Stark is dominant in the Hotels OTA Market?
- (v) Whether the Stark has abused its dominant position by imposing Parity Clause on the hotel partners, in violation of Section 4(2)(a)(i) read with Section 4(1) of the Competition Act?
- (vi) Whether the issue of Misrepresentation falls outside the scope of Section 4(2) of the Competition Act?
- (vii) If the answer to the above is no, whether the Stark abused its dominant position by engaging in Misrepresentation, in violation of Section 4(2) of the Competition Act?

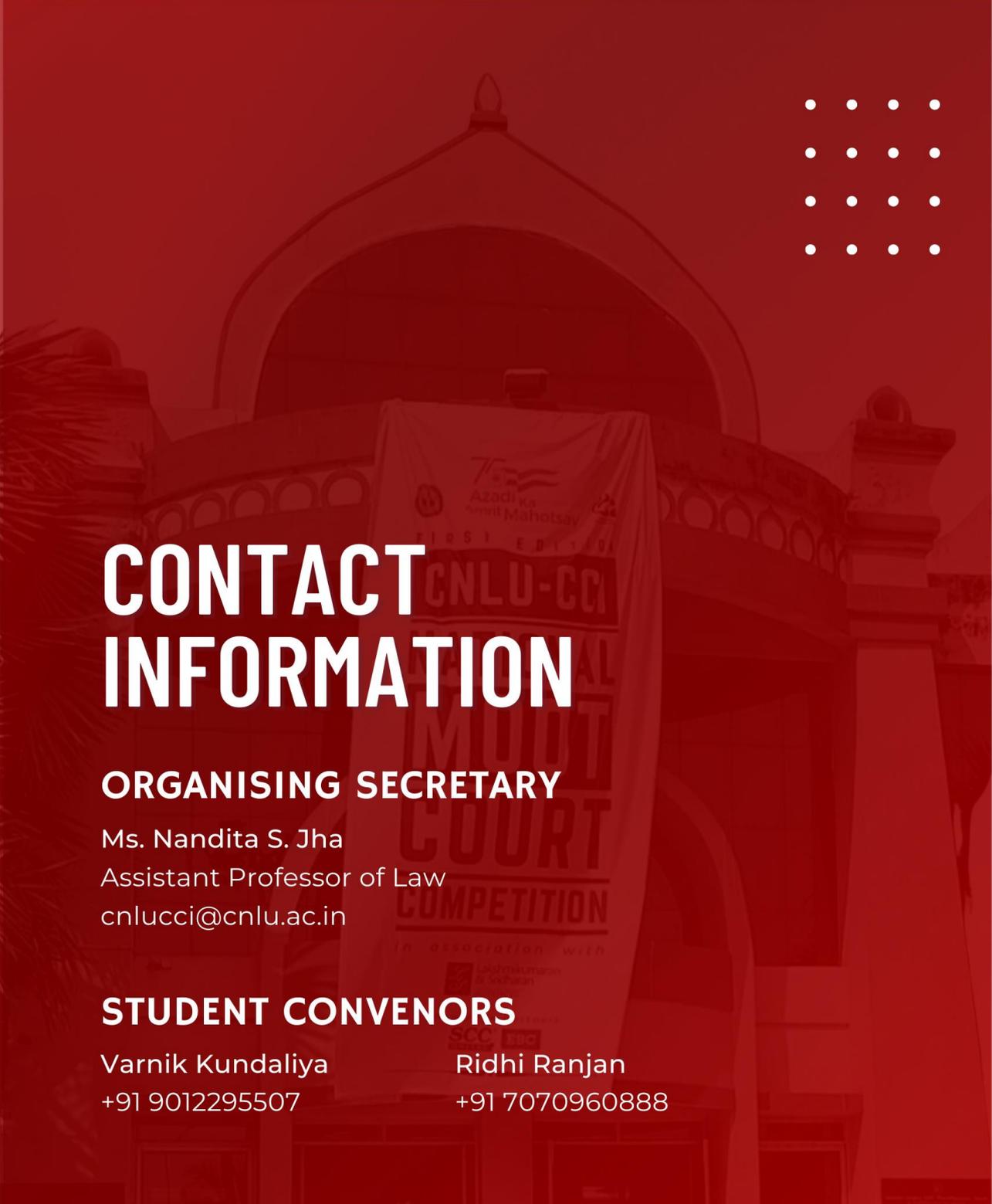
**NOTE:**

- (a) Lawyers representing both sides are required to frame sub-issues (if applicable) from the broad issues enlisted above.
- (b) Lawyers representing both sides have the liberty to frame any other issues other than the ones enlisted above.

\*\*\*

SECOND EDITION

**CNLU-CCI NATIONAL  
MOOT COURT COMPETITION**



**CONTACT  
INFORMATION**

**ORGANISING SECRETARY**

Ms. Nandita S. Jha  
Assistant Professor of Law  
cnlucci@cnlu.ac.in

**STUDENT CONVENORS**

Varnik Kundaliya  
+91 9012295507

Ridhi Ranjan  
+91 7070960888

**For further assistance and information:**

**E-mail:** [cnlucci@cnlu.ac.in](mailto:cnlucci@cnlu.ac.in)

**Website:** [www.cnlu.ac.in](http://www.cnlu.ac.in)