BEFORE THE HON'BLE SUPREME COURT OF AVALON

Special Leave Petition filed under Article 136 of the Constitution of Avalon& Appeal filed under Section 53T of the Competition Act,2002

MEMORIAL FILED ON BEHALF OF THE APPELLANTS

SLP(C) No. 101/2017

Adison & Anr. .....Appellants

V.

Competition Commission of Avalon .....Respondent

CLUBBED WITH

Appeal No. 1/2017

Plato& ors. .....Appellants

V.

Competition Commission of Avalon .... Respondent

Most Respectfully Submitted to the Hon'ble Judges of the Supreme Court of Avalon

COUNSEL APPEARING ON BEHALF OF THE APPELLANTS

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THE APPELLANTS HAVE APPROACHED THIS HON'BLE COURT INVOKING ITS APPELLATE JURISDICTION UNDER ARTICLE 136 OF THE CONSTITUTION OF AVALON TO GRANT A SPECIAL LEAVE AGAINST THE ORDER OF THE HIGH COURT.

*"**136: Special leave to appeal by the Supreme Court***

(1) Notwithstanding anything in this Chapter, the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India.

Nothing in clause (1) shall apply to any judgment, determination, sentence or order passed or made by any court or tribunal constituted by or under any law relating to the Armed Forces."

THE APPELLANTS HAVE APPROACHED THIS HON'BLE COURT INVOKING ITS APPELLATE JURISDICTION UNDER SECTION 53T OF THE COMPETITION ACT OF AVALON.

"***53T: Appeal to Supreme Court.***

The Central Government or any State Government or the Commission or any statutory authority or any local authority or any enterprise or any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal to them;

Provided that the Supreme Court may, if it is satisfied that the applicant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed after the expiry of the said period of sixty days."

In the present case the Hon'ble Court has used his original inherent power and clubbed the matters together under order "LV" (55), Rule 5 of the Supreme Court rules.

STATEMENT OF FACTS

ABOUT AVALON:

Avalon is a republic and a growing market in Asia whose laws are pari material to laws of India. It has a self-sustaining market with high potential for industrial growth. In 1991, government on Avalon opened its market to global competition and enacted Avalon Competition Act, 2002 to deal any emergent issues. Although, due to various judicial and policy consideration it was enacted on 20th May, 2010. CCA has high persuasive value of Competition Commission of India, Indian court and also relies on precedents and jurisdiction from EU and US.

GROWTH OF TECHNOLOGY AND COMPETITION:

After the growth of consumer electronic industry in Avalon, Adison, Brandon, Coral were leading manufacturers of TVs based on CRT technology. They started manufacturing LCD technology after entering into technology sharing agreement with Kitachi. Later, Plato, Quantas, Rony and Coral entered into technology sharing agreement with Hatim Tai and manufactured LCD (E) based TVs. Adison and Brandon continued to do the same. Because of the sudden emergence of TV industry, different manufactures started offering loyalties, incentives, discounts, different schemes to the customer.In Dec 2015, Brandon filed an Information under § 19(1)(a) of the Competition Act, before CCA alleging cartelization between manufactures of LCD(E) technology as their TVs were sold at abnormally high prices. CCA found it was a prima facie case of violation of § 3 of Competition Act and directed DG to investigate into the matter.

DG'S INVESTIGATION AND FINDING:

DG investigated that manufactures of LCD(E) marginally increase prices of their product during festive season to achieve their targets but as mentioned there have been continuously working to make their product affordable and increasing their consumer base. On further investigation it was found that, Mr. KechriMotiwala raised an issue on March 2010, that multi brand retailers sell TVs at very low or very high prices which affects single brand retailers. Therefore, their plea to set a minimum sale price for TVs having similar technology, was negated by the manufactures of LCD (E) as they would follow the market trend together but was taken into consideration by Adison and Brandon together to pacify the consumer who threatened to walk out of the

Conclave. Later, DG also tracked three phone calls between Adison and Brandon, their flight to attend the Facilitation Function and email which showed no correspondence with each other. It also took notice of the fact that their prices increased during festive season which resulted in violation of §3 of CCA.

ARGUMENT BY MANUFACTUERES AND DECISION BY CCA:

LCD(E) manufactures argued DG's report and alleged that conduct of cartelization is outside the purview of Competition Act and the conduct was prior to CCA. Adison and Brandon argued that there was no evidence of cartelization against them and DG's finding is based on cherry picking. CCA after hearing the parties held them in violation of § 3(3) and 27(b) of the Competition Act.

APPEAL AND THE DECISION BY COMPAT:

Adison and Brandon filed an appeal before COMPAT challenging the finding of commission against §3 and also raised an issue of jurisdiction of the CCA and DG's investigation. The COMPAT after hearing the issue of all the six parties decided that the appeals filed by LCD (E) manufacturers are dismissed and CCA findings on cartelization was upheld. Also, CCA was right in holding the price rise increase in Nov- Dec 2010 was in contravention of § 3 of the Act and there was no merit in the pleas of the Appellant that the act in question was outside the ambit of the Act. Further, it also held the plea by Adison and Brandon that DG acted outside his jurisdiction as unsustainable and remanded back the matter to CCA on the appeal so filed by them. Lastly, the penalties were rightly imposed by CCA according to the provision of the Act.

FINAL APPEAL IN SC:

Later, LCD(E) manufacturer approached the SC under § 53T of the Competition Act challenging the violation of §3 against them. Adison and Brandon on the other hand approached the HC challenging the finding of the COMPAT on scope and powers of DG's investigation but the writ was dismissed by HC. Aggrieved by HC, it approached the SC under Special Leave Petition challenging the order of HC to dismiss the petition and order of COMPAT remanding the matter back to CCA. The SC admitted the SLP as well as civil appeals, and directed that all the related matters be listed for final hearing together.

STATEMENT OF ISSUES

I. **WHETHER THE SLP FILED BY ADISON AND BRANDON ALONG WITH THE APPEAL FILED BY PLATO, QUANTAS, RONY AND CORAL IS MAINTAINABLE?**

II. **WHETHER THE ORDER OF COMPAT DECLARING THE DIRECTOR GENERAL'S REPORT SUSTAINABLE IS CORRECT IN LAW?**

III. **WHETHER THERE IS A VIOLATION OF SECTION 3(3) OF THE COMPETITION ACT, 2002 BY THE SIX MANUFACTURERS?**

SUMMARY OF ARGUMENTS

1 –WHETHER THE SLP FILED BY ADISON AND BRANDON ALONG WITH THE APPEAL FILED BY PLATO, QUANTAS, RONY AND CORAL IS MAINTAINABLE?

It is humbly submitted that the present special leave petition and appeal should be maintainable as it involves a substantial question of law which is not yet settled. The question of retrospective operation of the Act and the matter being remanded back to the commission requires a serious consideration. Further, by formulating inadmissible evidence by expanding the scope of his investigation and the commission on approving the report for examination although it was in excess of its direction has violated the principles of natural justice. The Hon'ble Court having residuary power can cure the absence of justice in the instant case.

2- WHETHER THE ORDER OF COMPAT DECLARING THE DG'S REPORT SUSTAINABLE IS CORRECT IN LAW?

It is humbly submitted that the DG is empowered to assist the Commission in investigating into any contravention of the provisions of said Act but not allowed to expand his scope of investigation. In the instant case, the DG was only directed to investigate into the festive season only, but he expanded his scope of investigation and investigated in excess of the commission's directions, thereby initiating suo moto enquiry which does not fall in the scheme of the Act. The findings of the DG are based on the conduct prior to the enactment of the act, thereby rendering his report invalid and unsustainable. Thus, the order of COMPAT declaring the DG's report sustainable is not correct in the eyes of law.

3- WHETHER THERE IS A VIOLATION OF SECTION 3(3) OF THE COMPETITION ACT, 2002 BY THE SIX MANUFACTURERS?

It is humbly submitted that for the attraction of 3(3) it is necessary that there must be an agreement. In the instant case there is no evidence which shows that there is an agreement between the manufactures regarding the increase of prices. Even if there is an agreement, there is no AAEC. Also, the order of COMPAT to remand the matter back to CCA is not correct in law as all the material evidence which is necessary for disposing an appeal is available on record and also the order of remand will give CCA, an opportunity to adduce evidence again.

ARGUMENTS ADVANCED

1.WHETHER THE SLP FILED BY ADISON AND BRANDONALONG WITH THE APPEAL FILED BY PLATO, QUANTAS, RONY AND CORAL UNDER SECTION 53T IS MAINTAINABLE?

It is humbly submitted before the Hon'ble Supreme Court[1] of Avalon that the Special Leave Petition[2] filed by Adison and Brandon challenging the order of the Hon'ble High Court[3] is maintainable.It is submitted thatArticle 136[4]of the constitution vests in the SC of Avalon a plenary jurisdiction in the matter of entertaining any appeal by granting of special leave, against any kind of judgment or order made by a court or a tribunal in any cause or matter[5].Also, the appeal filed by Appellants (Plato, Quantas, Rony and coral) under section 53T of the act is also maintainable. As per section 53T of the Act any enterprise or any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal to them[6].

It is contented that the jurisdiction of SC under Article 136 can be invoked when, (a) there is a substantial question law which is of general importance[7](b) gross injustice done to the parties. Subsequently, it can be gathered, that in the instant matter both, the SLP as well as appeals by the manufacturers are maintainable. There is existence of a substantial question of law which is of general importance, there is also an uncertainty of law which causes grave injustice to the parties and subsequently, exercise of Article 136 cannot be limited on the ground that there is an alternative remedy is available to the parties.

[1] Supreme Court Hereinafter SC.
[2] Special leave petition hereinafter SLP.
[3] High Court Hereinafter HC.
[4] Article 136 of Constitution of India.
[5]Durga Shankar Metha v. Raghu Raj Singh, AIR 1954 SC 520.
[6] § 53T, Competition Act, 2002.
[7]Commr., Centeral Exercise & Customs v. M/S Venue Casting(P) Ltd., (2000) 4 SCC 206.

1.1 – THAT THERE IS EXISTENCE OF A SUBSTANTIAL QUESTION OF LAW WHICH IS OF GENERAL IMPORTANCE.

1.1.1 - It is humbly submitted that the SLP filed by Adison and Brandon challenging the order of HC of New town along with an appeal file under section 53T is maintainable as it involves a substantial question of law which is of general importance.A question of law is substantial when it is of "general public importance or directly affects substantially rights of the parties or either an open question in the sense that it is not finally settled by this Court or by the Privy Council or by the Federal Court or when it is not free from difficulty or calls for discussion of any alternative views.[8]" The substantial question of law which persists, can be substantiated on three grounds, (a) the question of retrospective operation of the Act and (b) the question of arbitrary power exercised by the COMPAT in remanding back the order back to CCA.

1.1.2 - It is contented that though the Act is not retrospective,it creates a substantial question of law which directly affects the rights of the parties. This question of law is not yet settled as it is not based on an invariable rule that a statute could not be retrospective unless so expressed in the very terms of the Section which had to be construed.[9]It is essential to know that when a question of law is fairly arguable, where there is difference of opinion[10], it is not covered by specific provision of law or settled legal principal emerging from binding precedent, it is considered as a substantial question of law.[11]The question of retrospective operation of the Competition Act is not yet settled so far and conflicting views persist between legislations.The question of retrospective operation is also likely to violate the existing rights of the manufacturers if it subsists because of absence of express enactment of the law.There are two persisting views which conflict amongst each other, (a) that there is absolutely nothing in the language of the provisions to even distinctly suggest its retrospective operation and, (b) that the agreement being valid before the law coming into force would continue to be valid as it was not in breach of any law or affected any law then existing.The conflicting views still persist and the question regarding the retrospective operation of the Competition Act remains unanswered and not settled thereby creating a substantial question of law.

[8] Sir Chunilal Mehta & Sons. Ltd. v. Century Spinning & Manufacturing Co. Ltd., (1962) Supp (3) SCR 549.
[9] Mithilesh Kumari & Anr. v. Prem Behari Khare,(1989) SCR (1) 621, ¶ 21.
[10]Rimmalapudi Subba Rao v. Noony Veeraju & Ors., AIR 1951 Mad 969.
[11]Hero Vinoth v. Seshammal, (2006) 5 SCC 545.

1.1.3- It is contended that where the COMPAT hadremanded back the matter back to CCAbecause the scheme of the Act nowhere suggests that any matter could be remanded back when all the basic facts which are necessary for disposing an appeal are available on record. The COMPAT having sufficient evidence on record and material facts could not remand back the order back to CCA, rather there is no such merit for COMPAT to hear the instant matter.

1.1.4 - It is pertinent to note that the SLP can also entertain significant matter on the basis of question of facts. Even errors of facts can be a subject matter of judicial review under Article 136[12].In the instant case, the SC is not precluded from going into the question of facts[13].The evidence on record involving the material facts have been wrongly interpreted which further violates the present cause of matter.The identical material in the instant case has been wholly assumed by the COMPAT as coequal to the acts done by the manufacturers and further, use of arbitrary power poses a clear question of facts. This can be dealt with as an interference by the SC as the COMPAT relied on inadmissible evidence and the material facts which had not been considered would lead to an opposite conclusion.[14]It is humbly contended that all of the abovementioned questions need a fair consideration as they directly affect the existing rights of the manufacturers.

1.2 - THAT THERE HAS BEEN OCCURRENCE OF GROSS INJUSTICE TO ADISON AND BRANDON.

1.2.1 - It is humbly submitted that the SC has the power to grant special leave if, (a) there has been a relevant failure of justice[15], (b) when the lower court has no jurisdiction to entertain the matter and (c) when there is a violation of the principles of natural justice[16].The Court cannot allow injustice to simply perpetrate for the sake of upholding technicalities.[17]

1.2.2 - In the instant case, the DG expanded his investigatory power by exercising suo moto enquiry and did not confine to the directions given by CCA. By simply stepping into the shoes of the commission and relying on cherry picking, the DG has increased his scope of investigation

[12]Cholan Roadways Ltd. v. G Thirugnanasambandam, (2005) 3 SCC 241.
[13]Kathi Raning Rawat v. The State of Saurashtra, AIR 1952 SC 123.
[14]Ishwar Dass Jain Thr. Lrs v. Sohan Lal, (2000) 1 SCC 434.
[15]Santosh v. Mul Singh, AIR 1958 SC 321.
[16]National organic Chemical Industries Ltd. v. Miheer H. Mafatlal, (2004) 12 SCC 356.
[17]JanshedHormusjiWadia v. Board of Trustees, (2004)3 SCC 214.

formulating inadmissible evidence.Further, the CCA on approving the DG's report for examination although it was in excess direction and relying on inadmissible evidence has violated the principles of natural justice. The matter being remanded back by COMPAT to the CCA has been a remark of injustice since the parties lost their fair right of hearing and further, giving the opposite parties, a chance of procuring evidence is not correct in the eyes of law. The claim cannot be limited on the ground of any alternative remedy available[18] and the SC having residuary power can cure the absence of justice.[19]The exercise of jurisdiction conferred by article 136 of the constitution on this court is discretionary power of widest amplitude on this court to be exercised for satisfying thedemand of Justice[20]. It is therefore contended that the present SLP and appeal be maintainable.

II. WHETHER THE ORDER OF COMPAT DECLARING THE DIRECTOR GENERAL'S REPORT SUSTAINABLE IS CORRECT IN LAW?

It is humbly that submitted that as per §19(1) of the Competition Act, 2002,[21] the CCA can initiate inquiry on its own on the basis of information or knowledge in its possession.[22] Further, as per §26(1) of the Act, has the power to direct the Director General[23] to investigate any matter where it finds a prima facie infringement of the provisions of the Act.[24] However, it is essential to note that the power of the DG is confined to the directions it receives from the CCA and there cannot be any expansion of his investigating authority.

In the instant case, the CCA passed an order under Section 26(1) of the Act, directing the DG to investigate into a violation of Section 3.[25] The DG, in reporting a violation of the provisions of the Act, expanded his scope of information. It is contended that the COMPAT's order in declaring the DG's report sustainable[26] is not correct. This contention is sought to be substantiated on the following, (a) that the DG'S findings fall outside the purview of the Competition Act (b) that the DG's investigatory power is limited to the directions he receives

[18]East India Hotels Ltd. v. Syndicate Bank, (1992) Supp (2) SCC 29.
[19]C.C.E. v. Standard Motor Product, (1989) 2 SCC 303.
[20]Narpat Singh v. Jaipur Development Authority, (2002) 4 SCC 666.
[21]Hereinafter the Act.
[22]§19(1), Competition Act, 2002.
[23]Hereinafter DG.
[24]§26(1), Competition Act, 2002.
[25]§3, Competition Act, 2002.
[26]Proposition, ¶7.

from the CCA and (c) the DG on expanding his investigatory authority has violated the principles of natural justice.

2.1 - THAT THE DG'S FINDINGS FALL OUTSIDE THE PURVIEW OF THE ACT.

2.1.1 - It is humbly submitted that the DG's findings are concluded taking into considerationtransactions which had been occurred prior to the enactment of substantive provisions coming into force i.e. 20 May 2010.Since the conduct was prior to the enactment of the Competition Act, it saves the alliance of the manufacturers because there is absence of express enactment of the provisions of the Act which is likely to affect the existing substantive rights of manufacturers. Also, a statute which affects substantive rights is presumed to be prospective in operation unless made retrospective by necessary intendment.[27]The DG's findings are based on transactions which are not covered under the law in force, this renders the DG's report to be invalid and the conduct of the manufacturers unquestionable.

2.1.2 - It is pertinent note that unless there are words in the statute sufficient to show the intention of the legislature to affect existing rights, it is deemed to be prospective only *'nova constitution futurisformamimponeredebet non praeteritis'* In other words, provisions which touch a right in existence at the passing of the statute are not to be applied retrospectively in the absence of express enactment or necessary intendment.[28]

2.1.3 - There is absolutely nothing in the language of §3, which even distinctly suggests its retrospective operation. A statute becomes retrospective only and only when the language of provision so provides.[29] An understanding of §3 says that there shall be no agreement which causes or is likely to cause an appreciable adverse effect on competition within India. What is of the essence is, formation of an anti-competitive agreement. Unless there is creation of such agreement which is likely to hinder competition, the mischief of §3 would not attract.In the instant case, there can be no dispute that the manufacturers were involved in imposition of such condition as we can clearly see that the DG's report consists of findings when §3 was not available.Therefore, the question of DG's report to be sustainable would fall for consideration only and only if those agreements had actually been executed after 20th May, 2010. As

[27]Hitendra Vishnu Thakur v. State of Maharashtra, (1994) 4 SCC 602.
[28]Delhi Cloth & General Mills Co. Ltd. v. CIT, (1928) 30 BOMLR 60.
[29]DLF Ltd. v. Competition Commission of India, [2014] 45 taxmann.com 300 (CAT).

agreement was actually signed six years prior to the enactment of the Competition Act, i.e. 20th May, 2004[30] and hence, the DG's findings fall outside the purview of the Act. In the instant case, enactment of the Competition Act is bound to attach a new disability on the manufacturers in respect of transactions already taken prior to the enactment of the Competition Act, such intendment of the legislature must be presumed not to have a retrospective effect.[31] It is so becauseretrospective operation is not taken to be intended unless that intention is manifested by express words or necessary implication.[32]The legislature is silent on the topic of the retrospective operation of §3, therefore unless clear and unambiguous intention is indicated by the Legislature by adopting suitable express words in that behalf, the substantive provisions cannot be given retrospective operation.[33]

2.1.4 - Therefore, there can be no question that the whole transactions between the manufacturers are not prior to the relevant date of 20th may 2010. The agreement was certainly proposed to be acted as on the relevant date, i.e. 2004 which concludes all of the acts done in pursuance of the agreement and subsequently, there was no enactment of Competition Act during the relevant period. Due to absence of necessary enactment, acts done by the manufacturers are absolutely sustainable and cannot be questioned. The DG's findings are therefore invalid because the report is solely based upon acts done prior to the enactment of the substantive provisions of the Act.

2.2 - THAT THE DG'S INVESTIGATORY POWER IS LIMITED TO THE DIRECTIONS HE RECEIVES FROM THE CCA.

2.2.1 - It is humbly submitted that according to §26(1), the DG shall be directed to investigate the matter only when the commission is of the opinion that there exists a prima facie case. Being a quasi- judicial body, the commission alone has the powers to call for a prima facie infringement of the provisions of the Act and may accordingly direct the DG with his investigatory functions as it may deem so. Prima facie is a settled principle of law,[34] and is restricted to an examination of material on record without conducting a detailed analysis of the material. In the instant case, the DG is restricted to limited investigatory power which is solely

[30]Proposition, ¶ 2.
[31]Bourke v. Nutt, (1894) 1 QB 725 ; Amireddi Raja Gopala Rao v. Amireddi Sitharamamma & ors., (1965) 3 SCC 122.
[32]Arjan Singh v. State of Punjab, AIR 1970 SC 703.
[33]Bhagwan Singh Lal Singh & Ors. v. State of Punjab & Ors., AIR 1966 P H 25.
[34]Shin-Etsu Chemical Co. Ltd. v. AkshOptifibre Limited &Anr., (2005) 7 SCC 234;Ramdev Food Products Pvt. Ltd. v. ArvindbhaiRambhai Patel & Ors., (2006) 8 SCC 726.

dependent upon the directions received by the CCA. This restricted power of the DG can be substantiated through determining the intention of legislature while giving power to the said provision.

2.2.2 It is humbly submitted that when language of a statute is plain and clear, then literal rule of interpretation is to be applied[35]. Further, The Court must use literal rule of interpretation when a statutory provision is unambiguous and if, from the words, the intention of the legislature can be gathered.[36] A perusal of the provision to §26(1) makes it clear that direction from the commission is a prerequisite for initiation of investigation by the DG. In the instant case, the supposed intention of the legislature cannot be appealed to whittle down the statutory language which is otherwise unambiguous.[37] The CCA while forming a prima facie violation of §3 of the act directed the DG to investigate into the matter, however it should be made clear that the DG was nowhere allowed to expand his scope of investigation, rather he was restricted to investigate during the festive season only.[38]Hence, if CCA issued a direction to the DG to investigate into the matter during the relevant period, i.e. during the festive season in November- December 2010, the DG is ought to be confined to the directions issued by the CCA and he is not in a position to expand his scope of investigation.

2.2.3 - It is humbly submitted that a statute is an edict of the Legislature and in construing a statute, it is necessary to seek the intention of its maker.[39] By having a closer look at the Section, it can be gathered that the DG is not allowed to initiate inquiry *suo moto*[40] and such *suo moto* expression of investigatory power is not vested in the scheme of the Act.[41] In the instant case, the CCA being bound to disclose reasons for its rulings,[42]after forming a prima facie case of violation directed the DG to investigate further which does not give the DG, liberty to initiate investigation on its own motion. Further, Regulation 20(4) of the CCA (General) Regulations,

[35]Vijay Narayan Thatte & Ors. v. State of Maharashtra & Ors., (2009) 9 SCC 92.
[36]M/s. Hiralal Ratanlal v. STO, AIR 1973 SC 1034. ; Institute of Chartered Accountants of India v. Price Waterhouse, AIR 1998 SC 74.
[37]Keshavji Ravji & Co. v. CIT, (1990) 2 SCC 231.
[38]Proposition, ¶ 11.
[39]Suganthi Suresh Kumar v. Jagdeeshan, (2002) 2 SCC 420.
[40]Suo moto is a Latin term meaning "on its own motion". It is used in situations where a government or court official acts of its own initiative.
[41]SVS Raghavan Committee, Report of High Level Committee on Competition Law & Policy (2000), ¶ 2.8.
[42]Seimens Engg & Mfg. Co. of India Ltd. v. Union of India & Anr., (1976) 2 SCC 981.

2009[43] requires the DG to report his findings based on information filed and the he has to be confined to the allegations made in the information. Therefore, the act of DG has to be confined to the directions received by the CCA based on a preliminary review of material on record and by expanding his scope of investigation, the DG has initiated inquiry suo moto which is not allowed under the scheme of the Act.[44]

2.2.4 - It is essential to note that if a statutory provision is open to more than one interpretations, the Court has to choose that interpretation which represents the true intention of the Legislature.[45] Likewise, the true intention of legislature in the said provision confers limited authority on the part of the DG and by widening the scope of his investigatory power, the DG has initiated suo moto which tantamount to evasion of the statute.

2.3 THAT THE DG ON EXPANDING HIS INVESTIGATORY AUTHORITY HAS VIOLATED THE PRINCIPLES OF NATURAL JUSTICE.

2.3.1 - It is humbly submitted that as per §36(1) of the Act, in discharge of its functions, the commission shall be guided by the principles of natural justice.[46]In other words, the principles of natural justice have been statutorily engrafted in the scheme of the Act and the Commission is bound to comply with the same in the exercise of its adjudicatory functions.[47] Moreover, when the provisions of a statute requires an act to be done in a particular manner, such an act can be done only in the prescribed manner and not otherwise.[48]On a simple reading of §26, we understand that the DG's investigatory authority is restricted to the directions it receives from the Commission. In the instant case, the DG with no such reliance on procurement of material evidence, concluded his investigation solely on cherry picking which constitutes his act beyond the directions given by CCA while conducting investigation. It is contended it would be of no use if it amounts to completing a mere ritual of hearing and relying on simple oral communication without possibility of any change in the decision of the case on merits.[49] Simply relying on misconceived and misleading appearance of facts does not amount to formation of

[43]Hereinafter the 2009 Regulations.
[44]Grasim Industries Ltd. v. Competition Commission of India, [2014] 41 taxmann.com 333 (Delhi).
[45]National Insurance Co. Ltd. v. Laxmi Narain Dhut, (2007) (4) SCALE 36 (SC); Mohammad Ali Khan v. Commission of Wealth Tax, AIR 1997 SC 1765.
[46]Section 36(1), Competition Act, 2002.
[47]Lafarge India Ltd. *v.* Competition Commission of India, [2015] 64 taxmann.com 200 (CAT).
[48]Grasim Industries, *Supra*note 44.
[49]Escorts Farms Ltd. v. Commr. (2004) 4 SCC 281.

evidence, the DG while stepping into the shoes of the CCA has exercised suo moto authority in order to conclude his investigation process.

2.3.2 - It is pertinent to note that a tribunal or a person to whom judicial or quasi-judicial functions are entrusted is presumed to have an obligation to act with fairness, and not only the obligation to observe principles of natural justice but, on the contrary, to observe a higher standard of behavior than that required by natural justice.[50] Thus, in the instant case it becomes obligatory for the CCA which is entrusted with quasi-judicial functions to follow the principles of natural justice and not violate this unwritten right of hearing, i.e. *Audi alterum partem,*which is fundamental to a just decision deciding this controversial issue affecting the rights of the rival contestants.[51] The CCA on approving the DG's report for examination although it was formulated in excess of CCA's direction is a sheer violation of the Act.[52] It is contended that the manufacturers have been deprived of adequate opportunity to lead evidence and failure to defend themselves at the investigatory stage of the DG means failure to lead evidence before the CCA.[53]

2.3.3 - Therefore, it is contended that the DG acted in excess of authority conferred to him in reporting the said violation and the CCA on approving the DG's report for examination, has violated the scheme of the Act and subsequently, principles of natural justice in doing so.

III. WHETHER THERE WAS A VIOLATION OF SECTION 3(3) OF THE COMEPTITON ACT, 2002 BY THE SIX MANUFACTURERS.

It is humbly submitted before the Hon'ble SC of Avalon that there is violation of section 3(3) of competition act by manufactures. It is humbly submitted that as per section 3(3) of the Act, any agreement which is entered into between enterprise or association of enterprise or person or association of person including cartel[54] engaged in identical or similar trade of goods or provision of service which directly or indirectly determine purchase or sale price[55] shall be presumed to have an appreciable adverse effect on competition[56]. It is contented that for the violation of section 3(3) of the Act it is necessary that there should an agreement which is not

[50]Menaka Gandhi v. Union of India, (1978) 1 SCC 248.
[51]SayeedurRehman v. State of Bihar, (1973) 3 SCC 333.
[52]Grasim Industries, *Supra* note 44.
[53]*Id.*
[54] § 2 (c), Competition Act, 2002.
[55] § 3(3), Competition Act, 2002.
[56] Appreciable Adverse Effect on Competition hereinafter AAEC.

necessary to be formal or in writing[57]. It is substantiated on the ground that there was no agreement between Plato, Quantas, Rony and Coral to increase price and that they are not engaged in cartelization and there are no evidences which prove that there is price parallelism agreement between the manufactures of LCD(E) technology. Similarly, there are no evidences against Adison and Brandon which shows any kind of an agreement which accuses them for cartelization and order of COMPAT to remand back the matter to CCA is not correct in law and even if there is an agreement between manufactures there is no AAEC. As manufactures of LCD(E) were not engaged in cartelization to increase price hence penalties imposed by CCA under section 27(b) should by quashed.

3.1 - THAT THE MANUFACTURES OF LCD(E) ARE NOT ENGAGED IN CARTELIZATION.

3.1.1 - It is humbly contended that manufactures of LCD (E) are not engaged in cartelization. Here word Cartel has been defined in Hindustan Development Corporation case[58] as an association of producer, who by agreement amongst themselves limits control or attempt to control the production, sale or price of or trade in goods or provision of service to obtain the monopoly in any particular commodity or industry and cartel is formed with a view that member members of cartel do not wage a price war and they sell at an agreed and a uniform price[59].

3.1.2 - What needs to be established for cartelization is whether there was any agreement, implicit or explicit between the manufacturers.[60] In the instant matter, there is no agreement between the manufactures of LCD (E) to increase price of their TVs during festival season. It is contented that Section 2(b)[61] of Act while defining 'agreement', takes within its ambit any "arrangement" or "understanding" or "action in concert", even if arrived at informally and even if not intended to be enforceable[62]. For establishing an agreement it is required that "the existence of such an 'agreement' is unequivocally established.[63]And in the instant matter, there is no agreement between the manufactures as there is no arrangement, understanding or action in concert between manufactures.

[57] *In Re*, Aluminium Phosphide Tablets Manufacturers, [2013] 28 taxmann.com 364 (CCI).
[58] Union of India v. Hindustan Development Corporation, (1993) 3 SCC 499.
[59] M/s. Haridas Exports v. All India Float Glass Manufactures Association, (2002) 6 SCC 600.
[60] *In re*, Manufacturers of Asbestos Cement Products., [2014] 45 taxmann.com 529 (CCI).
[61] § 2(b), Competition Act, 2002.
[62] Jyoti Sawroop Arora v. Competition Commission of India, [2016] 70 taxmann.com 307 (Delhi).
[63] NeerajMalhotra v. Deutsche Post Bank, [2011] 106 SCL 62 (CCI).

3.1.3 - Here word 'arrangement' suggests a common course of conduct or behavior involving some sort of communication or exchange of views between the parties where there is an expectation that the other would act in certain way[64]. Merely following a price leader and adopting the price announced by him would not imply an arrangement as it lacks mutuality. Adoption of parallel business behavior, may be admissible as circumstantial evidence, cannot be taken to establish an arrangement and would require something more to justify such a contention[65]. The law is not subtle or unrealistic as to lead to a conclusion that an arrangement can come into being as a result of information as to one another intention supplied in words or in writing or by nod or wink, nor it can be derived from each other's intention or continuing conduct towards each other.[66]In the instant case, there was no arrangement between manufactures as there was no communication or exchange of views between the manufactures of LCD (E) and therefore, the interview of Mr. Jung Ho cannot be taken as evidence that there was an arrangement between them.

3.1.4 - Even the term 'understanding' implied some sort of behavioral communication between the parties where one make a representation as to his own future conduct with an intention and expectation that such conduct on his part will act as an inducement to another's act in a particular way. Whether that is sufficient to constitute an agreement, certainly depends in the ordinary sense even though parties never actually contacted each other.[67] Both arrangement and understanding require some sort of communication either oral or behavioral between the parties resulting in the adoption of a particular course of conduct by them.

3.1.5 - Concerted practice on the other hand covers a wide variety of conduct, ranging from a situation in which an agreement appears to exit but it is difficult to establish evidentially. It is generally the conduct observable in the market, suggesting that the firms, in some degrees, are colluding.[68] Here word action in concert covers the understanding as well as an agreement and informal as well as formal arrangement which lead to cooperation.[69]Although parallel behavior may not by itself be identified with a concerted practice; it may however amount to strong evidence of such a practice if it leads to conditions of competition, which do not correspond to

[64]British Basic Slag Ltd 1962 LR 3 RP 179.
[65]All India Motor Transport Congress v. Indian Foundation of Transport Research & Training (IFTRT), [2016] 69 taxmann.com 119 (CAT).
[66]*In re* Mileage Conference Group of the Tyre Manufacturers Conference Ltd 1966 LR6 RP 49.
[67] 1 SM DUGAR,GUIDE TO COMPETITION LAW 630(Lexis Nexis,5TH ed. 2010).
[68]Mark Furse, Competition Law of the EC and UK 146, 2004.
[69]Technip S.A.v.S.M.S. Holding (P.) Ltd., [2005] 60 SCL 249 (SC).

the normal conditions of the market[70]. In order to determine the existence of cartel, price parallelism must be supported by evidence of an agreement or collusion or action in concert.[71]

3.1.6 - In *All India Motor Transport*[72] it was held that the press release issued by the office bearers of the appellants shows, that the appellant had only expressed its resentment and the commission misconstrued the press release as a clarion call given by the appellant for increase in truck freight and it was held that the finding recoded by DG were based on assumption and conjectures and were not based on any tangible evidence. In the absence of any credible material evidence, bare assertion of complaint cannot be relied upon.[73] It is submitted that in the instant matter, interview given by Mr. Jung Ho cannot be taken as an admissible evidence for proving cartelization because in his interview Mr. Jung Ho expressed its resentment and form this it cannot concluded that there was an agreement between manufactures of LCD (E) to increase the price of their TVs and no credible material evidence from which it can be concluded that there is an agreement between manufactures of LCD(E) to increase the price of their product.

3.1.A - THAT PENALTY IMPOSED BY CCA ON THE MANUFACTURES OF LCD(E) MUST BE QUASHED.

3.1..A.1 - It is humbly contended before the Hon'ble Supreme Court of Avalon that penalty which is imposed by CCA under section 27(b) of the act on manufactures is not correct and it should be quashed.As per section 27 of the act Where after inquiry the Commission finds that any agreement referred to in section 3 or action of an enterprise in a dominant position, is in contravention of section 3 or section 4, as the case may be, it may pass orders[74]. Provided that in case any agreement referred to in section 3 has been entered into by any cartel the Commission has the discretion to impose upon each purchaser, seller, distributor, trader or service provider included in the cartel, a penalty up to three times of its profit for each year of the continuance of such agreement or ten percent of the turnover for each years of the continuance of such agreement, whichever is higher as per proviso to section 27(b).

3.1.A.2 - As per section, penalty can only be imposed when there is an agreement between manufactures under section 3 of the act. In the instant matter, as there was no agreement which is

[70]Case 48/69, Imperial Chemical Industries Ltd v. Commission., E.C.R. 619 (1972).
[71]*In Re*, Glass Manufactures of India, (2012) SCC Online CCI 7.
[72]All India Motor Transport Congress, Supra note 65.
[73] All India Distiller's Association v. Haidyn Glass Gujarat Ltd. Baroda & Ors., (2010) SCC Online CCI 17.
[74] § 27, Competition Act, 2002.

in contravention of § 3 and § 4 of the act between Plato, Quantas, Rony and Coral to increase the price of their LCDs from which it can be concluded that they all indulged in anti – competitive agreement. Therefore, the penalty so imposed by CCA should be quashed.

3.2- THAT ADISON AND BRANDON ARE NOT ENGAGED IN CARTELIZATION

3.2.1 - It is humbly contended before the Hon'ble Supreme Court of Avalon that for the attraction of section 3(3) of the act it is necessary that there should be an agreement between enterprise or association of enterprise or person or association of person including cartel. It is contented that in the instant matter, Adison and Brandon were not engaged in cartelization as there is no evidence of cartelization against them and entire finding of DG was based on cherry picking.While establishing cartel[75], "there must be an evidence that tends to exclude the possibility of independent action by parties. That is, there must be direct or circumstantial evidence that reasonably tends to prove that the parties had a conscious commitment to a common scheme designed to achieve an unlawful objective"[76].In the instant matter, there is no direct or circumstantial evidence which shows that there is cartelization between manufactures and that they have not entered into any sort of an anti- competitive agreement. Mere possibility of price parallelism[77] does not imply that parties offering such similar prices are engaging in cartelization and it is a settled law that in order to determine the existence of a cartel, price parallelism must be supported by evidence of an agreement or collusion or action in concert.[78]

3.2.2 - Avalon has an oligopolistic market as there are less number of sellers and large number of buyers. Evidence or finding which is indicating price following in an oligopoly market are not sufficient[79]. Price parallelism is a common feature of oligopoly market and in order to prove cartel like conduct there must be a 'plus factor'. Therefore, an oligopolistic market cannot *per se* be concluded to be a cartelized market.[80]

3.2.3 - Nearly identical price of LCDs by Adison and Brandon only form evidence which is insufficient to conclude that there is an agreement between them resulting into cartelization. It is contented that for proving cartelization or to invoke the provisions of section 3, the existence of

[75]Hindustan Development Corporation, *Supra note* 58.
[76]Monsanto Co. v. Spray-Rite Service Corpn,465 U. S. 752, 753 (1984).
[77] Moot Proposition, ¶ 15.
[78]Film & Television Producers Guild of India v. Multiplex Association of India,[2013] 36 taxmann.com 347 (CCI).
[79]VERSHA VAHINI, INDIAN COMPETITION LAW 28 (Lexis Nexis).
[80]*In Re,* Alleged Cartelization by Steel Producer, (2014) SCC Online CCI 7.

an 'agreement'[81] is sine qua non[82] and agreement must be established unequivocally.[83]In *Alkali & Chem Corp of India*[84] MRTP observed that mere identity of price increase between two units, even in the absence of any justification, such increase in the exercise duty or increase in the cost of raw material does not appear highly suspicious and it is hard to believe that there is some prior understanding.In the instant case, there is no arrangement[85] between Adison and Brandon. It is contented that adoption of parallel business behavior[86] by Adison and Brandon though may be admissible as circumstantial evidence but cannot be taken to established arrangement and would require something more to justify such contention.[87]. Similarly, to justify action in concert[88], parallel behavior needs to be substantiated with the additional evidence or plus factors to bring it into the ambit of prohibited anti-competitive agreements.[89]DG on finding has relied upon the pure assumption on the basis of Felicitation function[90] which was held on 19 may 2010, from emails[91], call records and travel to common destination[92]. DG came onto conclusion that there is cartelization between Adison and Brandon but all these does not constitute any strong evidence from which it can be concluded that there was any agreement between manufacturers.

3.2.4 - In *Film Television Producer*[93] the Commission observed that among set of circumstantial evidences, evidence of communication between the Opposite Parties[94] is very important. However, at the same point of time mere exchange of information alone is not sufficient. Meeting at trade association may be used as a platform for conducting concerted activities by the competitors, however, the mere fact that meetings held is where members exchanged certain information by itself cannot be said to be anti-competitive in terms of the provisions of the Act.[95] In the instant case, DG has not been able to gather sufficient evidence which could suggest that the Adison and Brandon used felicitation function as a platform to co-

[81]§ 2(b), Competition Act, 2002.
[82]Cartelization by Steel Producer, *Supra note* 80.
[83]Neeraj Malhotra, *Supra note* 63.
[84]The Alkali & Chem Corp of India (Bom), 1984 3 Comp LJ 268.
[85]All India Motor Transport Congress, *Supra note* 65.
[86] Moot Proposition, ¶ 15.
[87]SM DUGAR, *Supra note* 67, at 630.
[88]Technip SA, *Supra note* 69.
[89]Muthoot Mercantile Ltd. v. State Bank of India, [2015] 54 taxmann.com 104 (CCI).
[90]Moot Proposition, ¶ 17.
[91]Moot Proposition, ¶ 18.
[92]Moot proposition, ¶ 18 and ¶ 19.
[93]Film & Television Producers, *Supra note* 78.
[94]Hereinafter OP.
[95]Film & Television Producers, *Supra note* 78.

ordinate a conspiracy. Mere fact that both attended felicitation function only to agree and fix prices cannot be taken as an evidence for establishing anti – competitive agreement. It is contented that the existence of a scenario conducive to cartelization is not enough and cogent evidence must be adduced or collected to prove anti-competitive arrangement or agreement[96].

3.2.5 - Firstly, DG has relied also upon the e-mails[97] exchanged between the CEO of Adison and Brandon. However, the email record of Adison and Brandon did not contain any correspondence with each other except a common invitation for the Annual Technology Conclave and Felicitation Function of Minister of Corporate Affairs and this cannot be said that they entered into any kind of an agreement. Secondly, DG has also relied on flight record of Adison and Brandon. It was revealed that Mr. Bandhu took a 2:00PM Air Avalon flight to travel to New Town and Ms. Nehra travelled to flight number E 645 of Air Avalon at 2:00 PM to reach New Town. It is contented that form travel records of Adison and Brandon it cannot be said that both travel in same flight to reach New Town as DG in his finding did not provide name of the place from where Adison and Brandon took a flight to Avalon. Investigation of DG is based on pure assumption and form this assumption it cannot be said that there is an agreement between Adison and Brandon for anti – competitive agreements. Thirdly, DG also took call records into consideration of Adison and Brandon but was unable to find anything from which it could be said that there was any agreement or arrangement or understanding between the two. Fourthly, both Adison and Brandon took a collective action in order pacify members at trade association and 'collective' action of the members of a trade association per se does not fall in the categories of agreements contravening section 3(3).[98]

3.2.6 - Absence of any direct evidence of cartel and circumstantial evidence without shared evidence of proof or any plus factor to bolster the circumstances of price parallelism, it is unsafe to conclude that there is a contract[99]. In the instant case, except the fact that identical prices were quoted, there is no other material evidence for establishing cartelization by Adison and Brandon at same time. Hence, from finding of DG cannot be said that there was an agreement between them.

[96]GlaxoSmithKline Pharmaceuticals Ltd. v. Competition Commission of India, [2016] 76 taxmann.com 136 (CAT).
[97]Moot Proposition, ¶ 18.
[98]Advertising Agencies Guild v. Indian Broadcasting Foundation & Its Members, [2013] 35 taxmann.com 651 (CCI).
[99] Delhi Development Authority v. Shree Cement Ltd., (2010) CTJ 17 (COMPAT) (MRTP).

3.2.A -THAT THE ORDER OF COMPAT TO REMAND BACK THE MATTER TO CCA IS NOT CORRECT IN LAW.

3.2.A.1- It is humbly submitted before the Hon'ble Supreme Court of Avalon that order of COMPAT to remand the matter back to CCA is not correct in law due to the lack of merits and basic facts which is necessary to dispose an appeal is already on record in which COMPAT can remand back matter to CCA.

3.2.A.2 - It is contented that as per 53B (3) of the Act, the Appellate Tribunal may after giving parties to the appeal, an opportunity of being heard, pass such order thereon as it think fit, confirming, modifying or setting aside the direction, decision or order appalled against.[100] It is contented that COMPAT has power to remand the matter back to CCI under section 53B (3) of the act but remand cannot be directed by an Appellate Tribunal when basic facts which is necessary for disposing an appeal is available on record[101] and when there is no merit in which a case can be remanded[102]. The discretion given under this section by Competition Appellate Tribunal was a judicial discretion which should be exercised in accordance with legal principles and not in an arbitrary or capricious manner and also, it must be exercised within its limit. And in the instant matter, order of COMPAT to remand back the matter to CCA is not correct in law as basic facts such as evidence and findings of DG, is available on record and COMPAT could have decided the matter on its own motion.

3.2.A.3 - Order to remand the matter back was not correct because it provided CCA another chance to adduce evidence.[103] Remand is only a short cut, and is totally prohibited. Therefore, it is necessary that matter should be decided on merit without allowing one of the parties before the Tribunal to have another inning, particularly when such party had full opportunity to establish its case. Unnecessary remands, when relevant evidence is on record, belies litigant's legitimate expectations and is to be deprecated.[104]Remand cannot be made for the purpose of permitting the parties to adduce fresh evidence to fill up lacuna or to decide a point when material is already on

[100]§ 53B (3), Competition Act, 2002.
[101]United Commercial Bank v. CIT, [1982]9 Taxman 260(Cal.).
[102]M.G. Shahani & Co. (Delhi) Ltd. v. Collector of Central Excise, (1994) 73 ELT 3 (SC).
[103]Karnataka Wakf Board v. State of Karnataka, AIR 1996 Kar. 55.
[104]Zuari Leasing & Finance Corpn.Ltd. v. Income-tax Officer, [2008] 112 ITD 205 (DELHI) (TM).

record[105] and mere fact that evidence on record is not sufficient cannot be a ground for matter remanding back to CCI because remand is not for the benefit of the party seeking it to fill up gaps.[106]Hence, decision of COMPAT to remand the matter to CCA was nothing but a gross injustice to Adison and Brandon.

3.3- THAT THERE IS NO AAEC ON COMPETITION.

3.3.1 - It is humbly submitted that Section 3(1) of the Act provides that any agreement which causes or is likely to cause appreciable adverse effect on competition[107] shall be void. Section 3(3) of the Act provides that any agreement amongst persons or enterprises at same levels of the production chain shall be in contravention of Section 3(1) is presumed to cause AAEC. Since there was no agreement between the manufactures, it cannot contravene with section 3(1) of the act. Further, the alleged anti competition has pro-competitive effects as provided under Section 19(3)[108] of the Act.

3.3.2 - 19(3) of act the commission while determining whether an agreement has an appreciable adverse effect on competition under section 3, have due regard to all of the following factor (1) *creation of barriers to new entrants in the market*: the fact that new manufacturers like Kitachi[109] and Hatim Tai[110] came into technology sharing agreement with the existing manufactures is of enough proof that there were no barrier to the entry in the market. (2) *driving existing competitors out of the market*: this could not said that any of the manufacturers tried to drive existing competitors out of the market because it was due to the emergence to several TV manufacturers that led other manufactures to offer loyalties, target based discounts, incentives, free foreign trips to the customer.[111] (3) *fore-closure of competition by hindering entry into the market:* in the present case there has been no instance of foreclosure or refusal to deal or discrimination made on supply and distribution of the product *(4) accrual of benefits to*

[105]Ghasi Ram Dayanand v. CST, 92 STC 478.
[106]CITv.Harikishan Jethalal Patel, [1987] 33 TAXMAN 217 (GUJ.).
[107]Hereinafter AAEC.
[108]§19(3) of the Competition Act, 2002 following factors are: creation of barriers to new entrants in the market, (2) driving existing competitors out of the market, (3) foreclosure of competition by hindering entry into the market; (4) accrual of benefits to consumers (5) improvements in production or distribution of goods or provision of services (6) promotion of technical, scientific and economic development by means of production or distribution of goods or provision of services
[109] Moot Proposition, ¶ 6.
[110] Moot Proposition, ¶ 7.
[111]Moot Proposition, ¶10, ¶ 2.

consumers: the terms and conditions were formulated in order to cater to the existing customer base. Manufacturers here in question providing television services pride themselves in providing the latest quality television to their customers. In order to retain their customer base, it becomes imperative for the manufacturers to prioritize quality assurance and also achieve their respective targets in the given time. The main reason is to allow manufacturers to continue to influence the quality of their product by offering a high standard of service to the consumer.[112](5) *Improvements in production or distribution of goods or provision of services:* the fact new technology is coming in the market of Avalon therefore it is generating more production and distribution as per market demand. (6) *Promotion of technical, scientific and economic development by means of production or distribution of goods or provision of services:* the fact that television market has improved from CRT technology to LCD technology to LCD(E) technology is a proof that there was technical, scientific and economic development in the Avalon market.

3.3.4 - It has been appropriately explained that the competition to be an exclusive manufacturer may constitute "a vital form of rivalry, and often the most powerful one, which the antitrust laws encourage rather than suppress."[113] Therefore, rising of the pries during festive season could not have been said that they entered into any anti- competitive agreement causing AAEC. An undertaking has freedom to choose customers, the circumstances and conditions to deal with[114] which is quite evident in the instant case.

[112]Eugene Buttigieg, Competition Law:Safeguarding the Consumer Interest, Vol. 40(2009).
[113]Paddock Publication, Inc. v. Chicago Tribune Co., 103 F.3d 42 (7th Cir.1996).
[114]Southern Pac. Communications Co. v. A.T.T, 740 F.2d 980 (D.C.Cir. 1984).

PRAYER

WHEREFORE IN LIGHT OF THE ISSUES RAISED, ARGUMENTS ADVANCED AND AUTHORITIES CITED, THE APPELLANTS MOST HUMBLY AND RESPECTFULLY PRAY AND REQUEST THE HONORABLE COURT:

TO HOLD:

I. **THAT THE PRESENT SPECIAL LEAVE PETITION ALONG WITH THE APPEAL FILED BY THE MANUFACTURERS BE MAINTAINABLE.**

II. **THAT THE DIRECTOR GENERAL EXCEEDED THE SCOPE OF HIS AUTHORITY IN INVESTIGATING A VIOLATION OF SECTION 3(3) OF THE ACT.**

III. **THAT THE COMPETITION COMMISSION OF AVALON AND THE DIRECTOR GENERAL DID NOT HAVE ANY JURISDICTION TO EXPAND THEIR SCOPE OF INVESTIGATION.**

IV. **THAT THE AGREEMENT BETWEEN THE MANUFACTURERS AND AUTHORISED SERVICE PROVIDERS IS NOT ANTI-COMPETITIVE.**

V. **THAT THE MANUFACTURERS ARE NOT GUILTY OF CARTELIZATION.**

TO PASS:

THAT THE PENALTIES IMPOSED BY THE CCA MUST BE QUASHED.

MISCELLANEOUS:

ANY OTHER RELIEF WHICH THIS HON'BLE COURT MAY BE PLEASED TO GRANT IN THE INTERESTS OF JUSTICE, EQUITY AND GOOD CONSCIENCE. ALL OF WHICH IS RESPECTFULLY SUBMITTED.

FOR THIS ACT OF KINDNESS, THE APPELLANTS SHALL BE DUTY BOUND FOREVER

ALL OF WHICH IS RESPECTFULLY SUBMITTED

(COUNSEL FOR THE APPELLANTS)