

# MOOT PROPOSITION

1. The Kingdom of Ruritania is a state which had been a British colony for the last 200 years before its declaration of independence in 1947 resulting in the formation of the state of Ruritania. Ruritania has a large population of close to 1.4 billion and has a diversified economy. As an independent state, Ruritania adopted its own Constitution and constituted its own Parliament, which enacted several laws to govern the newly independent state. Many of Ruritania's laws were modelled along the lines of English law. In the initial few decades of its statehood, Ruritania had a closed economy which was opened to the rest of the world only in the early 1990s. With the advent of liberalization and the entry of multinational corporations into its economic landscape, this period sparked an era of unprecedented economic and technological growth.

2. The Ruritarian parliament passed stronger and more versatile laws to regulate its evolving economy. For instance, while its laws historically sanctioned monopolies and restrictive trade practices, the Ruritarian Parliament, in 2002, enacted the Competition Act, 2002 (**Competition Act**). The Competition Act was implemented in two phases: the provisions prohibiting anti-competitive agreements and abuse of dominance were brought into force in 2009; and the provisions regarding regulations of mergers, acquisitions and amalgamations were brought into force in 2011. The Competition Act also established the Competition Commission of Ruritania (**CCR**) to promote competition and prohibit anticompetitive practices by orders imposing suitable remedies.

3. The CCR passes orders to direct its investigative arm, the Director-General (**DG**), to open investigations against perceived anti-competitive conduct based on references received from the government or its agencies, or information received from citizens, upon finding that a prima facie case is made out. The CCR then passes final orders (including penalties, where applicable) after conducting hearings. Aggrieved parties can appeal the CCR's orders to the Competition Appellate Tribunal (Tribunal) and orders of the Tribunal can be appealed to the Ruritarian Supreme Court

4. Since the Ruritarian competition regime is relatively nascent, the CCR and the Ruritarian Courts hold the decisional practice of competition regulators in the European Union, United States of America (**U.S.A.**) and India in high regard. Given that the laws of Westeros, including its competition laws, are *pari materia* with the laws of India, the Ruritarian competition authorities, Courts and Tribunals consider orders and judgments of Indian courts and tribunals to have high persuasive value. Ruritania also uses Indian currency, i.e., the Indian National Rupee (**INR**).

5. Roark Industries Inc. (**Roark**) is a U.S.A. based multi-national conglomerate, producing products across sectors, including the manufacture of chips used in antiballistic missiles and other air defence systems. Over recent years, it has been increasing its presence in technology-based sectors by aggressively engaging in mergers and acquisitions. In March 2021, Roark completed its acquisition of Brillante Technologies Private Limited (**Brillante**) including its subsidiary in Ruritania. Brillante is a company that has made pathbreaking innovations in Artificial Intelligence (**AI**), with applications in various industrial processes. In particular, Brillante developed a patented AI technology with pathbreaking applications in chip manufacturing, perceived to be years ahead of other such technologies. By 2019, almost all major chip manufacturers servicing the defence sector were using Brillante's technology in their production lines.

6. Atlas Dome Technologies Ltd. (**Atlas**) is a Ruritarian defence technology company, specialising in providing solutions in the air defence sector, including manufacturing of chips used in this sector

7. Shortly after Roark's acquisition of Brillante, officials from the CCR conducted a "dawn raid" on Roark's Ruritanian offices, after receiving a reference from the Ruritanian Ministry of Commerce, regarding alleged cartelization and anticompetitive conduct by prominent players in the chip manufacturing industry, including Roark. The dawn raid was initiated at 0000 hours and continued until 2300 hours, the next day. Roark's lawyers rushed to the office as soon as they were made aware of the dawn raid.

However, CCR officials denied them entry into Roark's offices. Further, by the time Roark's lawyers had arrived, CCR officials had conducted depositions of Roark's top officials. In the course of these depositions, the Ruritanian CEO of Roark, stated that Roark had shared certain information relating to pricing strategy and customer retention policies, with GENZ Pvt. Ltd (**GENZ**), a competitor of Roark in the chip manufacturing industry. Roark is a minority shareholder in GENZ, holding 9.5% of its shareholding, along with a board seat. The Ruritanian CEO of Roark is also an independent director of GENZ, although in his personal capacity

8. The CCR found several e-mails that suggested that post the acquisition of Brillante by Roark, Brillante reached out to various competitors of Roark to renegotiate the terms of use and license of its AI technology, asking them to increase the license fee by approximately 25%. Some e-mails also suggested that Brillante was intentionally delaying these negotiations and had asked Roark's competitors to cease and desist from using its technologies pending re-negotiations. The CCR also found a letter from one of Brillante's employees to its compliance officer suggesting that Roark had pressurised Brillante to provide MFN treatment to GENZ and also to share with GENZ the terms and conditions on which Brillante provides services to Roark.

9. The CCR, based on the dawn raid it had conducted, passed a prima facie order against Roark and others, ordering the DG to initiate an investigation. As a result of the dawn raid, the CCR was also made aware of Roark's acquisition of Brillante. The CCR issued a Show Cause Notice, asking Roark why gun-jumping proceedings should not be initiated against it. Relevant financial details are enclosed as Annexure 1.

10. Although the CCR did not find Brillante to prima facie enjoy a dominant position, it ordered the DG to investigate whether Brillante had engaged in refusal to deal.

11. Upon receiving the DG's reports, and upon hearing the submissions of the parties, the CCR decided to pass an order making the following observations:

a. The direct and indirect exchange of information on pricing trends and strategy between Roark and GENZ amounted to cartelisation.

b. By insisting on a change in terms of the terms of use and license of its AI technology, and intentionally delaying negotiations, Brillante had engaged in a refusal to deal with competitors of Roark.

c. CCR officials did not err by conducting depositions in the absence of Roark's lawyers.

12. The CCR also considered Roark's submissions with regard to gun-jumping proceedings and observed that Roark was required to notify its acquisition of Brillante. The CCR observed that consolidated financial statements of its Indian subsidiaries were required to be considered, which included financials of its offshore subsidiaries.

13. On appeal, the Tribunal considered the submissions made by the various parties and issued an order to list the matter for hearing on 11th February 2022. Accordingly, the participants are required to present written and oral arguments before the Tribunal addressing the following issues (in addition to any other issues identified):

(i) Was the CCR correct in finding that Roark was required to have notified its acquisition of Brillante?

(ii) Did Roark have a right to have its lawyer present during the dawn raid and deposition?

(iii) Was the CCR correct in penalising Roark for exchange of information/ cartelisation?

(iv) Was CCR correct in finding that Brillante had engaged in refusal to deal?

## Annexure 1

### I. Consolidated financial details of the Brillante group

| Sl. No. | Geography            | Revenue (USD)* |
|---------|----------------------|----------------|
| 1.      | Americas             | 5.5 billion    |
| 2.      | Ruritania            | 66 million     |
| 3.      | Rest of Asia-Pacific | 1 billion      |
| 4.      | Europe               | 3 billion      |

\* Revenue based on the location of customers

### II. Standalone financials of Brillante Ruritania

| Sl. No. | Particulars             | Revenue (INR Crore) |
|---------|-------------------------|---------------------|
| 1.      | Revenue from Operations | 120                 |
| 2.      | Other Revenue           | 60                  |
| 3.      | Total Revenue           | 180                 |

### III. Consolidated financials of Brillante Ruritania

| Sl. No. | Particulars                            | Revenue (INR Crore) * |
|---------|--|-----------------------|
| 1.      | Revenue of Brillante Ruritania         | 180                   |
| 2.      | Revenue of Brillante Specialties Inc.* | 900                   |
| 3.      | Consolidated Revenue                   | 1080                  |

\* Revenue of Brillante Specialties Inc. is a wholly-owned subsidiary of Brillante Ruritania with operations entirely outside Ruritania.