



**jsa**  
advocates & solicitors

8<sup>th</sup> TO 10<sup>th</sup> SEPT, 2017

# **5<sup>th</sup> KIIT NATIONAL MOOT COURT COMPETITION, 2017**

**IN COLLABORATION WITH J. SAGAR ASSOCIATES**

***Organised By  
School of Law,  
KIIT University***



**INFORMATION BROCHURE**

## ABOUT KIIT UNIVERSITY



KIIT University is situated in Bhubaneswar, capital of Odisha, and is one of the premier self-financing Universities of the country. It caters to more than 25,000 students from all across the nation and 22 other countries through more than 100 academic programmes like MBA, Engineering, Law, Bio-Technology, Rural Management etc., in more than 28 constituent campuses involving more than 1800 academic and research staff. The University has been accorded ‘Category A status’ by the Ministry of HRD, Govt. of India, and is accredited as ‘A’ Grade by NAAC and Tier 1 accreditation as per Washington Accord for Engineering streams by NBA of AICTE. The University has alliance with over 105 globally reputed foreign institutions, and had achieved the 16th position among all national level universities, and 5th position among all national level Self-financing Universities, more details of which are available at [www.kiit.ac.in](http://www.kiit.ac.in)

## SCHOOL OF LAW, KIIT UNIVERSITY

The School of Law, an integral part of KIIT University, was established in the year 2007, and since then, we have consistently grown in stature and strength, and today we cater to a talent pool of 1100 students from all across the country. We are one of the few law schools in India to provide conjoint degrees in the form of BA.LLB/BBA.LLB/BSc.LLB, and one of the very few Law schools providing for separate honours specializations involving eight separate papers each in Business Laws, Intellectual Property Law, Taxation Law, Constitutional Law, Crime and Criminology and International Law, more details of which are available at [www.kls.ac.in](http://www.kls.ac.in)





Dear Students,

Greetings from School of Law, KIIT University, Bhubaneswar.

It gives us immense pleasure to announce the 5<sup>th</sup> edition of The KIIT University National Moot Court Competition, hosted and organized by the School of Law, KIIT University.

As one of the upcoming law schools in India, we have constantly undertaken measures to provide holistic and meaningful legal education to bright young talent from across the country. In course of such endeavours, we have observed that strong advocacy skills, ability to think logically and rationally, combined with acumen for drafting, are some key characteristics that are very necessary for a lawyer in the present scenario.

Keeping in mind these requirements, we have tried to nurture these attributes in our budding talent pool of students and likewise, we have always encouraged students to participate actively in national and international co-curricular and extra-curricular events like moot court competitions, wherein we believe they can correctly assess, evaluate and nurture their potential to best serve the interests of the profession and the fraternity in the times to come.

In 2011, the School of Law was proud to be the host of the 52nd Phillip C. Jessup International Moot Court Competition (North India Rounds) and also the 1st Bar Council of India International Moot Court Competition. In 2013, we undertook the initiative to host our own national moot court competition, the KIIT University National Moot Court Competition, and buoyed by its success, we continued with the second edition of the event in 2014, wherein Nishith Desai Associates, one of the country's leading law firms, was kind to draft the problems for the event. In the third and fourth edition, Jyoti Sagar Associates, Mumbai, an exceedingly reputed law firm of the country was kind to draft to the moot proposition.

Encouraged by the overwhelming response of the past competitions, we are proud to declare that we will be hosting the 5<sup>th</sup> KIIT University National Moot Court Competition, 2017, in continuation of the overwhelming response received in terms of participation during the previous edition, from the 8<sup>th</sup> to 10<sup>th</sup> of September, 2017 to be hosted and organized at KIIT University campus. J. Sagar Associates, one of the finest law firms in the country, has again been very gracious to draft the problem for this competition, and we expect this to be a great learning opportunity for the upcoming legal talent of the nation.

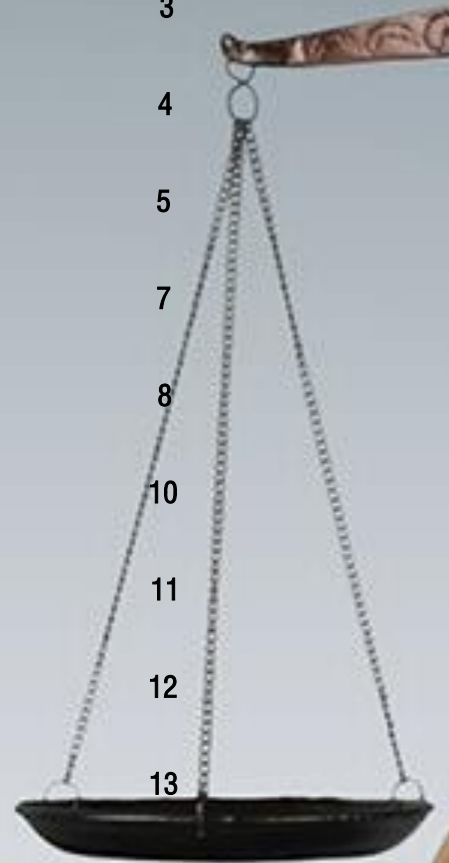
We hereby extend a warm and cordial invitation to participate in this event, and we look forward to your enthusiastic participation.

Wishing you the very best

  
Prof. (Dr.) N.K. Chakrabarti  
Director, School of Law, KIIT University

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## ABOUT THE 1<sup>ST</sup> KIIT UNIVERSITY NATIONAL MOOT COURT COMPETITION, 2013

The 1st KIIT University National Moot Court Competition, 2013, was our first initiative at organizing a national level moot court competition and it turned out to be very successful and encouraging, for which we thank the twenty four participating teams for their enthusiasm and participation.

The competition's objective was to nurture academic excellence amongst the students, and it was to our pleasure and honour to have a seven-panel bench for judging the final round of the competition. The competition was weaved around two moot problems, one for the preliminary and quarterfinal rounds and another problem for the semi-final and final rounds, and the active participation of the teams were of great motivation to us in our decision to organize this moot competition in a slightly different format.



02.09.2013 : (L to R) Prof. N. K. Chakrabarti, Director, KIIT School of Law, Mr. Ashok Parija, Member, Bar Council of India, Hon'ble Shri Justice B. K. Nayak, Judge, Orissa high Court, Hon'ble Shri Justice C. Mookerjee, Frn Chief Justice, Bombay High Court, Hon'ble Shri Justice Sanjib Bannerjee, Judge, Calcutta high Court, Hon'ble Shri Justice B. K. Mishra, Member, OHRC and Prof.(Dr.) P. C. Mishra at the valedictory function of 1st KIIT University National Moot Court Competition – 2013.



The final round of the event witnessed a stiff competition between National Law Institute University, Bhopal, and Christ University, Bengaluru, and the success of the event encouraged us to host and organize the next edition of the moot in 2014.

## ABOUT THE 2<sup>ND</sup> KIIT UNIVERSITY NATIONAL MOOT COURT COMPETITION, 2014

The 2nd edition of the competition upheld the essentials of the first moot which were challenging mootings, erudite judging, high stake prizes and great hospitality and at the same time, there were significant improvements based on our learning experience from the past edition. One of India's best known law firms, Nishith Desai Associates, drafted the problems for the competition, while SCC Online and Lawctopus also partnered with us in different capacities, Like the earlier edition, the competition had



two problems – one for the preliminary and quarter final rounds, and another problem for the semi-final and final rounds. Participation by teams from across the country had increased substantially for this event and by the conclusion of the moot, KIIT University National Moot Court Competition had made a name for it and had become a much-awaited mootings event.

Before a panel of eminent judges like Justice Altamas Kabir, Former Chief Justice of India, Justice Pinaki Chandra Ghose, Judge, Supreme Court of India and other Justices of the Orissa and Calcutta High Court, the grand finale witnessed some intense advocacy by Hidayatullah National Law University, Raipur and Rajiv Gandhi National University of Law, Patiala, pleading on behalf of petitioner and respondent respectively and the success of that event encouraged us to conduct the 3<sup>rd</sup> Edition.



The 5<sup>th</sup> KIIT National Moot Court Competition, 2017

## ABOUT THE 3<sup>RD</sup> KIIT UNIVERSITY NATIONAL MOOT COURT COMPETITION, 2015

The 3<sup>rd</sup> National Moot Court Competition was privy to an unprecedented 46 teams from across India who came here to argue before the erudite judges, at a shot to earn prizes worth over 2 Lacs. The teams' experienced great hospitality by the young, dynamic and dedicated Organising Committee which received praises from everyone. The event took place in between 18<sup>th</sup> September – 20<sup>th</sup> September, 2015. Mr. Zerick Dastur, partner at JSA, gave the inaugural address by stressing upon the importance of



mooting skills for law students. The Preliminary Rounds witnessed excellent speaking skills and an overall prowess of court room etiquette. The rounds were judged by many eminent personalities of the legal field. The knock-out rounds witnessed the advocacy skills of the budding lawyers with utmost perfection which also involved the best adjudicating panels comprising of sitting High Court and Lower Court Judges, Senior Advocates, Legal Counsels and Academicians. The teams were assertive yet concrete in their approach with their persuasive contentions and convincing arguments and at the end of the Semis, the two best teams namely- CMR Law College, Bangalore and Campus Law Centre, Delhi University entered the finals.

The Final was chaired by Justice Altamas Kabir, former Chief Justice of India along with a panel consisting of Justice Ruma Pal, former Judge of Supreme Court; Justice. Indira Banerjee, Judge, Calcutta High Court; Mr. U.K. Chowdhary, Sr. Advocate, Supreme Court and Mr. Somasekhar Sundaresan, Partner at J Sagar Associates.



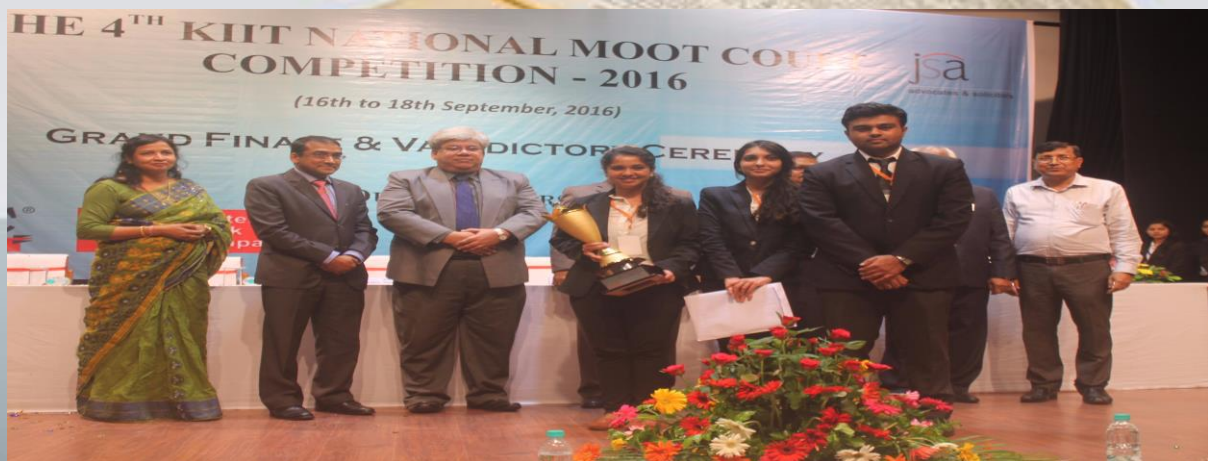
## ABOUT THE 4<sup>TH</sup> KIIT UNIVERSITY NATIONAL MOOT COURT COMPETITION, 2016

The 4<sup>th</sup> edition of the national moot court competition saw a participation of 56 teams from all across the country. Various national law schools as well as top private university battled it out for the ultimate prize money of 2 lakhs rupees. This edition registered itself as the biggest corporate law moot in the eastern India. The event was organised from 16<sup>th</sup> September, 2016 to 18<sup>th</sup> September, 2016. The inaugural address was given by Hon'ble Justice (Retd.) A. S. Naidu enlightening the people about the core values of a lawyer and professional perseverance. The preliminary rounds witnessed impeccable mooting skills along with high standards of court room etiquettes. After intense two rounds 8 teams proceeded to the quarter-finals and then 4 teams to the semi-finals, where they were put in front of a panel consisting of sitting High Court Judges, Senior Counsels, Company Secretaries, Senior Partners & Associates from leading law firms of the country. Their approach was subtle yet assertive of the highest order.

The finals saw the teams of School of Law, Christ University & School of Excellence in Law, Chennai



pitted against each other. The Final was chaired by a panel consisting of Hon'ble Justice Pinaki Chandra Ghosh, (Judge, Supreme Court of India), Hon'ble Justice Sanjib Banerjee, (Judge, Calcutta High Court), Justice (Retd.) S. J. Mukhopyadhay (Chairman, National Company Law Appellate Tribunal) and Mr. Somasekhar Sundaresan, Former Senior Partner at J. Sagar Associates.





### **1. COMPETITION FORMAT**

The Competition is structured as per the following format:

- I. Memorial Rounds (Only 32 teams shall be selected)
- II. Oral Rounds:
  - a) Preliminary Rounds
  - b) Quarter Finals
  - c) Semi-Finals
  - d) Grand Finale

### **2. ELIGIBILITY**

Students of three year and five year law degree courses from any University / Law School / College / Department are eligible to apply for registration of their team. However, a maximum of one team shall be allowed to participate from any one University / Law School / College / Department.

### **3. TEAM COMPOSITION**

3.1 Each team shall consist only of three members, comprising of two speakers and one researcher.

3.2 Any alteration of the names of the team members shall be informed in writing to that effect, addressed to the Director, School of Law, KIIT University, by the Vice Chancellor / Dean / Director / Head of the Department of the University / School / Department / College of Law, of the team requesting such alteration. However any such alteration shall be permitted only once.

3.3 Once the Competition commences, the team composition cannot be altered under any circumstances whatsoever. Inability of any team member to participate in accordance with the rules of this Competition shall lead to

immediate disqualification of the team from the Competition.

### **4. PARTICIPATION AND REGISTRATION PROCEDURE**

4.1 The teams interested to participate are required to confirm their participation by sending an email attaching the scanned copy of Annexure-A (Provisional Registration form), duly filled to [kiitmoot2017@kls.ac.in](mailto:kiitmoot2017@kls.ac.in) by **10<sup>th</sup> of July, 2017**. Please note that such email has to be sent only through the University / School / College / Department official email address. Emails sent through personal / non-official email addresses and emails sent to any other address other than the above mentioned will be ignored. Annexure A is available at [www.kls.ac.in](http://www.kls.ac.in) and also attached herewith this brochure.

A team code shall be generated and a confirmatory email, together with the team code, shall be sent to such team by the 12<sup>th</sup> of July, 2017. Thereafter, for all further correspondence with the organizers of the Competition and otherwise, all the registered teams shall identify and refer themselves using the allotted team code only.

4.2 **Memorial Rounds:** The teams which have registered should send the soft-copy of the memorials for both the sides by 20<sup>th</sup> July, 2017 for the memorial rounds. Only top 32 teams shall proceed for the oral rounds. The selected 32 teams shall be notified through confirmatory mail by 31<sup>st</sup> July, 2017.

4.3 The selected teams shall then send –

- (a) The printed copy of Annexure A,
- (b) Hard Copies of the Memorials and
- (c) A non-refundable participation fee of Rs. 3000/- (Rupees Three Thousand only) in the

form of a Demand Draft drawn in favour of KIIT, payable at Bhubaneswar (clearly stating the name of the institution at the reverse side of the demand draft), addressed to:

Mrs. Pratiti Nayak

Faculty Convener

5<sup>th</sup> KIIT University National Moot Court Competition, 2017

School of Law, KIIT University, Patia Bhubaneswar, Odisha. PIN – 751024.

Such to be received by the 18<sup>th</sup> of August, 2017. A soft copy of the same should be sent by 7<sup>th</sup> of August, 2017.

4.4 On receipt of the printed copy of Annexure–A, Memorials and the Demand Draft, the team shall be formally registered as a participant for the event,

4.5 The teams shall also send a soft copy of Annexure–B (Travel details), duly filled, to [kiitmoot2017@kls.ac.in](mailto:kiitmoot2017@kls.ac.in) by 1<sup>st</sup> September, 2017. Annexure –B is available at [www.kls.ac.in](http://www.kls.ac.in) and is also attached herewith this Brochure.

## 5. MEMORIALS

5.1 All memorials submitted for all purposes of the Competition shall strictly adhere to the rules as stated below.

5.2 Teams have to prepare memorials for both the sides, i.e., Petitioners and Respondents.

5.3 The registered teams shall submit the pdf copy of their memorial for both sides by email to [kiitmoot2017@kls.ac.in](mailto:kiitmoot2017@kls.ac.in) by 23:59 hours of 20<sup>th</sup> of July, 2017 for the memorial rounds. Only top 32 teams who are selected for the oral rounds shall send twelve printed copies (for each side) of such memorials by 18<sup>th</sup> of August, 2017, addressed to:

Mrs. Pratiti Nayak

Faculty Convener

5<sup>th</sup> KIIT University National Moot Court Competition, 2017

School of Law, KIIT University, Patia Bhubaneswar, Odisha. PIN – 751024

5.4 When sending the memorials by email in pdf format, please name the file pertaining to the memorial for the respondent as R accompanied by the team code and the file pertaining to the memorial for the petitioner as P accompanied by the team code. For example, for a team assigned a code of 100, the pdf file for the respondent should be named as 'R100' and the pdf file for the petitioner should be named as 'P100'.

5.5 The cover page of the memorials sent, for both the soft and printed copies, shall clearly mention the word “P” for memorials on behalf of the Petitioner, and the word “R” for memorials on behalf of the Respondent, followed by the team code for both the instances, such being clearly inscribed on the top right hand corner of the cover page of the memorial for the Petitioners and Respondents. For example, if a team had been assigned a code of 100, the memorials sent by such team shall have “P100” and “R100” clearly marked on the top right hand corner of the cover page of the respective memorials. The teams should not disclose the identity of their institution anywhere on the memorial. Violation of this rule will result in immediate disqualification

5.6 The memorials have to be submitted on A4 size paper and must contain the following sections in the order as stated below–

- Cover Page
- Table of Contents
- Index of Authorities
- Statement of Jurisdiction
- Statement of Facts
- Statement of Issues
- Summary of Arguments
- Arguments Advanced
- Prayer

Non-compliance with above criteria shall result in penalty of two marks per missing section.

5.7 The memorials must be printed in Times New Roman font with 12 font size and with 1.5 line spacing. The footnotes must be in Times New Roman font with 10 font size and with 1.0 line spacing. The memorials should have a margin measuring one inch on all sides of each page. **To conserve paper, teams may print their memorials on both sides of the A4 sheet and submit accordingly.**

5.8 The 'Arguments Advanced' section should not exceed 15 pages.

5.9 The memorials as a whole should not exceed 30 pages including the cover page.

5.10 The numbering should be on the bottom-center of each page.

5.11 **The cover page of the petitioner's memorial shall be printed on Blue color A4 size paper, and the cover page of the respondent's memorial shall be printed on Red color A4 size paper.**

5.12 The teams have to use the citation method as stated in the **19th edition of the Harvard Blue Book**, for citation throughout the memorial, with strict adherence.

5.13 There shall be no speaking footnotes in the memorial.

5.14 The maximum scores for the memorials for each side shall be 100 marks. The memorials shall be evaluated on the following criteria:

Knowledge of Law and Facts	: 30 Marks
Proper and Articulate Analysis	: 30 Marks
Extent and Use of Research	: 20 Marks
Clarity and Organization	: 10 Marks
Grammar and Style	: 10 Marks

## 6. PRELIMINARY ROUND

6.1 To determine the order of participation in the preliminary rounds of the event, all the selected registered teams shall participate in a

draw of lots to be conducted for that purpose. Such draw of lots shall take place on the 8<sup>th</sup> of September 2016, immediately after the inaugural function. The exchange of memorials and orientation of the teams shall be conducted immediately after the draw of lots.

6.2 For the preliminary rounds, every team shall argue twice: once for petitioner and once for respondent ( Prelims-I and Prelims-II round).

6.3 No two teams shall face each other more than once in the preliminary rounds.

6.4 In determining the scores in the preliminary rounds, memorial scores will be added to the oral scores.

## 7. QUARTER-FINALS, SEMI-FINALS AND FINALS

7.1 The top eight teams of the preliminary rounds shall qualify for the Quarter-final rounds.

7.2 From the Quarter final rounds, winning teams from each round shall proceed to the subsequent stages of the Competition on a knock-out basis, with the memorial scores of the teams taken into consideration at all stages, as per the formula stated below –

- (i) Quarter Finals = Preliminary Round Oral Scores + Memorial Scores
- (ii) Semi-Finals = Quarter Final Round Oral Scores + Memorial Scores
- (iii) Finals = Semi-Final Round Oral Scores + Memorial Scores

In case of a tie between two teams in any of the rounds, memorial scores will be taken into consideration to break the tie. In case the tie still subsists, the oral score of the best speaker of each team will be considered to break the tie. If the tie continues, the oral score of the other speaker of the team will be considered to break the tie. In case of further subsistence of the tie, the result will be decided by draw of lots.

## 8. RESULTS

8.1 The results shall be announced shortly after each round.

8.2 The results of the final round shall be announced at the valedictory and award ceremony, to be held on the 10<sup>th</sup> September, 2017.

## 9. ORAL ROUNDS

9.1 Each team will get a total of 60 minutes during the preliminary rounds (30 minutes for Prelims I & 30 minutes for Prelims II) to present their case. For the Quarter final rounds, each team will be permitted a total time of 45 minutes, while for the Semi-final and Final rounds, each team will be permitted a total time of 60 minutes. The time stated above includes the time required for rebuttal and sur-rebuttal.

9.2 Any team exceeding the time limit stated above shall be penalized with a deduction of one mark for every two minutes exceeded.

9.3 The division of time per speaker is left to the discretion of the team subject to a minimum of 10 minutes per speaker.

9.4 The oral arguments should be confined to the issues presented in the memorial.

9.5 The researcher shall be present with the speakers during the oral rounds.

9.6 Passing of notes to the speaker by the researcher is allowed.

9.7 Maximum scores for the oral rounds shall be 100 points per speaker, and which shall be judged on the following criteria:

Knowledge of Law	: 20 Marks
Application of Law to Facts	: 20 Marks
Ingenuity and Ability to Answer	: 20 Marks
Style, Poise and Demeanor	: 20 Marks
Time Management	: 10 Marks
Organization	: 10 Marks

## 10. SCOUTING

10.1 For the preliminary rounds, apart from the participant teams for such round, the members of the other teams are not allowed to observe such round. Scouting is strictly prohibited and scouting by any team shall entail instant disqualification.

## 11. AWARDS

11.1 Winning Team Award – The winning team will receive a trophy and a prize worth Rs.1,00,000/- (Rupees One Lac Only).

11.2. First Runners-Up Team Award –The first runners up team will receive a trophy and a prize worth Rs.50,000/- (Rupees Fifty Thousand Only).

11.3. Second Runners up Team Award –The Second runners up team will receive a trophy and a prize worth Rs. 25,000/- (Rupees Twenty Five Thousand Only).

11.4. Best Student Advocate/Counsel – The Best Student Advocate/Counsel will receive a trophy and a prize worth Rs. 10,000/- (Rupees Ten Thousand Only).

11.5. Best Memorial –The team submitting the best Memorial will receive a trophy and a prize worth Rs.10,000/- (Rupees Ten Thousand Only).

11.6. **SCC Online** and **Eastern Book Company**, as the exclusive knowledge partners for the Competition, have declared the following awards amounting to more than Rupees Two Lacs in equivalent value, in the form of– SCC Online Web Edition– Special Student Access Card for each of the individual members of the winning team; SCC Online Web Edition– Special Student Access Card for each of the individual members of the first runners up team; SCC Online Web Edition – Special Student Access Card for the Best Student Advocate and the Best Memorial.

11.7 Legal Dezire as the exclusive Magazine Partners for the Competition, have declared the

awards in the form of Discount Vouchers worth Rupees Five thousand each for the winners and 1<sup>st</sup> runners up team.

#### 12. ANONYMITY

The student counsels shall not state their names during the oral rounds and must use the assigned team code for all correspondence. All team members must refrain from disclosing the identity of their institutions at any time and in any manner during the entire Competition. Non-compliance with this Rule will result in immediate disqualification of the team.

#### 13. FINALITY OF DECISIONS

The decision of the judges with regard to the outcome of the rounds shall be final. For all purposes and in any dispute, the decision of the Chairman of the Organizing Committee of the Competition shall be final and binding.

#### 14. ACCOMMODATION, FOOD AND TRANSPORT

The University shall provide for pick-up from the airport/ railway station / bus terminus for all teams participating in the Competition, along with accommodation and food in the University premises from the afternoon of 7<sup>th</sup> of September, 2017, till the forenoon of 11<sup>th</sup> of September, 2017. Participating teams must make their own arrangements for their departure from the University premises.

#### 15. CLARIFICATIONS.

Any query pertaining to the Moot Problem should be sent to [kiitmoot2017@kls.ac.in](mailto:kiitmoot2017@kls.ac.in) by 10<sup>th</sup> of July, 2017. Questions submitted / clarification sought through any other means other than by e-mail shall not be entertained. A consolidated response for all questions and clarifications shall be emailed to all the participating teams on 15<sup>th</sup> of July, 2017.

## TIMELINE FOR THE COMPETITION

SL. NO.	PARTICULARS/ EVENTS	DATE/TIME
1.	Release of Official Brochure	10 <sup>th</sup> May, 2017
2.	Last Date of Provisional Registration (Soft Copy)	10 <sup>th</sup> July, 2017
3.	Clarification for Moot Problem (Last Date)	10 <sup>th</sup> July, 2017
4.	Confirmation of registration/participation, together with allotment of team-codes.	12 <sup>th</sup> July, 2017
5.	Release of Clarifications	15 <sup>th</sup> July, 2017
6.	Memorial Submission (Soft Copy)	20 <sup>th</sup> July, 2017
7.	Notification of Top 32 teams selected for the Oral Rounds	31 <sup>st</sup> July, 2017
8.	Last Date of Final Registration (Soft Copy) along with the demand draft	7 <sup>th</sup> August, 2017
9.	Last Date of Hard Copies of Final Registration, Memorial submission (Hard copy) (For the oral rounds) & Travel Plan(Hard Copy of Annexure "B" )	18 <sup>th</sup> August, 2017
10.	Inaugural function/draw of lots/exchange of memorials, Etc. (09:30 AM to 12:30 PM)	8 <sup>th</sup> September, 2017
	Preliminary (Round- 1) (03:00 PM to 06:30 PM)	
11.	Preliminary (Round- 2) (09:00 AM to 12:30 PM)	9 <sup>th</sup> September, 2017
	Quarter-Final Rounds (03:00 PM to 05:30 PM)	
12.	Semi-Finals (09:00 AM to 01:00 PM)	10 <sup>th</sup> September, 2017
	Final Round (02:30 PM to 04:30 PM)	
13.	Prize Distribution/Valedictory Function (04:30 PM to 06:30 PM)	10 <sup>th</sup> September, 2017

*Drafted by: J. Sagar Associates*

Viking ( “V” ) and Mars ( “M” ) were major players in the credit card market in India. In the year 2017 the market share, of V was 40% and that of M was 30%. Zoro ( “Z” ) entered into the credit card business in 2015. Over the course of the next two years it acquired a market share of 7 percent. There were also other smaller players in the market.

V and M separately entered into contracts with different member banks prohibiting them from issuing any other cards, including Z cards. The decision taken independently by V and M respectively had a severe impact of business of other players like Z.

Being aggrieved, Z filed a complaint with the Competition Commission of India ( “CCI” ) alleging anti-competitive conduct on part of V and M by entering into “exclusionary contracts” which prohibit their member banks from issuing cards for other companies. There was however no allegation of collusive conduct or cartelisation on part of V and M.

It was alleged that V and M were both dominant players in the market for credit cards in India and that they were abusing their dominant position to the detriment of other smaller players like Z and hence adversely affecting competition in the market. Directions were sought from CCI for imposition of penalty on V and M for abusing their dominant position. Further directions were sought restricting these companies from entering into or acting upon contracts prohibiting banks from issuing other credit cards. Market research reports showing that the market share of V was 40% and that of M was 30% were filed along with the complaint to sustain the proposition that both the companies enjoyed a dominant position in the credit card market.

An application was also filed for interim reliefs pending hearing and disposal of the case before CCI to restrain V and M from entering into or acting upon contracts prohibiting banks from issuing other credit cards. It was urged that in the absence of interim reliefs, smaller players like Z would be wiped out and would be compelled to exit the market within a short span of a few months.

The CCI passed an Order holding that it appeared from the data relied upon by the Complainant itself that there was no single dominant entity in the market for credit cards in India and, rather, that there was vibrant competition between V and M. The data showed fierce competition between V and M who were business rivals in the relevant market. It was also observed that the concept of more than one dominant undertaking in the same market is alien to the Competition Act, 2002 and that only one enterprise can be dominant in a given market. This was clearly not a case where any one entity could be said to be dominant. The Complaint was accordingly rejected and the case was closed. Consequently, the application for interim relief was also dismissed.

Z filed an appeal against the order of CCI before the Competition Appellate Tribunal ( “COMPAT” ). On appeal the COMPAT observed that the conduct of entering into contracts with banks prohibiting them from issuing other credit cards could be possibly viewed as restrictive and anti-competitive. However, this may not necessarily be true and only investigation would reveal whether there was any violation of the Act or whether the restrictive clauses in contracts with banks had a commercial justification.

The COMPAT also held that the market share of both V and M was significantly high and that there was nothing in the Competition Act, 2002 which states that more than one enterprise cannot be dominant in the same market. The COMPAT observed that two wrongs do not make a right and that if two entities indulge in an abusive practice the regulator cannot turn a blind eye and refuse to act. The COMPAT accordingly directed the Director General to investigate and present its report to the CCI. Further, the COMPAT also restrained V and M from entering into or acting upon contracts prohibiting banks from issuing other credit cards pending the final order of CCI

V filed an appeal before the Supreme Court of India against the Order of the COMPAT.

It was contended by V that the COMPAT failed to arrive at a *prima facie* finding of any violation while directing investigation. By simply expressing a possibility of violation without any definite finding, the COMPAT had failed to arrive at any *prima facie* view of violation, which would warrant investigation.

It was also argued that the present case was not a fit case for grant of interim reliefs and that Z had failed to make out a case for grant of such reliefs. The clause had a commercial justification and that Z was an inefficient competitor trying to use the regulatory route to impede the business of an established and efficient market player like V. Accordingly the order restraining V from entering into or acting upon contracts prohibiting banks from issuing other credit cards pending the final order of CCI was bad in law and ought to be set aside.

The fundamental premise of the arguments of V before the Supreme Court was that in the present case V could not be treated as a dominant entity in the market as M also had a substantial market share and that there was healthy competition between V and M. The concept of more than one dominant enterprise in the same market was not recognised under the Competition Act, 2002 and the plain language of Section 4 of the Act would show the same. Since V could not be considered to be dominant, there was no question of abuse as there was no dominance. Hence, no direction can be issued against V in the present context.

The legal issue of whether the Act recognises the concept of more than one dominant undertaking was placed before the Supreme Court without going into the factual aspects or merits of the proposition.

After hearing the parties, the Hon' ble Supreme Court issued the following directions:

*UPON hearing counsel, the Court made the following ORDER*

*The following issues arise for consideration in the present proceedings:*

1. *What is a "prima facie" view and whether in the present case the COMPAT was justified in directing investigation?*
2. *Whether it was a fit case for grant of interim relief by COMPAT?*
3. *Whether there can be more than one dominant undertaking/enterprise in the same market?*

*Parties to file their Written Submissions / Memorandums by 20<sup>th</sup> July, 2017.*

*List for hearing during 8<sup>th</sup> to 10<sup>th</sup> September 2017*

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Mr. Prasenjit Ghosh

Student Convenor

Mob: +91-9531594605

Mr. Subhankar Biswal

Student Co-Convenor

Mob: +91- 8994109824

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KISS is the finest expression of KIIT's social commitment. It plans to educate 2, 00,000 tribal children during the next decade.





School of Law, KIIT University  
Campus-16

Bhubaneswar, Odisha-751024,  
Email: [kiitmoot2017@kls.ac.in](mailto:kiitmoot2017@kls.ac.in)

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