

MOOT PROPOSITION¹

1. The Sovereign Republic of Covfefe is a culturally diverse country located in the heart of South-East Asia, with a population of 1.3 billion people. An erstwhile British colony, Covfefe earned its freedom through peaceful means in 1947, adopting a closed economy through its formative years. This period of conservative economic thought was marked by the passing of laws such as the Monopolistic and Restrictive Trade Practices Act in 1969 (**'MRTP'**), which drew largely from the country's own experience and relied seldom on international precedents.
2. In 2002, Covfefe passed the Covfefe Competition Act (**'CCA'**) as its primary statute to regulate competition laws in the country, repealing the MRTP. The law adopted a broader outlook and relied on European and American competition laws for its formulation. The law established the Covfefe Competition Commission (**'CCC'**) as a regulator for enforcing the provisions of the CCA. The CCC was further empowered to issue its own regulations, and has to date, issued a diverse set of rules and regulations in relation to its functioning.
3. The economy of Covfefe had, since its inception, been plagued by illegal money transfers, hoarding and corruption. To curb such practices, the Covfefeian government demonetized two of its high denomination currency notes (CR 1000 and CR 500) in 2016, encouraging its citizens to adopt cashless means of payment.
4. EasyMoney E-Commerce Private Limited (**'EasyMoney'**) is a private entity incorporated in Covfefe, with its head office in New Brewerierie, the capital city of Covfefe. Originally, EasyMoney operated as an e-commerce website (**'EasyMoney Marketplace'**), retailing physical goods. Due to its status as a local company and the first indigenous e-commerce company, EasyMoney received considerable benefits such as an exemption from the payment of Goods and Services Tax.
5. In 2017, Easy Money developed the AltAnna Payments App (**'AltAnna'**), a payment gateway providing comprehensive payment services for both merchants and customers.

¹ The proposition has been drafted by KS Roshan Menon, Indrajeet Sircar and Pratik Datta.

AltAnna provided QR based mobile payments through its platforms. Customers could install the AltAnna app on their mobile phones and after scanning QR codes available with any vendor accepting AltAnna, users could make payments of their choice. To facilitate the payments, AltAnna provided users with a digital payments wallet (**‘DigiAnna’**) [a non-banking Prepaid Payment Instrument (**‘NB-PPI’**)], in addition to the option of paying through bank accounts or cards. These transactions would be made through a user account on the app.

6. Due to its status as the first mobile payments app in Covfefe, AltAnna received considerable benefits from the Government. The Reserve Bank of Covfefe (**‘RBC’**), the central bank of Covfefe, issued a certificate authorizing AltAnna as a Payments System Operator, relaxing Know Your Customer (**‘KYC’**) norms for AltAnna. Users could transact using AltAnna without providing any official identification documents for verification.

7. Due to the benefits provided to AltAnna, several other domestic players would consequently enter the market for mobile wallets and payments systems. Wallachian Industries Corporation (**‘Wallachia’**) and Gotha Incorporated (**‘Gotha’**) were two such companies in the south of Covfefe, that provided for a mobile payments app in the local languages and thereby capturing the specific markets of the state. AltAnna continued to dominate the market in the North and Eastern parts of Covfefe, with steady gains in other parts of the country. The market share for each payments’ app in Covfefe at the end of 2017 is provided hereunder.

TABLE 1: MARKET SHARE OF PAYMENT SYSTEMS IN COVFEFE (2017)

ENTITY	% OF MARKET SHARE
AltAnna	38%
Wallachia Pay	16%
Gotha Pay	13%
FidelT CashPro	9%
PayNoche	7%

MugaPay	7%
Other entities	10%

8. In 2018, the Government of Covfefe published its Annual Economic Survey (**‘Survey’**). The Survey highlighted that a vast majority of Covfefeians had no access to bank accounts and payments facilities. The Survey further noted that the creation of an accessible unified payments interface (**‘UPI’**) shall be an incisive policy measure to provide rural financial inclusion and to remove the hardships people faced in repeatedly going to far away banks to facilitate financial transactions.
9. Based on the observations made in the Survey, the Ministry of Finance along with the RBC, constituted the National Payments Corporation of Covfefe. (**‘NPCC’**) The NPCC was incorporated under Section 8 of the Covfefeian Companies Act, 2013 as a “Not-for-Profit” company. The core promoters of the company included both public and private sector banks, however appointments to the Board of Directors were made by the RBC. To support growth and access to greater infrastructural facilities, the government later expanded the shareholding of the company to include a wider number of private banks. The shareholding banks agreed to form Banks for Development (**‘B4D’**), a voluntary organization for conducting independent research to advise the objectives of the NPCC.
10. The NPCC subsequently launched Samsaara, a payments application that allowed users to make quick payments transactions using UPI. Samsaara allowed users to send and receive money via the app through a Virtual Payment Address (**‘UPI ID’**), an account number and through QR scans. Users could switch between multiple bank accounts to be linked to Samsaara and could pay for transactions directly through these bank accounts via QR scan.
11. The data within the system was encrypted, users could set a PIN of their choice and control their bank accounts through the app. To cater to the diverse population of Covfefe, the app was further launched in 13 languages, including all prominent languages in North and South Covfefe. The app was compatible with all mobile Operating Systems (**‘OS’**) and was

available for download for free. The NPCC also made the UPI technology available to third party apps and member banks at no extra cost.

12. In its first 3 months of operation (November 2018 - February 2019), Samsaara saw sparse use amongst the population of Covfefe. A survey carried out by the NPCC revealed that the users preferred other payment systems, particularly AltAnna for its wide acceptance amongst merchants, and for the various discounts and cash-back offers offered by the application.
13. Users also highlighted the relaxation of KYC norms as a key factor because many people in rural areas did not possess the required series of documents for verification of identity. Despite protests on the usage of AltAnna as a platform for money laundering, the government had refused to impose stringent KYC norms on operators of payment systems.
14. In March 2019, RBC issued the NPCC a Certificate of Authorization (**‘Certificate’**), providing the NPCC the right to notify rules relating to the organization, conduct of business and exemptions for mobile payments applications (utilizing the UPI platform). The scope and extent of the Certificate included (i) introduction, modification and removal of any levy on payments routed through member banks, (ii) introduction, modification and removal of levy on bank to bank money transfers via mobile payments app, (iii) introduction, modification and removal of KYC norms on mobile payments services and (iv) prescribing conditions for the use of UPI. These Circulars were subject to the approval of the Payments Regulatory Board(**‘PRB’**) of the RBC.
15. Members from the industry welcomed the move, highlighting the requirement for clarifications on several aspects of the law related to mobile payments. Certain concerns were also raised on the permissibility of the extent of such delegation of powers by the RBC to the NPCC under its laws.
16. In April 2019, the NPCC issued three separate Circulars outlining the regulatory framework for mobile payments. (**‘Circular A, Circular B and Circular C’**) Circular A provided for the levy of a 1% Interconnect Fee on all transactions between banks and mobile payment wallets and an additional 3% Processing Fee on all payments made using

mobile payment gateway platforms. Circular B required users to mandatorily link their Covfefeian Identity Card (**'CIC'**) to their app accounts. On failing to link app accounts to CIC, such accounts were forbidden from carrying out any transactions.

17. Circular C exempted Samsaara from the provisions of the aforementioned circulars. A Background Note (**'Note'**) appended to the Circular reasoned that the exemption to Samsaara was to promote financial inclusion and provide 'banking to the unbanked.' The Note emphasised the need for the NPCC to provide institutional and infrastructural support to these objectives. In a conference organized by the Covfefe Conference for Economic Development (**'CCED'**), the NPCC affirmed its commitment to financial inclusion, noting that it shall closely monitor the development of the market for payments systems, working with other players to achieve its objectives. The NPCC further hoped to adopt a 'dynamic regulatory approach' for the market, notifying new rules as and when required. It also did not rule out the possibility of monetizing its technological assets in the future to generate greater revenue.
18. On 02.05.2019, NPCC released another Circular titled, 'Cashbacks for Samsaara'. (**'Circular D'**) The Circular permitted users a 10% cashback on each transaction for the first ten transactions², provided that the users complete 20 transactions with the application. The Circular also extended this benefit to merchants using Samsaara. The RBC, in a Press Release noted that its PRB had assented to the Circulars.
19. A fifth Circular (**'Circular E'**) was released a day later, outlining a framework for the use of UPI technology by payment systems. Under the terms of the Circular, member banks of the NPCC and third party applications using UPI were advised to change their names to Samsaara <Name of App> UPI. The Circular also advised merchants accepting UPI payments to display UPI branding. Lastly, the Circular levied a UPI Development Fee (0.5% of transaction value) on all payment systems using UPI. Member banks were exempted from the levy of the cess.
20. By early October 2019, the subscriber base of Samsaara in the mobile payments market had substantially increased. A revised market share table is presented below.

² The value of the cashback was capped at RR 100 per transaction.

TABLE 2: MARKET SHARE OF PAYMENT SYSTEMS IN COVFEFE (2019)

ENTITY	% OF MARKET SHARE
AltAnna	34%
Samsaara	21%
Wallachia Pay	17%
Gotha Pay	14%
FidelT CashPro	3%
PayNoche	2%
MugaPay	2%
Other entities	7%

21. On 01.10.2019, AltAnna introduced a rewards program titled Virtual Transaction Concession (**VTC**). VTC guaranteed users a cashback identical to the one provided by Samsaara, under identical conditions of usage. Around the same time, Wallachia Pay and Gotha Pay introduced a variant of the VTC, under different names. The incentives provided by the both the companies were identical to the incentives offered by Samsaara.

22. On 10.10.2019, an unverified series of E-Mails exchanged between three recipients was leaked to media outlets in Covfefe. The E-Mails documented an exchange between Mr. L Tyagi, Mr. S Lala and Mr. Subedaar (the Chief Executive Officers of AltAnna, Wallachia Pay and Gotha Pay respectively) and the CCED. The CCED was involved in conducting periodic events, such as conferences and workshops, to raise awareness about commercial laws in the country. The e-mails highlighted the urgent need to take measures to counter the dominance of Samsaara in the market and to develop strategies which ensure that the interests of desirable payments systems in the market are not affected in the long run. The mails also discussed certain measures to address the same. A solitary E-Mail noted that,

“the measures previously had the backing of *The Big One*, but he now wants the entire pie to himself.”

23. The mails caused widespread backlash from other mobile payment systems in the ecosystem, with many alleging that the measures could ruin smaller players in the industry. Certain segments of the industry however echoed the sentiments raised in the leak, citing the vital role state aid had played in the growth of Samsaara and the generous exemptions offered to member banks by the NPCC.
24. In response, the three entities (Wallachia, Gotha and Easy Money) released official press statements stating that the mails were sent to the CCED for future discussions for the purpose of a conference. Concurrently, a Press Release by the CCED stated that the mails were sent independently by each entity and were conference submissions. The Press Release, however indicated that the leaked mails contained sensitive information that could only be known to insiders.
25. In November 2019, an information was filed by MugaPay Payments Systems Limited (**‘Informant’**) under Section 19(1)(a) against B4D & NPCC [**Opposite Party (‘OP’) 1&2**] alleging violation of Sections 3 & 4 of the CCA (**‘Case No. 13 of 2019’**). The Informant also filed an information against the NPCC, Easy Money, Wallachia, Gotha and RCED [**OP 2,3,4 5 and 6**] alleging the contravention of Section 3 of the Act (**‘Case No. 14 of 2019’**).
26. After inquiring into the information received from the Informant on both the issues, the CCC decided to merge the two cases noting the commonality of the market that the players were involved in. The CCC was of the opinion that a *prima facie* case existed and pursuant to Section 26 of the CCA. directed investigation into the matter by the Director General (**‘DG’**).
27. The Report of the DG concluded that both B4D and NPCC fall under the meaning of ‘enterprise’ under the Act and subsequently Circular E notifying exemptions for B4D members, amounted to an agreement under the Act. Downplaying the impact of the development objectives pursued by the NPCC in evaluating its conduct for the application

of Section 3, the Report observed that the conduct of the parties amounted to a violation of Section 3 of the CCA. It noted,

“8. It may be observed that the B4D is *prima facie* engaged in providing research for the laying down of guidelines, policies and regulations for matters that remain inextricably tied to the finance sector in India. It may be noted that such functions are policy functions and would ordinarily be exempt from the provisions of the CCA but the proximate involvement of B4D with the NPCC, an entity engaged in the provision of financial services, shall be sufficient for it to fall under the ambit of Section 2(h) of the CCA. This would also sufficiently imply that Circular D, providing for exemptions to Bank, is an agreement in violation of Section 3. The definition of an agreement under Section 2(b) is wide enough to provide for enactments by an Authority to fall under its ambit.”

28. The DG Report also noted that owing to its resources and economic power over other enterprises, NPCC was in a dominant position, and the Circulars issued by the it, violated Section 4 of the CCA.

29. Identifying the relevant market to be payment systems in India, the DG report found that the distinction between payment wallets and payment gateways was immaterial to the instant case. Based on the information filed against Easy Money, Wallachia and Gotha, the DG submitted that the measures undertaken did not amount to an agreement in violation of Section 3 of the CCA, noting the following

“7. A contravention of the provisions of Section 3 requires an agreement between entities engaged in identical or similar trade which leads to an appreciable adverse effect on competition. The E-Mails sent by OP-3,4 and 5 may have been designed with an ulterior motive, and the identical nature of the e-mails lead to suspicion of an offensive agreement. Little evidence however has been brought to the Court to suggest that sensitive information has been “exchanged”. Further, whilst it may be noted that though the measures could lead to the inference of *incentive parallelism*, this parallelism is not indicative of prior consultation. The NPCC had taken measures in furtherance of the growth of the financial system, and certain players adopting a similar incentive structure is not indicative of meeting of minds. Additionally, in the event of any foul play by CCED, there is no provision in the CCA to impute liability to a third-party platform for the acts of spokes.”

30. The CCC agreed to the findings of the DG Report and subsequently notified the parties to appear before it. The matter is listed to be heard with the following issues to be addressed before the Commission:

ISSUES

- (i) Whether the conduct of the NPCC, in issuing Circular E, violates Section 3 of the CCA?

- (ii) Whether the conduct of the NPCC, in issuing Circulars A, C and D, violates Section 4(2)(a)(ii) of the CCA?

(iii) Whether the conduct of the NPCC, in issuing Circular B, has resulted in the denial of market to other enterprises under Section 4(2)(c)?

(iv) Whether the acts of OP 2, 3, 4, 5 and 6 amount to an arrangement in violation of Section 3 of the Act?

31. The laws of Covfefe are *pari materia* to the laws of India as of December 3, 2019. The CCC often relies on international precedents, particularly from the European Union to interpret the provisions of the CCA.

DISCLAIMER

This is a work of fiction. Names, characters, places and incidents either are products of the authors' imagination or are used fictitiously. Any resemblance to actual events or locales or persons, living or dead, is entirely coincidental. Any resemblance to actual firms, institutions, organizations or any other entities is entirely coincidental and in exercise of the authors' attempt to further academic research.