

SVKM'S NMIMS KIRIT P. MEHTA SCHOOL OF LAW, MUMBAI
3RD INTERNATIONAL MOOT COURT COMPETITION 2021,
PRESENTED BY STRATAGE LAW PARTNERS

20th-22nd August, 2021

CASE CONCERNING NATIONAL SECURITY AND INTERNATIONAL TRADE
RELATIONS:

CONFLICT PERTAINING TO THE USE OF A SOCIAL MEDIA PLATFORM AS A
TOOL TO DISTURB THE STABILITY OF THE COUNTRY DURING POLITICALLY
FRAGILE TIMES LEADING TO THE DISPUTE ARISING BETWEEN AMAGADIA

AND NORTH AMRUBIA IN TERMS OF VIOLATION OF OBLIGATIONS UNDER
GATS AND OTHER TREATIES

WORLD TRADE ORGANISATION

AMAGADIA (APPLICANT)

v.

NORTH AMRUBIA (RESPONDENT)

2021

STATEMENT OF FACTS

1. Amagadia is a democratic country, and one of the largest economies in the World. North Amrubia was under military rule until 2003, after which a compromise was arrived to hold democratic national elections but with the military having 40 per cent of the seats in the lower and upper house of the Parliament with a democratically elected civilian leader as the President. Till 2003, North Amrubia was a closed economy, and its citizens had no access to the internet. However, post-elections in 2003, the country witnessed wide ranging reforms including the liberalization of the economy. Amagadia and North Amrubia signed a Bilateral Investment Treaty (BIT) in 2007.
2. Hello! is a renowned international social media platform that is head quartered in Amagadia. With presence in over 80 countries, it hosts over 750 million active users on a monthly basis. Signing up for Hello! is free of charge, and once a profile is created, the user can upload photos, post any information such as opinions or important events, and add other people to increase their social network profile. Given its expansive reach due to the number of subscribers, most leading global and local news media outlets across the world actively use Hello! to link news through social media and direct visits to its own websites.
3. North Amrubia has many users of Hello! since it commenced operations in the country in 2010. Survey conducted by reputed internet research organizations show that majority of the population in North Amrubia used Hello! to consume news and information. More specifically, the study notes that 68 per cent of the respondents in a survey said they got their news from social media "often", whereas 12 per cent said they gathered news from print newspapers and other internet search engines, and 20 per cent gathered news from the radio and TV. Research also showed that over 75 per cent of people in North Amrubia trusted news on social media, which was significantly higher when compared to 22 per cent of people from Rest of the World trusting news on social media.
4. In June 2020, the military carried out a *coup d'etat* after the then-incumbent democratically elected government tried to change certain provisions of the Constitution which would have permitted the President to re-run for elections without any limitation of number terms. Subsequently, the military arrested all members of parliament from the ruling party and installed another political leader as the acting-President of North Amrubia. The *coup d'etat* was passionately opposed by majority of the citizens of North Amrubia who wanted the democratically elected government re-instated.
5. The Secretary-General of the United Nations strongly condemned the detention of the President and other political leaders. The Secretary-General further expressed grave concern

regarding the declaration of the transfer of all legislative, executive and judicial powers to a military installed leader. The Secretary-General urged the military leadership to respect the will of the people of North Amrubia and adhere to democratic norms. At the United Nations Security Council, three permanent members tried to impose economic sanctions on North Amrubia, whereas two other permanent members vetoed the motion noting that the situation was an internal political issue that did not require international intervention. Till date, no country has imposed any independent economic sanctions on North Amrubia.

6. Peaceful civil disobedience commenced within a week of the *coup d'etat* with Hello! being the primary platform for coordinating such protests. Despite reporting restrictions imposed by the government, international media reported over 550 deaths and approximately 2000 arrests between June and September 2020. Here too, social media platforms like Hello! played a prominent role in disseminating information. The military-elected and backed President of North Amrubia made a national address to citizens in North Amrubia where he raised concerns regarding the use of Hello! as tool to incite violence and disturb the stability and harmony of the country during politically fragile times. The President also declared that the military had thwarted a large-scale terrorist activity that was organized on a social media platform that sought to undermine the sovereignty of North Amrubia. The President did not respond when pressed by journalists to disclose the name of the social media platform in question.
7. In an unprecedented move, the military released a new social media platform in August 2020. Called *All Good*, the platform is available only to citizens of North Amrubia who can sign up for free. Unlike Hello!, users cannot post photos on *All Good*. However, they can send emails to other users, and can share their feelings or updates within 280 characters. Digital rights NGOs have called Hello! a database where the government can collect information and monitor content of users.
8. In September 2020, North Amrubia introduced new intermediary liability rules through the *Law on Intermediary Liability*. Provisions of this law ban content affecting the sovereignty and integrity of North Amrubia and that which threatens the national security of the country. Social media companies are obliged to remove such content within 36 hours from a government or legal order. Failure to do so results in the imposition of hefty fines. Further, the law also requires social media intermediaries to identify and trace the “first originator” of such content and share details with the government.
9. Despite the passing of the *Law on Intermediary Liability*, Hello! continued to be used by citizens of North Amrubia to disseminate coverage by international news media, coordinate peaceful

protests and demands for the military-backed government to cede power to the democratically elected government, and voicing personal opinions on political dissidence. Hello! made best efforts to comply with the *Law on Intermediary Liability* by taking down majority of the posts within 36 hours of a government or legal order. Nevertheless, given the sheer volume of posts by Hello! users, some posts remained on the platform, for which Hello! was issued an extensive fine.

10. Further, the government of North Amrubia demanded information of the “first originators” of the content. Despite repeated demands in the form of government or legal notices, Hello! refused to provide the government this information in order to protect the identity of its users. In a press conference, the CEO of Hello! raised serious concerns regarding the potential misuse of Hello! More specifically, the CEO stated that “Hello! can provide a database of readily available and sensitive information that can be used by the government of North Amrubia to centralize power using tools such as the *Law on Intermediary Liability*”.
11. Subsequently, on 1 November 2020, North Amrubia banned Hello! and other social media platforms that did not comply with the *Law on Intermediary Liability* from providing any of its services in North Amrubia with immediate effect. According to the government, Hello! had become a platform where anti-nationals incited hateful comments that negatively affecting the sovereignty and integrity of North Amrubia. The government also noted that Hello! was teeming with seditious activities and comments which threatened the national security of the country. By not providing details of persons that perpetrated these seditious comments, the government noted that Hello!’s actions were complicit in threatening the national security of the country.
12. In August 2020, North Amrubia had also declared that it had “immediately terminated” the BIT Amagadia. The said BIT was set to expire on 30 November 2020.
13. Hello! petitioned government official in Amagadia to raise a trade dispute at the WTO. Subsequently, a dispute was raised at the panel stage of the WTO after consultations between Amagadia and North Amrubia failed. More specifically, Amagadia claims that:
 - The applicable law for the dispute is WTO law¹
 - North Amrubia violated national treatment obligations under Article XVI (1) of the GATS relating to CPC 7523 under the General Agreement on Trade in Services (“GATS”).

¹ While the WTO dispute settlement mechanism only deals with WTO Members concerning their rights and obligations under the provisions of the Agreement Establishing the World Trade Organization and any other covered agreement, for the purposes of this moot court competition, the panel will also make an assessment of the point on jurisdiction.

- North Amruba cannot seek protection of its essential security interests under Article XIV *bis* of GATS

In response, North Amruba claims that:

- The applicable law for the dispute is the BIT, which stands terminated
- National treatment obligations under Article XVI (1) of the GATS relating to CPC 844 had not been violated
- In any event, North Amruba can seek protection of its essential security interests under Article XIV *bis* of GATS

Annexure-I

GATS/SC/XX

15 April 1994

North Amruba - Schedule of Specific Commitments

Modes of supply	(1) Cross border supply; (2) Consumption abroad; (3) Commercial presence; (4) Presence of natural persons			
Sector/sub-sector	Limitations on market access	Limitation on national treatment	Additional commitments	Notes
Telecommunication services Data & message transmission services, the following (CPC 7523) (a) Electronic mail (b) Voice mail (c) Online information & data base retrieval; (d) Enhanced/value added facsimile services, including store & forward, store & retrieval; (e) Online information and/or data processing	1) None	1) None		
	2) Unbound	2) Unbound		
	3) None	3) None		
	4) Unbound	4) Unbound		

Annexure-II

ATS/SC/XX

15 April 1994

North Amruba - Schedule of Specific Commitments

Modes of supply	(1) Cross border supply; (2) Consumption abroad; (3) Commercial presence; (4) Presence of natural persons			
Sector/sub-sector	Limitations on market access	Limitation on national treatment	Additional commitments	Notes
Computer and Related Services; Data base services –All services provided from primarily structured databases through a communication network. Exclusions: Data and message transmission services (e.g., network operation services, value-added network services) are classified in class 7523 (Data and message transmission services). (CPC 844)	1) None	1) None		
	2) Unbound	2) Unbound		
	3) Unbound	3) Unbound		
	4) None	4) None		

Annexure-III

Amagadia-North Amrubia BIT

Article 2. With respect to the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of covered investment, each Party shall accord treatment no less favorable than that it accords, in like situations, to investments in its territory or its own nationals or companies (hereinafter “national treatment”) or to investments in its territory or nationals or companies of a third country (hereinafter “most favored nation treatment”), whichever is most favorable (hereinafter “national and most favored nation treatment”). Each Party shall ensure that its state enterprises, in the provision of their goods or services, accord national and most favored nation treatment to covered investments.