



Symbiosis Law School
Pune

**10th SURANA & SURANA INTERNATIONAL TECHNOLOGY
LAW MOOT COURT COMPETITION – 2011**

18 – 20 February 2011



Surana & Surana
International Attorneys

In the Supreme Court of Diphia

(SLP (C) No. 1001 of 2010)

Forum for Better and Open Internet (FBOI) & Free the Internet (FI)

- PETITIONERS

Vs

Govt. of Diphia and Donway, Don Power & Gateway

- RESPONDENTS

1. Gateway is a communications technology firm specialized in the field of mobile communication based in the Republic of Agna a highly industrialized and developed nation. During the year 2007 Gateway entered the broadband service provider network. Gateway has close links with Beehive Inc. a creative software company in Agna which designed software for systems such as photo editing, file formatting, web designing video editing, anti-virus and content traffic management.
2. The Republic of Diphia is a developing nation in Asia with one of the fastest growing economies in the world and has a fast growing communication system network in the world and has the most number of mobile and broadband users in the world.
3. In September 2008 Gateway entered the Diphian market, in pursuance of the Globalisation Policy of Diphia, on a tie up with another communication and marketing firm known as Don Power. Gateway decided not to enter the market of Diphia on its own due to the large presence of Don Power Communication (Don Power) in the field. An MoU was signed between Mr. Lawrence Bay, CEO of Gateway and Raghu the CEO of Don Power such that Gateway would provide 100 Gigabit Ethernet connection services and Don Power would accordingly implement those services in Diphia. The parliament of Republic of Diphia passed an amendment bill called Amendment Act No. 2 of 2000 to THE TELECOM REGULATORY AUTHORITY OF DIPHIA ACT, 1997 (Which is the same as THE TELECOM REGULATORY AUTHORITY OF INDIA ACT, 1997)
4. In view of the rising globalised markets and the need for improvement in its communication networks, the Republic of Diphia was cautious enough to advise and suggest to the all Ethernet connections services and mobile service operators to keep an open, free and efficient management of the spectrum.
5. It was agreed between Gateway and Don Power that the services would be on a mutual basis of benefit and profit sharing would be accordingly decided and the broadband service would be called Donway Network Services and was available in a number of packages which included an unlimited download scheme at Rs.1700 per month. This was promised for all sites and stated that downloads would be fast especially with regards to movies, music, games, and social networking sites.
6. With the amazing offers by Donway a number of people chose to leave their usual ISP's and began to use Donway's services for its cheaper costs and excellent download speed. By the end of 2009 there were over 25 million users who were using Donway's services including cyber cafes and browsing business organizations and companies. They were termed one of the fastest growing ISP's on the planet and had an annual revenue turnout which quadrupled during 2009, thanks to the growing

number of users. During this time Donway engaged the services of Beehive Inc on the advice of Gateway.

7. The most used website till date is the search engine by the domain name of muble.com with more than 700 million visitors a day, available in over 200 countries and over 300 languages. It has plethora of products and services including mail services chat messenger, tool bar, advertising systems and photo viewing and editing software. Spacepage.com is the world's most used social networking site with over 500 million users and is the second most visited site in the world. The site is known for a number of applications including games, applications, movies, music etc. More than half of gateways users were frequent visitors of Spacepage and almost 95% visited muble after login. There were various free sites which were accessed through muble frequently by its users such as the movieforum.com(movie downloads) musicforum.com(music) gameoflife.com(games) and virusbuster.com(anti-virus).
8. Mango inc is the world's leading technology, software and hardware company based in Agna whose paraphernalia includes social networking(mround.com) music(m-tunes) gaming(m-games) and movies(m-videos) all of which are pay for use with Mango charging annual subscription rates and m-tunes available for \$1 a song and a movie or game downloadable for around \$9.99. Mango also manufactures hardware products such as laptops, cellular phones and mp3 devices. Don Power owns franchises of Mango all over Diphia.
9. In Dec 2009 a number of users of Spacepage.com began to complain of problems in accessing the popular social game known as Agriworld. The game which involved creating and designing farms and growing crops etc was played by over 30 million users worldwide and over 500,000 of those who used Donway in Diphia. When checked it was discovered that the problems with regards to accessing the game were experienced mainly by the subscribers of Donway. The network apologized for the inconvenience and stated that the problem would be fixed as soon as possible. It was later reported that apart from a number of applications that were rendered unusable, the overall speed of the website was also slowed and chat messages took over a minute to get processed.
10. At the same time musicforum announced that songs of the latest releases were available on the site and could be downloaded for free (for listening purpose only) by the users. A number of people flocked the website to try and download the songs but found that the site was not responding well for subscribers of gateway and even those who could access the site had to wait for over an hour for the songs to download. The songs which were at a maximum of only 10 Mega Bytes should take nothing more than two minutes to download considering the download speed promised by Gateway.
11. There were also problems with regards to other sites such as movieforum.com and gameoflife.com. It was reported by a number of subscribers that movies which could be downloaded in a matter of half an hour took a full day to download and most games were not accessible to anyone. This problem however was not seen on any of mango's online applications and m-tune of 10 MB could be downloaded in a matter of a minute and m-videos of over 3 hours took only 20 minutes to download. Also games which were created by mango or were used by their applications were functioning well and so were other products. There were also reports that spacepage.com could be opened only from Mango applications and software.

12. This was seen as a concerted effort by both Gateway and Don Power to stifle other websites and free software and promote the paid applications with whom they had certain links thus making the subscribers pay to use most services and try to minimize the usage of free websites.
13. In January 2009 a Bill was tabled in the legislature of Agna wherein all Internet Service Providers were required to be net neutral and principle of non-discrimination between all websites was made mandatory to all ISP's. The bill although tabled was not passed yet by the Agna legislature but made it clear that under no circumstances were any services to be denied to any subscriber.
14. The Telecom Regulatory Authority of Diphia (TRAD) based on a complaint lodged by users of Don Power sent a show cause notice to Donway in March 2010 asking them to explain the reasons why their services seemed so biased and why none of the conditions of service were mentioned in their mass advertising campaigns which ensued from January 2009 and also as why their license should not be terminated. It also requested that the principles of net neutrality be followed with full effect and ensure that no form of arbitrary discrimination ever subsists when network services are provided. Also speed of downloads should be uniformly consistent with those originally advertised.
15. In reply to the show cause notice Raghu CEO of Don Power issued the following statement:
“We at Don Power are committed towards providing the best of services to all those who subscribe to our services and our Gateway Ethernet connection is no different. I would like to stress that there has been no form of tampering in absolutely any manner and that we very firmly believe in all principles of free internet traffic and network neutrality. Our relationship with Mango Technology Limited operates on a completely different level and would not interfere in our Internet services in any manner. If any customer faces problems with regards to this they may please feel free to call our 24 hour customer care number or address grievances to donpower@gateway.com
16. On such complaints made by the customers, Donway replied that the problem was technical and they are working on a wide range of tariff plans that suit the varied lifestyle of the users. In the plan table, a footnote in small letters contained the words “Unlimited usage plans will have a fair usage policy of 10 GB/month, beyond which the customer will be charged at Rs. 2/- per MB. Besides this limitation, it was alleged that they tweaked download speed considerably lower beyond the specified usage announced in the ir fair usage policy. This problem was allegedly noticed only in their Unlimited and Infinity Plans.
17. After receiving the reply from Donway TRAD withdrew the show cause notice against the company. The said withdrawal by TRAD was challenged by an association of internet users of Don Power before the Telecom Dispute Settlement Appellate Tribunal (TDSAT), and the said appeal was dismissed as premature and the TDSAT directed the association to make representations to the concerned Ministry. However during this time in February 2010 Gateway Inc. was charged with interference of internet traffic in Agna and a suit was filed for regulation by the Federal Communications Commission (FCC) of Agna. Here FCC determined Gateway was guilty of unfair practices and charged with arbitrarily interfering with internet traffic and promoting certain websites which they had close links. District Court of Agna held that the FCC could not regulate the operations of the ISP without any due provisions of law and that no action could be taken till the appropriate neutrality act was passed by the Agna Senate.

18. In April 2010 new songs of a popular Indian film 'The Machine' were released and the songs were available from April 8th online in a number of sites including themusicforum.com. However when the users of Gateway tried to download songs from themusicforum.com they received messages that the webpage was temporarily unavailable and received a link to the m-tunes website. The users complained that this was the case for over a week after which the website finally opened. During this time themusicforum reported that it was only gateway users around the world faced similar problems and were unable to access both themusicforum and themovieforum.com. In January 2010 Spacepage entered into a network agreement with Gateway and was freed of its trouble to the dismay of new sites such as litter.com.
19. On April 23rd 2010 a consortium of free websites including themusicforum.com, movieforum.com litter.com etc, which are basically registered companies in Agna, formed a union called Free the Internet (FI) and filed a Writ Petition in the High Court of Delphi which is the National Capital Territory of Republic of Diphia against the Central Government of Diphia for their failure to check the continued interference of the internet traffic and also making both Don Power, Gateway and Donway as party respondents seeking a direction from the Hon'ble High Court for an order of injunction and to restrain interference with Internet traffic with immediate effect. The Hon'ble High Court of Delphi questioned the Writ Petition on the grounds of maintainability as the union consisted of foreign citizens, and their prayer to exercise their right to free trade is not maintainable. The compliance with the laws of Agna was questioned and the said writ petition was dismissed by the Division Bench of the High Court of Delphi.
20. Simultaneously, an association called as Forum for Better and Open Internet (FBOI) filed a Public Interest Litigation before the Honourable High Court of Delphi seeking directions to be issued to the Central Government of Diphia to implement the Amendment Act No. 2 of 2000 to the TRAD Act 1997 in letter and spirit and to initiate immediate action against the erring companies making Don Power, Donway and Gateway as party respondents to the Public Interest Litigation. Some members of FBOI, who had their interests in Agna, were also members of FI. The Hon'ble High Court dismissed the PIL on grounds of maintainability without referring or observing the case on merits.
21. The FBOI and the FI preferred appeals to the Hon'ble Supreme Court of Diphia (similar to India) aggrieved by their respective orders passed by the Hon'ble High Court of Delphi. The Hon'ble Supreme Court of Diphia for the sake of convenience clubbed both the appeals as the cause of action is same. The matters came up for admission on 17 Dec 2010 and the Hon'ble Supreme Court directed notices to be issued to Don Power, Gateway and Donway to appear on the next date of hearing i.e., 19 Feb 2011 to explain why their licenses are not to be cancelled or any strictures be passed against them. Agna has certain rules of the communications board which are similar to those of the United States of America. The communication board rules are in line with the FCC rules.