
A 'Governance Network Model' For Legally Democratic National Sports Bodies (NBS) in Malaysia

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ABSTRACT

The good governance practices for sport bodies in the world concerns more on the exercise of power within an organizational system. The system emphasizes the principle of transparency, accountability, democracy, responsibility, equity, efficiency and effectiveness. If all these principles ceased to exist, the system will collapse. The Malaysian system of sports governance is still based on two models of 'hierarchical pyramid network' and 'democratic anchorage' respectively. These two models are undemocratically accepted and denying some of the principles of good governance. As a result, the stakeholders (players, supporters, unions and government) perceived both as the main failure to establish good sports governance practices. Thus, to establish good governance practices for sports bodies in Malaysia, this article analyses the new 'governance network model'. It also examines on how the new model interacts efficiently and able to develop good governance practices for sport bodies. To achieve this, the research adopted qualitative and quantitative approaches. The constitutional policy of national sports bodies (NSB) was legally analysed. The clauses in the sports constitution are surveyed using Rasch Modelling Techniques. The survey highlighted the low monitoring compliance of the existing NSB for the purpose of current changes of sports legislations and industrial environments. The findings also showed that despite of commercialisation and industrialisation of sports, the NSB cannot guarantee the same in term of adopting good governance practices. The article recommended the changes of environment from autonomous self-governance to mixed governance (governance network model). This will guarantee the good governance practices for sport bodies in Malaysia.

KEYWORDS: 'good governance practices', NSB, 'governance network model', 'sports law', Malaysia

INTRODUCTION

Governance deals with the structures and processes by which an organisation is directed, controlled and held to account (David Shilbury et al. 2013). Proper governance

provides the means to help an organisation to achieve its goal and objective. Apart from that, implementing proper governance also important in order to ensure the organisation function appropriately and efficiently. Proper governance means applying the concept of good governance practice in managing an organisation. In general, the concept of good governance is governance, which characterised by a high degree of openness, transparency, accountability and democracy (Good Governance in Grassroots Sport.2011).

The achievement of good governance is very important for every sector organisation in the world, either public or private, and this also including sports organisation. Through the inclusion of good governance in sports organisation, it will able to influence the sports organisation on how the objectives of the organisation are set and achieved, spells out the rules and procedures for making organisational decisions, and determines the means of optimising and monitoring performance, including how risk is monitored and be assessed professionally (Moiescu Petronel, Moiescu Florentina. 2012).

In sports area, sport governance can be defined as the responsibility for the functioning and overall direction of the organisation and is a necessary and institutionalised component of all sport codes from club level to national bodies, government agencies, sport service organisations and professional teams around the world (David Shilbury et al. 2013). Primarily, effective sports governance requires leadership, integrity and good judgment. In addition, effective sports governance also will ensure more effective decision making, with the organisation applying and demonstrating transparency, accountability and responsibility in the activities undertaken and resources expended. In contrast, poor governance has a variety of causes, including director inexperience, conflicts of interest, failure to manage risk, inadequate or inappropriate financial controls, and generally poor internal business systems and reporting. Ineffective governance practices not only impact on the acts in the best interests of the members. The Sports Governance Principles advocate strengthening structures that support good leadership and decision-making, and ensure sound and effective governance.

LEGALLY DEMOCRATIC NATIONAL SPORTS BODIES IN MALAYSIA

In Malaysia, the administrations of all sports body are based on the concept of legally democratic. Initially, the primary definition of democracy is government, which is derived from public opinion and is accountable to it. Democratic governance is a system which provide people the freedom of association whereby through such rights, people are free to form any kind of associations including sports associations (Michael J Allen et al. 1990). Democracy also relies on procedural indicators of electoral democracy such as universal suffrage, elections registering voter preferences faithfully; unbiased choice among alternatives, and these choices or preferences become the basis for constituting holders of public office (Robert B. Albritton, Thawilwadee Bureekul. 2009).

Historically, in Malaysia, prior to the independence in 1957, the general development in the legal aspect of sports saw a natural growth moving along the leisurely space of the global development of legislation in sports, which was largely based on natural justice. Therefore, references to the law pertaining to disputes on sports are fairly recent (Beloff et al. 1999). Due to the absence of appropriate legislation, there has also been gradual decline in the standard of

sports and sports management over the years, though there have been a considerable focus on sports at all levels (Dr Abbas Hardani. 2011). With regards to the administration and management of sports association in Malaysia, practically, there is no direct government involvement in the administration of sports associations, which are fully controlled by executive committees, appointed by general members and from private associations. In Malaysia also, generally, political figures and the royal families and the associations' founders enjoyed close connections and this relation spontaneously give the power for them to decide the direction of their associations' take. The relationship was formed on the contractual basis, and the members of the association were bound by its self-regulated constitution. Accordingly, this was proved with the creation of a national private association of the Olympic Council of Malaysia (OCM) in 1963 that functioned as an umbrella body and was responsible for ensuring the participant of athletes from national sports bodies (NSB) in both national and international competitions. Later, in February 1972, the federal government via the Ministry of Youth and Sports (KBS) has created the National Sports Council (NSC). This NSC is responsible to act as a coordinating body for all NSB with the objective to promote sports participation, competition and the general development of sports in Malaysia. This situation illustrated the conflict of interest existing between OCM and KBS and also raised concern over sports falling under the legal jurisdiction of the federal law affecting the private affairs of NSB.

In the 1980s, sports governing bodies established themselves more firmly at the national level. Modern sports also began drawing more attention to the federal government as sports could promote good values among the Malaysian public. During this time, Malaysian sports were seen as a form of public service. Further, in 1988, the government has drafting the National Sports Policy for the purpose of promoting and developing sports in this country and a number of federal jurisdictions on matters related to sports has been passed by the federal government in order to implement such policy. Essentially, this was possible because 'sports' was listed under the Ninth Schedule, List III, Section 9B of the Concurrent List of the Federal Constitution, the Supreme Act of Malaysia. Basically, under Malaysian law, if a subject matter is listed in the Concurrent List, the federal as well as the state government has jurisdictions to make laws. At the federal level, Ministry of Youth and Sports (KBS) is exclusively control sports.

With regards to the sports good governance practise in Malaysia, KBS adopted a general sports based on the four federal legislations. However, the NSB continued to view itself as a separate autonomous private entity. The NSB formed a hierarchically structured pyramid network model so as to provide itself with its own internal government at national level and the join assembly of international federations (IFs) and the International Olympic Committee (IOC). The essential elements of the organisation are its self-regulated constitution and by-law. The organisations are very independent whereby its authority did not originate from external body. Besides, it also did not sub-serve any political ideology, and it was not subject of the government (Dr. Kee-Young Yeun et al. 2013).

GOVERNANCE NETWORK MODEL AND ITS CHARACTERISTICS

Governance network model is a model, which increasingly empowered stakeholder of the organizations to interfere in the policy processes of the organization itself. On the other hand, the stakeholders also have the ability to give their directions towards the future of the sports that

they represent. This actually in contrast with the concept of a democratic political model whereby this model reflects that clubs and players who want to take part in the competitions of the network, are subject to the rules and regulations of the governing bodies, often without being able to influence their benefit.

In governance network model, there are several characteristic of good governance, which will direct a professional and effective sports organisation. Among them are accountability; transparency; follows the rule of law; responsive; equitable and inclusive; effective and efficient; and participatory (Report of the Commission on Global Governance Our Global Neighbourhood). Accountability is a fundamental requirement of good governance. Accountability means that the organisation has a sport where they are present, but also undermine confidence in the sports industry as a whole (*Australian Sports Commission 2012: Sports Governance Principles*).

Basically, governance will concerns on three key issues, which firstly, on how an organisation develops strategic goals and direction. Secondly, on how the board of an organisation monitors the performance of the organisation to ensure it achieves these strategic goals, has effective systems in place and complies with its legal and regulatory obligations, and thirdly, on ensuring that the board obligation to report, explain and be answerable for the consequences of decisions it has made on behalf of the community it represents. Besides, a good governance is transparent whereby this means that the members of the organisation able to follow and understand the decision-making process. With this regard, the management process of the organisation as a whole able to clearly see how and why a decision was made; and what information, advice and the consultation council considered; and which legislative requirements the council followed.

Good governance also follows the rule of law, which means that all decisions made in the organisations are consistent with relevant legislation or common law, and are within the powers of council. Moreover, the characteristic of responsive means that the organisation should always try to serve the needs of the entire community while balancing competing interests in a timely, appropriate and responsive manner. Equitable and inclusive governance means that the all of its members feel their interests and have been considered by council in the decision-making process. This means that all groups, particularly the most vulnerable, should have opportunities to participate in the process.

Further, an organisation also should implement decisions and follow processes that make the best use of the available people, resources and time to ensure the best possible results for their community. This will show the effectiveness and the efficiency of the organisation. Lastly, the participatory concept means that anyone in the organisation, which affected by or interested in a decision should have the opportunity to participate in the process for making that decision. This can happen in several ways such as through the members may be provided with information; or they are being asked for their opinion; they are given the opportunity to make recommendations or, in some cases, they can be as part of the actual decision-making process (Russel Hoye. Aaron C.T. Smith. 2012).

GOVERNANCE NETWORK & THE CONCEPT OF NATURAL JUSTICE

Initially, in administrating any organizations including sports organization, the concept of natural justice need to be applied in order to avoid any unfair administrative action. Apart from that, the concept of natural justice also is a part of good governance system for management of associations. Natural justice basically is a procedural safeguard for the affected person against improper or wrongful exercise of power by a public authority and it is also be considered as a 'fair administrative procedure (MP Jain. 2011). This concept will enable the grievance persons to bring to the notice of the decision-maker that person's side of the case, including the relevant facts, circumstances and information in that's person's possession and having a bearing on the case. Through such way, based on all relevant information given, a right decision may more often be the outcome. Thus, hearings provide a safeguard against ignorance, carelessness or wrongful use of power by the administrator. Syed Othman J, in the case of *Wong Kwai v President Town Council, Johore Bahru* [1970] 2 MLJ 164 observed that before any decision made by any tribunal, the rule of *audi alteram partem* must be perceived. Such principles underlying this rule provide a minimum standard for justice. In the absence of observing them, the decision made loses its judicial character. Besides, in *Ketua Pengarah Kastam v Ho Kwan Seng* [1977] 2 MLJ 152, the court emphasized that the rule requiring a fair hearing is of central importance because it can be used to interpret a whole code of procedural rights.

In relation to the management of sports organization in Malaysia, the principle of natural justice is very important to be applied as it not only can be considered as a good legal procedure because it is fairness itself but a standard of a good administration insofar as it encourages just and right decision by the administration. The application of natural justice can prevent much injustice at negligible cost to the efficiency of good administration of sports associations in Malaysia. As for example, the constitution, which contains the element of natural justice, may include provisions regarding the procedure of dismissal, right to be heard and appeal procedure to Court of Arbitration for Sports. Thus, through such implementation, the administration of the sports associations will become more accountable for their actions, which it is something important in a democratic system.

THE IMPORTANCE OF IMPLEMENTING GOVERNANCE NETWORK MODEL

In running out any organisation, the inclusion of good governance and good administration is very essential for the successful conduct of any sporting organisation. The most potential consequence is that, the absence of efficient organisation carries with it possible harm to participants and legal consequences for the organizers.

Secondly, the significant of applying good corporate governance is regarding the benefit sharing and responsibility of the organisations towards its shareholder and stakeholder. As usually known, each organisation has its own shareholder and stakeholder who have an interest on that organisation. Due to that situation, a management of such organisation needs to be administered professionally and effectively in order to ensure that the rights of all shareholders and stakeholders are taking into account. To achieve this purpose, the only way is through the application of the principle of good governance or a governance network model.

Apart from that, thirdly, the other importance of applying good corporate governance is due to the situation that when there is demonstrated incompetence in the conduct of the affairs of sports bodies, then an immediate consequence will damage to the image of the sport. This can be seen through example when an organisation fails to manage with match-fixing and doping scandals in soccer for instance, the image of the sports itself will be affected.

Fourthly, the failure to manage organisations professionally and effectively also will cause a long-term consequence to that organisations and sport, which they represent whereby that both participants and spectators will turn away from the sport and if that happened, it will lead the sponsors to turn away as well. This then will give a tough effect and will cause difficulties to that sport organisation in running and developing the reputation of their organisation.

Based on all above reason, it shows that the implementation of good corporate governance practice or governance network model is very important for the good of the organisation itself and also for all of its shareholders and stakeholders, who expect benefits from their participation with the sports organisation.

METHODOLOGY

Figure 1 shows the process flow in this study, which involves 4 different stages. First stage involves the design of fulfillment of model club constitution test questionnaire. The fulfillment of model club constitution test questions was carefully constructed as to cover the Malaysian system of sports governance based on two models of 'Hierarchical Pyramid Network' and 'Democratic Anchorage' respectively. The format scale of the questionnaire is nominal scale, which consist of 67 questions. A second stage data was collected data from 30 sports bodies that were registered with the Sports Commissioner Office. The third stage is the analysis process, which involves with the used Rasch measurement. The analysis process consists of 2 steps: the construction category of each questions and Conversion of data into *Winstep* format. Finally the last stage concludes the analysis output.

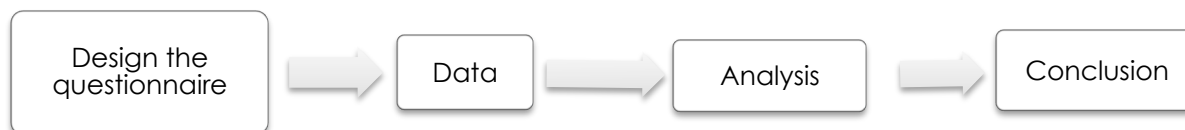


Figure 1. Process flow

2.1 Step 1: Construction of Topic for Each Question.

Each of the questions was assessed by the category as shown in Table 1. Individual constitution sport body is recorded based on.

Category	No. of Questions
Membership (B)	11- 44
Organization (C)	45 - 74
Judicial Bodies (D)	75-79
Arbitration (E)	80-85
Finance (F)	89-92
Final Provision (G)	98

Table 1. Category of Questions

2.2 Step 2: Conversion of Data into Winstep Format

The data from questionnaire is tabulated in Excel format. This data is required for evaluation of sports organization' performance in Malaysia by using Rasch software, *Winstep*. The analysis outputs obtained from the *Winstep* were then analyzed.

RASCH ANALYSIS: 67 ITEM SCALE (N = 30 NATIONAL SPORTS BODIES (NSB))

The final analysis with *Winstep* program tested the 67 items (N=30) in order to create a linear scale of fulfillment of a sport body toward constitution. The Item reliability of the items is 0.91 which indicates the adequacy of the items to measure what should be measured. The results from the test were tabulated and run in *Winstep*; a Rasch analysis software to obtain the *logit* values. The common analysis outputs from *Winstep* is Person-Item Distribution Map (PIDM); variable map. The PIDM shows a better picture on how the sports body correlates to the respective questions. It can give a clearer view of the person's ability and relevant item difficulty. Figure 2 illustrates the Person-Item distribution map which of the Rasch analysis. Persons (sport association's name) are distributed on the left side of the *logit* ruler (center vertical line) and items (questions) are distributed on the right side.

In the map, we can see that 90% (27/30) of the respondents fall within the range of traits of 42 items. All persons are positioned below 9 items (B11, B18, B23, B31, B41, B42, E84, E85 and E82). These are items most difficult to achieve upon by the respondents. It also indicates a low probability in the response to these items. One of the sport associations is located far below the $Mean_{person}$ *logit*, which is $+0.36logit$. This indicates that the sport body felt unimportance for all 67 items in constitutions. Among 30 sport associations, only one sport association found fulfills 86% (58/67) items of constitution. The sport body is *Persatuan Jurulatih Atletik Paralimpik Malaysia*. This indicates that sport body follows the constitution on year 2013.

However, the level of fulfillment differs across the category. On the Membership and Arbitration category, the sport associations perceived that they are less knowledgeable in a few of the items. The least Membership and Arbitration item is B11, B18, B23, B31, B41, B42, E84, E85 and E82. On the other hand, the items which are found to be quite fulfillment to the all sport body are related to the Organization, Judicial Bodies, Finance and Final Provision. Under Final Provision category, 3% (1/30) perceived it as fewer fulfillments and 97% (29/30) perceived fulfillment.

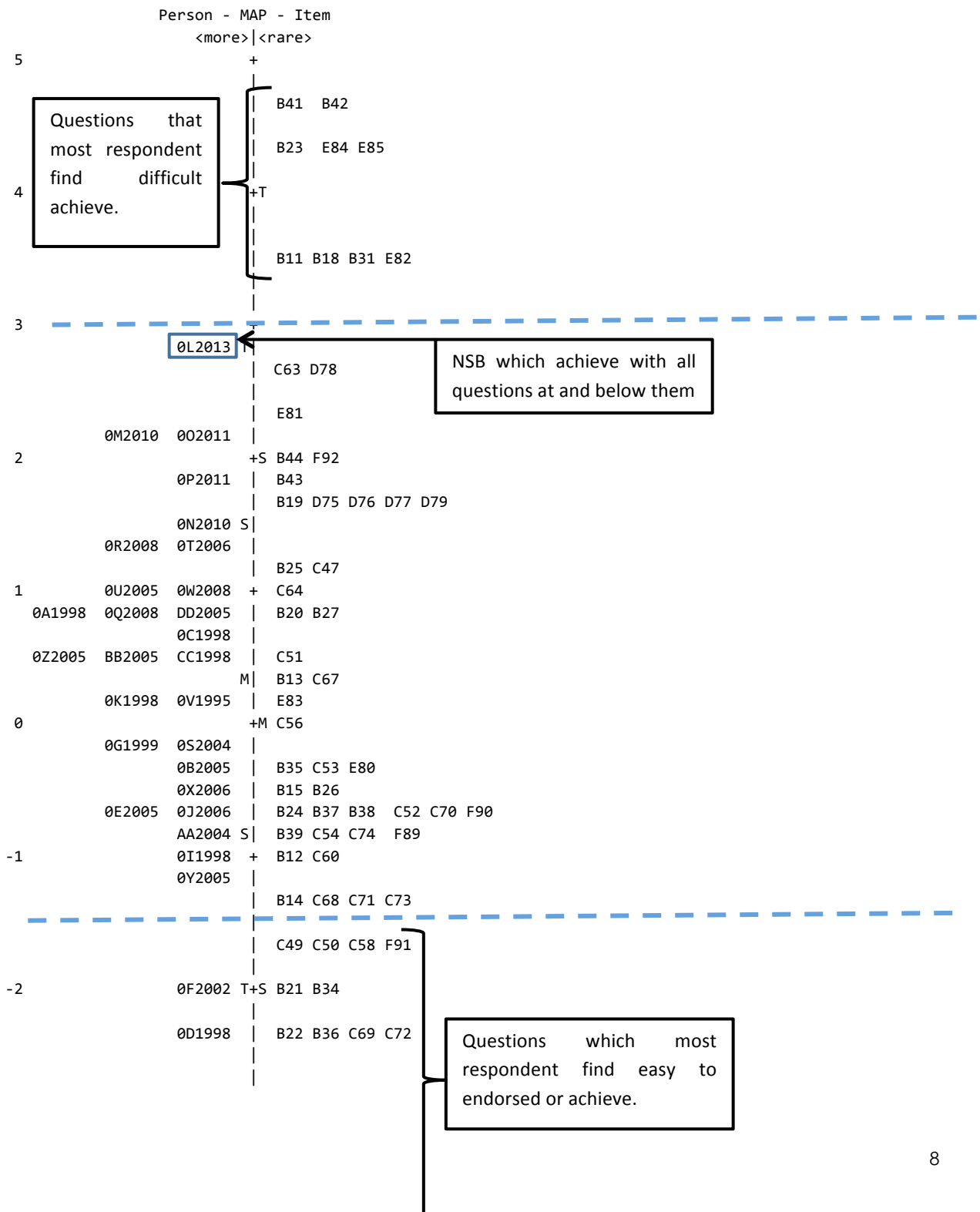




Figure 2. Person-Item Distribution Map of National Sports Bodies in Fulfillment of Constitution

CONCLUSION

In Malaysia, Sports Commissioner manages the governance of sports association. Prior registration with Sports Commissioner in Malaysia, all sports associations need to follow the template of the constitution provided by the Sports Commissioner. This is however, not all sports body registered under Sports Commissioner in Malaysia follow 100% template provided by them. Based on structured interview made by the officer in charged, due to the template provided by them are not gazetted, the Sports Commissioner itself does not make any sports body which register with them to follow 100% of the template. Indeed, they are able to make any additional, deduction or any alteration to their constitution. It can be said that, the template provided by the Commissioner Office only referable as a guideline. Besides, the other reason of non-compliance of the template of constitution is due to the sports associations itself that have been registered with Trade Union, Registrar of Societies and Companies Commission of Malaysia. As to that situation, those sports associations' constitutions are made according to the template provided by Trade Union, Registrar of Societies and Companies Commission of Malaysia. Lastly, the reason is due to the year of the template itself that have gone through several amendments from 1999 until 2010.

Overall, in Malaysia, all sports associations registered under Sports Commissioner Office are legally democratic. However, there are still problems whereby there are still associations, which does not include all the principles of good governance model in their association's constitution. Based on the analysis, the least sports association is a company registered with Companies Commission of Malaysia. As company based nature differs from association based nature, especially on the concept of separate legal entity, the liability of a person runs the company itself is lesser and this enables them to dismiss any of their stakeholder/shareholder if fail to fulfill their profitable target. This is actually against the principle of natural justice as there is no element of good governance in it.

As a conclusion, the implementation of good governance network model which based on good governance principles is seems very important in order to make Malaysian sports management become as a very good corporate governance practice. This also is for the good of the organisation itself and also for all of its shareholders and stakeholders, who expect benefits from their participation with the sports organisation. It is suggested also to the Sports Association Office to minimize the hindrances such as the problem of non-gazetted template, which may lead to the non-uniform associations' constitutions. Sports Commissioner Office also needs to

play a vast role in order to implement the governance network model in their template constitution in order to have a governance network model (industry- NSO-players, unions and supporters) interacts efficiently and develops best model for sports governance in Malaysia.

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