



COMPETITION COMMISSION OF INDIA

Case No. 29/2018

In Re:

**Mr. Vijay Gopal, 12-13-1085/72, 3rd Floor,
Street-11, Sirdi Sai Nagar, Tarnaka,
Secunderabad, Telangana-500017.**

Informant

And

**Inox Leisure Ltd., Maheshwari Parmeshwari Mall,
5th Floor, Kachiguda Cross Roads,
Hyderabad, Telangana-500027**

Opposite Party-1

**Hindustan Coca-Cola Beverages Private Limited,
B-91, Mayapuri Industrial Area,
Phase-I, New Delhi – 110064**

Opposite Party-2

CORAM

**Mr. Ashok Kumar Gupta
Chairperson**

**Mr. U. C. Nahta
Member**

**Ms. Sangeeta Verma
Member**

Order under Section 26(2) of the Competition Act, 2002

1. The present information has been filed by Mr. Vijay Gopal (“**Informant**”) under Section 19(1)(a) of the Competition Act, 2002 (“**Act**”) against Inox Leisure Ltd., (“**OP 1**”) and Hindustan Coca-Cola Beverages Private Limited (“**OP 2**”) alleging contravention of the provisions of Section 3(4)(a), 3(4)(b), and 3(4)(c) of the Act.
2. As per the information, the Informant who has claimed to be a social activist, has alleged that many “Multiplex Malls” including OP-1 have colluded with “Beverage



Companies” including OP-2, to sell water/beverages, within such multiplexes, at higher prices, with a special packing, contrary to the price of the same brand available in retail market.

3. It is stated that the Informant visited multiplex of OP-1 to watch a movie on 23.06.2018 and purchased some beverages manufactured by OP-2. Detail of products and their prices inside the premise of OP-1 are as follows:

Product	Purchased from OP-1's premises	
	Selling Price inclusive of CGST and SGST (Rs)	Maximum Retail Price (MRP) Printed (Rs)
Diet Coke (330 ml)	60.00/-	60.00/-
Minute Maid Pulpy Orange Can (300 ml)	70.00/-	70.00/-
Schweppes Water Bottle (1 Ltr)	60.00/-	60.00/-

4. The Informant has submitted that all the above-mentioned products are sold at different or lesser prices in retail market. For instance;
- Diet Coke Can (300 ml) Rs. 35.00/-
 - Minute Maid Pulpy Orange Bottle (400 ml) Rs. 32.00/-
5. Thus, the difference of price between multiplex and other retail stores in Hyderabad is approximately Rs. 22.00/- and Rs. 34.00/- for Diet Coke and Minute Maid, respectively. The Informant has also submitted that OP-2 has introduced a slight difference in quantity/volume of said beverages sold at multiplexes, as compared to other retail stores, so as to get around the Packaged Commodity Rules 2011 (As amended on 23.06.2017) which stipulates that identical goods cannot be priced differently by resorting to ‘Unfair Trade Practice’ or “Restrictive Trade Practice”.
6. Further, as alleged by the Informant, OP-1 only sells OP-2's products and doesn't sell products of OP-2's competitors. Similarly, in PVR Cinemas, only products of Pepsi Co and in McDonald restaurants only OP-2's beverages are sold.
7. Moreover, the Informant has stated that OP-1 doesn't permit the consumers to carry their own eatables or drinking water inside its movie halls, which has to be purchased



at higher prices from OP-1. The Informant has submitted that provision for free water is usually not accessible, as it is placed towards a farthest corner, in seclusion.

8. The Informant has also mentioned that he has won a case in Hyderabad Consumer Forum against INOX being Case No. 399/2016 for selling “Select Channel Water Bottle” and for stopping the Informant from carrying his own water bottle. This decision is pending in appeal in higher forum.
9. On the basis of the above information, the Informant has alleged that there is collusion between OP-1 and OP-2, which falls within the vertical restraint, as defined under the provisions of Section-3(4) (b) and (c) of the Act. Further, as mentioned in the Information, both the OPs fall on different levels of the supply chain, with OP-2 being into manufacturing of beverages and OP-1 being into retail selling of such beverages manufactured by OP-2. According to the Informant, the nature of the restraints placed by OP-1 and OP-2 clearly fall under Section 3(4)(b) and (c) of the Act, *i.e.* exclusive supply agreement and exclusive distribution agreement.
10. As submitted by the Informant, OP-1 and other similar players in the market, are purchasing and selling only one brand of products *i.e.* either of Coca Cola or of Pepsi Co. in their establishments, and thus it can be concluded that OP-2 has entered into an exclusive supply agreement as defined under Section 3(4) (b) of the Act with OP-1. Further, the Informant has alleged that OP-1 has entered into an exclusive distribution agreement with OP-2, as defined under the provisions of Section 3(4) of the Act, by way of selling selected similar goods at higher prices, than available in the retail market.
11. The Informant has further stated that mostly people visit OP-1, with intent and purpose to watch cinema and not to buy these products. But OP-1 seems to be taking undue advantage of this opportunity. Although, there is no explicit condition on consumers to buy these goods while they visit to OP-1 to watch the movies, water is an essential commodity for survival. The Informant has alleged that by prohibiting consumers from bringing their own water and then selling water bottle to them at



excessive prices, knowing fully the fact that consumers have no option but to purchase water from OP-1 shows the mala-fide intent of the OP-1.

12. Similarly, the Informant has submitted that though purchase of beverages is not a pre-condition for watching movies in the multiplexes of OP-1 and in that sense there is no tie-in arrangement, however by introducing restrictions, whereby the consumer is forced to buy essential goods like water from the OP-1, there exists such implicit condition of tie-in arrangement, which is prohibited under Section 3(4)(a) of the Act.
13. The Informant has also submitted that the legislative intent behind the amendments in Packaged Commodity Rules 2011, as on 23.06.2017, was to prohibit the mischief of dual pricing of identical products by adopting a different label *viz.* 'to be sold at select channels'. The act of circumventing the legislative intent and thereby coercing consumers to spend more money for the similar products is acting against the spirit of consumer welfare and in no way, it contributes to technical, scientific and economic development.
14. The Informant has thus submitted that the collusion between OP-1 and OP-2 satisfies all the conditions mentioned under Section 19 (3) to prove appreciable adverse effect on competition mentioned under Section 3(4) of the Act. The Informant has sought relief(s) from the Commission *inter alia* to direct OPs to abstain from selling products at exorbitant prices, by merely making negligible changes in the said products and has requested to investigate this sector and implead all parties who are resorting to similar conduct. Further Informant has also requested the Commission to impose maximum penalty on the OPs under Section 27 of the Act.

Written submission provided by the OPs

15. The Commission considered the matter in its ordinary meeting held on 13.08.2018, and decided to seek some additional information from the OPs before arriving at any conclusion. The OPs were directed to provide certain information/clarification/documents in relation to their agreements *inter-se*, and details of sales



of beverages, *etc.* The Commission received the said information/clarification from OP-1 on 07.09.2018 and from OP-2 on 06.09.2018.

16. The Commission observes that with reference to the queries, where OP-1 was asked to produce copy of the relevant agreement(s) from 2009 till date, OP-1 submitted that the agreement(s) between OP-1 and OP-2 are confidential in nature and are not available in public domain, hence access to these agreements by third parties may cause irreparable commercial losses to OP-1 and OP-2. On the contrary, OP-2 informed that it does not have any exclusive supply agreement(s) in respect of beverages in India including in the cities of Hyderabad/ Secunderabad.
17. The Commission thus, *vide* order dated 01.11.2018, *interalia*, directed OP-1 to provide certain information/documents which had not been provided by the said OP. OP-2 was also directed to provide details of beverage supply agreements entered into by it with OP-1 along with copies thereof, within a period of 10 days from the date of receipt of the Order dated 01.11.2018. In response, the Commission received additional information/documents from OP-1 and OP-2 *vide* letter dated 26.11.2018 and 20.11.2018, respectively.
18. The Commission notes that OP-1, *vide* communication dated 07.09.2018, also provided some additional submission. The OP-1 has *interlia* submitted that it has 128 multiplex properties with 520 screens across India which includes 2 multiplexes and 11 screens in Hyderabad and no multiplex in Secunderabad. Thus, OP-1's market power is negligible for it to cause Appreciable Adverse Effect on Competition (“AAEC”) in these two markets. OP-1 also submitted that a similar case *viz*, Case No. UTPE 99/2019 was decided by the Commission earlier where identical allegations were made against OP-1 and OP-2. The Commission had held in that matter that there was hardly any AAEC because of exclusive supply agreement between OP-1 and OP-2 and thus, it did not find any contravention of the provisions of the Act, in the said case.



19. In compliance with Commission's order dated 01.11.2018, OP-2 provided copy of following sale and supply agreements signed with OP-1 on 22.11.2018:

- (i) Agreement dated 10.06.2008, for 3 years duration, effective from 01.01.2008
- (ii) Sale and Supply Agreement dated 25.08.2011 for 3 years duration effective from 01.01.2011
- (iii) Sale and Supply Agreement dated 25.04.2014 for 3 years duration effective from 01.01.2014
- (iv) Sale and Supply Agreement dated 18.09.2017 for 3 years duration effective from 15.05.2017

20. Further, OP-1 has also submitted an application dated 22.11.2018, under Regulation 35(2) of the Competition Commission of India (General) Regulations 2009 read with Section 57 of the Act seeking confidentiality on the aforesaid agreements and amendments thereto.

21. The Commission considered the information filed by the Informant, written submission provided by OPs and information available in public domain in the ordinary meeting held on 09.01.2019.

22. The Commission notes that the allegations made by the Informant are two fold, firstly that the agreement between OP-1 and OP-2, for selling some of OP-2's products, to the exclusion of products of competitors, amounts to 'exclusive supply agreement' as well as 'exclusive distribution agreement' *interse* the said parties which may fall foul of the provisions of Section 3(4) (b) and Section 3(4) (c) of the Act. Therefore, the consumers are forced to buy essential commodities like water by paying a higher price than that is available in other retail stores for the same product which results in consumer welfare loss. Secondly, the Informant has also submitted that though, there is no tie-in arrangement in the literal sense as purchase of beverages is not a pre-condition for watching movies in the multiplexes of OP-1, there exists an implicit condition of tie-in arrangement, whereby the consumer is



forced to buy essential goods like water from the OP-1, which is prohibited under Section 3(4)(a) of the Act.

23. The Informant has thus submitted that collusion/agreement between OP-1 and OP-2 amounts to a vertical restraint as defined under Section 3(4) of the Act. This agreement stifles competition as OP-1 is selling the products of OP-2 only and to that extent right of consumer's to choose any other product is also violated. Further, Informant has submitted that such exclusive arrangements do not accrue any benefit to the consumer and rather harms consumer welfare in the form of high prices of beverages. Such agreement allegedly forecloses market for other competitors/players who are existing in the market as well as to potential entrants. Thus, as submitted by Informant, the consumers' right to have access to a variety of beverages at competitive prices is infringed by OP-2 through enforcement of its vertically restrictive agreement with OP-1.

24. The Commission observes that the facts of the present case are similar to an earlier case titled, *In Re M/s Cine Prekshakula Viniyoga Darula Sangh Vs Hindustan Coca Cola Beverages Pvt. Ltd. (Case No. RTPE 16/2009)*. In that case the Informant, *i.e.*, Cine Prekshakula Viniyoga Darula Sangham, alleged that because of the tacit agreement/understanding between Hindustan Coca Cola Beverages Pvt. Ltd. (HCCBPL) and Inox Leisure Private Ltd.(ILPL) and others, stall owners charged higher prices for the products like soft drinks, water bottles *etc.* The Monopolies and Restrictive Trade Practices Commission (MRTPC) *vide* its order dated 14.05.2009 directed the Director General (DG) to investigate the matter. Before the investigation report was submitted, the MRTP Act, 1969 was repealed and the said case was transferred to the Commission in terms of the provisions of Section 66(6) of the Act. During the course of investigation, the DG found that issues and Opposite Parties in said cases were similar to *In Re: Consumers Guidance Society Vs Hindustan Coca Cola Beverages Pvt. Ltd. and Inox Leisure Pvt. Ltd. (Case No. UTPE 99/2009)*. The DG thus conducted common investigation in both the said cases and submitted a consolidated report before the Commission on 25.11.2010. After considering the Investigation Report and submissions of parties, the



Commission passed its final order on 23.05.2011, differing with the findings of the DG.

25. In its order dated 23.05.2011, in the said cases, the Commission observed that the impugned agreement, was for a short period of four months and that too could be terminated by either party by giving 30 days' notice, and could not be said to have resulted in denial of market access to the competitors. Even otherwise, the fact that the multiplexes were switching over their supplier on periodical basis went against the conclusion that competition was getting foreclosed.
26. The extracts of relevant paras of the said order dated 23.05.2011, are reproduced as under:

“12.5 It is also noted that HCCBPL in its reply has submitted that there is intense competition between suppliers of non-alcoholic beverages to compete for obtaining such contract with multiplexes and to buttress this argument they have pointed out that many multiplex owners like Adlabs/Big Cinemas, Cinemax and Waves Cinema have been switching over their suppliers periodically. HCCBPL has also submitted that it has been able to enter into such agreements with multiplexes having only 214 screens in India whereas its competitor PEPSICO has entered into similar agreements with a large number of multiplexes having about 600 screens.

“12.7 Furthermore, in the present case the impugned agreement, which is for a short period of four months and that too is terminable by either party by giving 30 days' notice, cannot be said to have resulted in denial of market access to the competitors. Even otherwise, the fact that multiplexes are switching over their supplier on periodical basis goes against the conclusion that competition is getting foreclosed.

12.9 Similarly the conclusion of the DG that HCCBPL has also contravened section 3(4) of the Act by entering into 'exclusive supply agreement' with



ILPL cannot be accepted in the absence of proper assessment of AAEC by the DG. If the reasoning advanced by the DG in his report is accepted then every exclusive supply agreement will become per se anticompetitive. It has been brought out by the HCCBPL in its reply that the supply of products made to multiplexes constitute less than 0.3% of the total supply of such products sold in India. Taking into account the volume of business of total beverages market in India, there can be hardly any appreciable adverse effect on competition because of exclusive supply agreement between HCCBPL and ILPL or other such organizations unless shown otherwise on the basis of cogent material.

12.10 In the light of foregoing discussion, the Commission is of the opinion that no violation of provisions of section 3 and 4 of the Act has been established against HCCBPL. Thus, the conclusion drawn by the DG in his investigation is erroneous and cannot be accepted. In view of the above findings the matter relating to this information is disposed off accordingly and the proceedings are closed forthwith.”

27. The Commission observes that DG had delineated two markets for the purpose of investigation in the above mentioned matter, one relevant market for Hindustan Coca-Cola Beverages Private Limited (HCCBPL) and other for Inox Leisure Private Limited (ILPL). The market for ILPL was defined as “market of retail sale of bottled water and cold drinks inside the multiplexes of ILPL”, whereas the market for the HCCBPL was taken as “the market of supply of bottled water and cold drinks to the owners of closed market of multiplexes and to other commercial enterprises where it is treated as the preferred beverage supplier”.

28. As submitted by Informant, the present case is woven around the ‘exclusive supply agreement’ entered between OP-1 and OP-2 and has the potential to harm competition in the market. However, for any agreement to fall foul of the provisions of Section 3 (4) of the Act, it needs to be established that such an agreement causes an AAEC in India.



29. To examine a matter under Section 3 (4) of the Act, the following points need to be analysed:

- (a) Existence of an agreement;
- (b) Between 'enterprises' or 'persons';
- (c) Engaged at different stages or levels of the production chain in different markets;
- (d) In respect of production, supply, distribution, storage, sale or price of, or trade in goods, or provisions of services;
- (e) Including tie-in-arrangement, exclusive supply agreement, exclusive distribution agreement, refusal to deal, and resale price maintenance; and
- (f) Which agreement causes or is likely to cause an AAEC in India.

30. In the present case, the Commission observes that there exists sale and supply agreement between OPs. OP-1 is into retail sales of beverages, whereas OP-2 is manufacturer of beverages, and thus they fall on different levels of the supply chain. OP-1 is a company incorporated under the Companies Act, 1956, which is in the business of screening movies in the multiplex cinema theatres and also sells food and beverages inside its multiplexes. OP-2 is also a Company incorporated under the Companies Act, 1956 and it manufactures, packages, sells and distributes beverages all over India. Thus, based on the functions discharged by OPs, the Commission finds OP-1 and OP-2 to be covered within the definition of 'enterprise' in terms of Section 2(h) of the Act.

31. As the present case deals with allegation of 'exclusive supply agreement' entered into between OP-1 and OP-2, the Commission examined the Sale and Supply Agreement between OPs. The Commission observes that these agreements were signed for a period of three years initially. Thereafter, fresh agreements have been signed for the same tenure upon expiry of the earlier agreements. The agreement of 2008 between the OPs had a clause which provided that "*HCCBPL will act as exclusive partner of Inox for beverage availability in the Multiplexes Cinema Theatres of Inox*". The term '*exclusive partner*' has been removed from the successive agreements signed in the year 2011, 2014 and 2017, each executed for a



term of three years. The parties however have chosen to continue with business relationship based on their commercial interest and requirement, which they are well within their rights to do so. The Commission also notes that the agreements entered into by the OPs *inter-se* can be terminated by giving 60 days' notice and thus there are no exit barriers. The agreement also does not pose the risk of hold up problem or confine a party to endure long years of association with others.

32. The Exclusive Supply Agreements prevent a purchaser from dealing with other suppliers. If a supplier has significant market power and enters into exclusive supply agreement with a purchaser to create entry barrier for other suppliers, the contract can be seen as exclusionary. The Commission observes that in relation to the agreement between the OPs, OP-2 cannot be said to have a significant market power and OP-1 can switch to sell the brands of competitors, if it gets better commercial terms and conditions. The Commission observes that there is presence of other brands in the open retail market as well as inside other multiplexes which makes the market highly contestable. Therefore, it cannot be said that there will be appreciable adverse effect on competition due to the agreements between OP-1 and OP-2.
33. As regard allegation pertaining to tie-in arrangement, there is no explicit condition that consumers have to necessarily buy these goods to watch the movie. Thus, it cannot be said that there exists a tie-in arrangement because the provision of movie screening is independent of the provision of sale of beverages by OP-1. Further, the Informant himself has submitted that people mostly visit OP-1 with an intent and purpose to watch cinema and not with the sole intention to buy these beverages. These beverages are incidental and not the main driving force to visit the multiplexes of OP-1. Moreover, OP-1 provides free water inside the multiplexes. Hence, it is difficult to sustain the argument that the sale of select beverages by OP-1 at MRP as compared to prices of similar product in open market has the potential to cause AAEC.



34. The determination of AAEC in the context of section 3(4), based upon the factors provided in Section 19(3) of the Act, needs to be conducted in context of the market where the alleged anti-competitive conduct is being perpetuated. Section 19 (3) of the Act reads as follows:

“The Commission shall, while determining whether an agreement has an appreciable adverse effect on competition under section 3, have due regard to all or any of the following factors, namely:-

- a) creation of barriers to new entrants in the market;*
- b) driving existing competitors out of the market*
- c) foreclosure of competition by hindering entry into the market;*
- d) accrual of benefits to consumers;*
- e) improvements in production or distribution of goods or provision of services; or*
- f) promotion of technical, scientific and economic development by means of production or distribution of goods or provision of services”.*

35. In this backdrop when the factors enshrined under Section 19(3) are applied to the factual position as it exists, it can be seen that conduct of OP-1 and OP-2 of having a supply agreement *inter-se*, neither creates a barrier to new entrants nor is in the nature of driving any existing competitor out of market. Further, there are no exit barriers as the agreement can be terminated by either of the parties. The Informant has also not brought to the notice of the Commission any facts or evidence to say that existing competitors have been driven out from the market. There is no market foreclosure also as the other brands are easily available in the retail market though not necessarily available inside multiplexes.

36. Further, the facts brought out in the information do not signify any major variation from the facts involved in Case No. UTPE 99/2009 and Case No RTPE 16/2009, where the Commission had already taken the view that no violation of the provisions



of Section 3 and 4 of the Act has been established against OPs, in view of absence of AAEC.

37. The Commission thus holds that no violation of the provision of Section 3(4) read with Section 3(1) of the Act is made out against OPs in the instant case, as the impugned agreement between OPs doesn't have the potential to cause any AAEC in the market of retail sale of beverages inside multiplexes, in the facts and circumstances of the case. Accordingly, the matter is ordered to be closed forthwith in terms of the provisions of Section 26(2) of the Act.

38. The Secretary is directed to communicate the order to the parties, accordingly.

Sd/-
(Ashok Kumar Gupta)
Chairperson

Sd/-
(U. C. Nahta)
Member

Sd/-
(Sangeeta Verma)
Member

New Delhi

Dated: 28/02/2019