



COMPETITION COMMISSION OF INDIA
Case No. 10 of 2019

In Re:

Unilazer Ventures Private Limited,
(through its division – RSVP)
Nishuvi, 75, Dr. Annie Besant Rd,
Bhim Nagar, Worli,
Mumbai -

Informant

And

PVR Ltd.
7th Floor, Lotus Grandeur Building,
Veera Desai Road,
Andheri West,
Mumbai – 400058

Opposite Party No. 1

Inox Leisure Ltd.
5th & 9th Floor,
Viraj Towers, Western Express Highway,
Andheri East,
Mumbai – 400093

Opposite Party No. 2

Cinepolis India Pvt. Ltd.
Fun Republic Mall, 1st Floor, Plot No.
844/4, Shah Industrial Estate, New Link
Road, Andheri West,
Mumbai – 400053

Opposite Party No. 3



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Carnival Motion Pictures Pvt. Ltd.
Carnival House, General A.K. Vaidya
Marg, Off Western Express Highway,
Dindoshi,
Malad (East),
Mumbai 400097

Opposite Party No. 4

FICCI Multiplex Association of India
FICCI Federation House,
Tansen Marg,
New Delhi- 110001

Opposite Party No. 5

CORAM:

Mr. Ashok Kumar Gupta
Chairperson

Mr. U. C. Nahta
Member

Ms. Sangeeta Verma
Member

Present:

For Informant:

Mr. Balbir Singh, Senior Advocate
Mr. Abhishek Singh Baghel, Advocate
Ms. Chandrima Mitra, Advocate
Mr. Arbab Hussain, Advocate
Mr. Rohinton Screwvala, Director
Ms. Kanchan Bhatia, In-house Counsel

For Opposite Party – 1:

Mr. Amit Sibbal, Senior Advocate
Mr. Ravisekhar Nair, Advocate
Mr. Parathsarathi Jha, Advocate
Ms. Krushika Nayan Chaudhary, Advocate
Mr. Soham Kumar, Advocate



Mr. Saksham Dhingra, Advocate
Mr. Prahalad Singh, Legal Executive
Mr. Nitin Sood, CFO
Mr. Kamal Gianchandani, President

For Opposite Party – 2:

Mr. Rajshekhar Rao, Advocate
Ms. Gauri Puri, Advocate
Ms. Avaantika Kakkar, Advocate
Mr. Dhruv Rajain, Advocate
Ms. Sree Ramya Hari, Advocate
Mr. Balaji Venkata Krishnan, Advocate
Mr. Alok Tandon, CEO
Mr. Rajender Singh Jyala, Chief Programming Officer

For Opposite Party – 3:

Mr. AN Haksar, Senior Advocate
Mr. Amitabh Kumar, Advocate
Mr. Vaibhav Chouksey, Advocate
Ms. Unnati Agrawal, Advocate
Mr. Parth Sehan, Advocate
Ms. Sitwat Nabi Advocate
Mr. Sahil Sharma, Advocate
Mr. Jitender Chawla, Head-Legal
Mr. Devang Sampat, Director-Strategy

For Opposite Party – 4:

Ms Neelu Mohan, Advocate

For Opposite Party – 5:

Mr. Ramji Srinivasan, Senior Advocate
Mr. GR Bhatia, Advocate
Ms. Kanika Chaudhary Nayyar, Advocate
Ms. Nidhi Singh Prakash, Advocate
Ms. Perna Parashar, Advocate
Ms. Sylona Mohapatra Advocate
Mr. Dnyandas D. Chaphalkar, Secretary



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

1. The present case has been filed by Unilazer Ventures Private Limited (“**Informant**”) under Section 19(1)(a) of the Competition Act, 2002 (“**Act**”) against PVR Ltd. (“**OP-1**”), Inox Leisure Ltd. (“**OP-2**”), Cinopolis India Pvt. Ltd. (“**OP-3**”), Carnival Motion Pictures Pvt. Ltd. (“**OP-4**”) and FICCI Multiplex Association of India (“**OP-5**”), collectively referred to as OPs, alleging contravention of the provisions of Section 3(3) read with Section 3(1) of the Act.
2. As stated in the Information, RSVP is a division of the Informant which began its operations in 2017, and till date it has released six films. It is an independent film content creation company, which funds/ self-finances creation and production of its films.
3. The Informant has submitted that OP-1, OP-2, OP-3 and OP-4 are members of OP-5 and are *inter-alia* engaged in the business of operating multiplex cinema theatres in various Indian cities (some operating outside India also). It is further submitted that OP-1 to OP-4 collectively control almost 60% of the entire multiplex film exhibition business in India and OP-5 promotes the interest of multiplexes and theatre operators in the film industry.
4. It has been averred that the Indian film industry is the foremost constituent of the entertainment industry in India. As per the Informant, three main parts of the film industry are:
 - i. Content Creation, which is commonly known as film production;
 - ii. Distribution of films in each territory (region/ state/ province and country) and through various platforms; and
 - iii. Exhibition in the form of theatrical release, satellite or television release; exhibition through delayed release in the form of VCDs, DVDs, and via the internet.
5. Once production of a film is complete and the film is ready for release, the producer either approaches the distributor (or distributes a film himself) for release through exhibitors like OP-1, OP-2, OP-3 and OP-4. Distribution involves the process of making the film available to the consumers through various distribution channels. Copyright in a film being a bundle



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of rights is divided into various distribution/exploitation rights, which are then monetized by the producer through arrangements with distributors. Distribution channels refer to different platforms and media via which the film can be exploited for benefit of consumers. These include traditional media platforms like the theatrical distribution of a film through movie theatres, television (both terrestrial and satellite), home video (CDs, VCDs and DVDs) and also the new age distribution platforms like internet, digital, mobile *etc.* for distributing a film. It has been averred by the Informant that the distributor releases a film either directly, or through sub-distributors across India. Commercial understanding in various types of distribution arrangement varies. It could be in the form of revenue sharing, minimum guarantee, fixed fee *etc.* The Informant has stated that theatre revenues are currently the largest contributor and most important part of a film's revenues as most stories are created specifically for a big screen release, as theatrical exploitation of a film is seen as the most important mode of distribution of a film.

6. The Informant has stated that Indian film industry had been battling with several issues related to theatrical distribution of films including piracy, exorbitant costs for creating and transportation of physical prints, lack of durability of the physical prints, *etc.* In order to address these issues, the producers and distributors decided to release their films only through digital projection systems.

7. The grievances which are stated to have compelled the Informant to file the present Information are mentioned as under:

i. Virtual Print Fee (“VPF”)

VPF is a fee paid by a film producer/ distributor to the film exhibitor (including single screen theatres and multiplexes) to recoup part of purchase price of digital cinema projection equipment by exhibitors, for use in the presentation/ screening of the film. The fee is paid by producers/ distributors, prior to screening of a movie in a theatre. The Informant has alleged that the VPF model was agreed upon by the producers/ distributors with a sunset period, in a move to reduce the cost of physical prints incurred by the producer/distributors, curb piracy, increase durability of the content, and improve quality of cinema viewing experience. Although, the agreed period is long over, the multiplexes



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have continued to charge the VPF even after the sunset period. The VPF charges should never have been imposed by OP-1, OP-2, OP-3 and OP-4 in the first place, since, there was hardly any replacement cost for old equipments. VPF that was recovered from producers/ distributors was supposed to only cover the cost incurred by the multiplexes on equipment and such collection of fee ought to have ceased after some time. Further, details regarding investments made for equipment or accounts related to total collection of VPF were never shared by any multiplex with the producers.

The Informant has averred that the Indian film producers/ distributors are losing out due to this scenario as VPF is not charged in India, presently from Hollywood studios as they have an alleged worldwide agreement not to pay such charges and multiplexes in India have colluded with globally present multiplexes chain. It has been further alleged that when a Hindi/ Indian film is released on the same weekend as a Hollywood/ International film, the Hollywood/ International studios incur zero cost per print as compared to Hindi/ Indian film studios, which are paying Rs. 20,000/- per print per multiplex/theatre as VPF to the exhibitors. This allows the Hollywood/ International studios to release more prints of their films in more cinema theatres, in comparison to the Indian production houses. The same has been illustrated by the Informant by citing example of the popular Hindi film *Dangal* produced by *Disney*. The said movie was not charged any VPF owing to an arrangement of *Disney* regarding exhibition of their international/ Hollywood films in India. Further, due to dubbing of the films, Hollywood/ International production houses are capturing Hindi belt and the regional market owing to zero VPF charges paid by them. In the absence of VPF, these films can be screened in maximum theatres as opposed to Bollywood content. The Informant has alleged that OP-1, OP-2, OP-3 and OP-4 do not negotiate on the VPF individually, but collude in charging the same, owing to an anti-competitive arrangement amongst them.



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ii. Revenue Sharing Model and Sharing of Market

The Informant has alleged that OP-1 to OP-4 under the aegis of OP- 5 have been colluding and putting forth an agreement with standard terms which is non-negotiable as a standard industry practice by them which points towards collusion on their part. The alleged arrangement of revenue sharing, at present is in a standard non-negotiable format of 50% in week one, 42.5% in week two, 37.5% in week three and 30% for collections thereafter as distributor's share. The disbursement of revenues as producers'/ distributor's share are subject to all deductibles as agreed upon for each film. The multiplex owners and the producers also have an arrangement of payment of an incentive of 2.5% by such multiplexes in the first two weeks of a film's release, provided the film crosses a certain agreed box office collection. The said box office collection is an aggregate of the box office collection of the film across all the multiplex chains, and not any specific multiplex chain. It is further submitted that OP-5 being in a position of strength, only prescribes terms suitable to them completely disregarding the fact that they are only a body of service-providers (exhibitors).

iii. Advance Payment Hold Up

The Informant has alleged that as a part of a concerted arrangement amongst themselves, multiplexes are not remitting, timely, the revenue share meant to be forwarded to the content creators after collection of the price from customers through sale of tickets for the movie by the exhibitors. E-commerce companies engaged in ticket booking service are reportedly paying huge amount for purchasing the release/ exhibition rights for a particular film. These advances are meant for payment to content creators by the multiplexes in order to obtain theatrical rights and releases. The concerned booking advances should ideally be used by the producers/ distributors towards marketing of a film and to generate better content of higher quality. However, all multiplexes allegedly hold these booking advances at their end, and delay payments to the content creators. OP-1, OP-2, OP-3 and OP-4 also receive advance booking and current booking on a daily basis and (with daily high cash inflow), which are to be shared with the content creators. However, such share of revenue, generated at



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the time of bookings, is not shared by the exhibitors with the content creators/ producers, simultaneously, but the same is received by producers, often after a delay of 45-60 days.

iv. Trailers and Promotions

It has been alleged that, owing to lack of transparency in advertising policy followed by all multiplexes and to gain revenues from independent promotions and producers/ distributors, multiplexes tend to attach long advertisements to a film during intervals. The effort of a producer while editing and during the post production process to curtail the length of a film is sabotaged due to these practices. Also, no data is revealed regarding the same to producers/ distributors. Any revenue that is generated out of such promotions, needs to be equally shared with the producers/ distributors, who have invested huge amounts to produce a film.

v. Intervals

As per the Informant, India is one of the only few countries which still has a concept of interval during films. Since the year 2000, the length of the films has been curtailed significantly in order to make them more audience friendly unlike the past films which were mostly made for a duration of more than 150 minutes. In view of the same, the Informant has alleged that because of the content created by producers, like the Informant, multiplexes earn revenue from the food and beverage sales, advertising revenues, car parking revenues, merchandising, gaming, non-film promotions, *etc.* OPs instead of sharing a portion of such revenue with the producers, demand a huge chunk of revenue from the producers for exhibition of films.

vi. Instances of Victimization, Abuse and Discrimination

The Informant has alleged that it faced discrimination, at the hands of the multiplexes, when it tried to release its film *Love Per Square Foot*. Owing to the fact that the concerned film was produced on a small-budget by the Informant, the imposition of VPF as a standard charge without any scope for negotiations, did not allow the same to be released in multiple screens. As per



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the Informant, since VPF was required to be paid for release in multiplexes, it had to enter into an agreement with digital platform- *Netflix* to release the same. Whenever, the Informant engaged OP-1 for publicity and promotions of the concerned film for its premier, its booking was cancelled by OP-1 a few days before the show, since they were averse to any content that was being released nationwide on a digital platform.

8. The Informant, with regard to OP-5, has alleged that the latter being in a position of strength, only prescribes terms suitable to multiplexes, completely disregarding the fact that they are only a body of service-providers. The discrimination is writ large as they do not allow any multiplex chain to independently negotiate the revenue sharing terms with any producer/distributor. It has further been alleged that the theatre booking orders annexed with the information clearly demonstrate that all multiplexes are adhering to standard terms which have been prescribed by OP-5, irrespective of footfall and are not negotiating the same, thereby, clearly showing designs of a cartel under the aegis of OP-5.
9. Based on the above allegations, the Informant has sought the following reliefs from the Commission:
 - i. That the OPs be restrained from imposing any unfair and unjustified fees and restrictions including VPF and/or be restrained in any manner from obstructing the exhibition and exploitation of Informant's films;
 - ii. That an investigation may be undertaken in the instant matter regarding the anti-competitive collusion and understanding;
 - iii. That the OPs be restrained from acting like a cartel under the aegis of OP-5 or abusing their collective dominance in a manner which harms and hurts the Informant's interest;
 - iv. Pass such other order as the Commission may deem fit and proper in the circumstances of the case.
10. Subsequent to filing of the Information, the Informant also filed an application dated 25.03.2019 for Interim Relief under Section 33 of the Act praying before the Commission to pass an ex-parte ad interim order restraining the OPs from:



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- i. Imposing VPF charges and other unjust impositions, till pendency of this matter;
 - ii. Declining release of any film owing to objection being raised on such charges;
 - iii. Pass such other order as the Commission may deem fit and proper in the circumstances of the case.
11. After considering the information and the documents annexed therewith, the Commission held a preliminary conference with the parties on 07.05.2019. During oral hearing, the counsel for OP-1 refuted all the claims of the Informant and submitted that the crux of the information pertained to issues arising from purely commercial and contractual disagreements between OP-1 and the Informant. It was further submitted that the Informant has not approached OP-1 for resolution of most of these commercial issues in order to enter into any meaningful negotiations/ discussions and has, instead, chosen to directly approach the Commission while raising unsubstantiated allegations. The same is further substantiated by the fact that the Informant never intended to engage into any serious and meaningful discussions and its e-mails on VPF addressed to OP-1 just ahead of the release of the movie of the Informant viz., 'Sonchiriya' were aimed simply to create a paper-trail aimed at supporting the baseless grounds set out in the Information.
12. While dealing with the specific allegations, the counsel for OP-1 submitted the following:
 - i. **Virtual Payment Fee**

The genesis of VPF can be traced to the migration from physical prints to digital cinema by both the content producers as well as the cinema exhibitors. Digital equipment aggregators such as *UFO Movies* and *Scrabble* entered into agreements with Six Hollywood producers (*i.e. Paramount Pictures, Sony Pictures Entertainment, 20th Century Fox, Universal Studios, The Walt Disney Company* and *Warner Brothers*) in 2008, undertaking to lease Digital Cinema Initiative ("DCI") compliant Digital Projection Systems ("DPS") to exhibitors in India and to collect a payment for the same, *i.e.*, VPF of Rs. 20,000/- per print per multiplex/theatre. OP-1 had no involvement in the fixation of this rate and there was no agreement between exhibitors and the content producers. As Indian exhibitors, who for most part screen Indian content, began migrating to digital



सत्यमेव जयते



cinema requiring huge amounts of investments, the prevailing VPF rate (as agreed between the said Six Hollywood producers and third party equipment aggregators) also became the guiding benchmark for Indian content producers who began paying VPF to Indian exhibitors on a per movie per theatre (not per screen) basis. There was no oral or written agreement pursuant to which the Indian producers began paying VPF to the exhibitors. The agreement and the sunset clause alluded by the Informant refers to the agreement between the Six Hollywood producers and the third-party aggregators. In 2018, the agreement between the Six Hollywood producers and the third- party digital aggregators lapsed. In 2017, OP-1 initiated the process of formalizing the industry practice of VPF payment into formal individual agreements with both Indian and non-Indian content producers. OP-1 is in discussion with many of these producers for signing separate VPF agreements and 'Yash Raj Films' has already signed an agreement with OP-1 for payment of VPF until December 2024. 'Viacom' (a Hollywood content producer) and OP-1, also, are in the final stages of concluding a written agreement. It is imperative to note that the benefits of digitization though accruing to both the content producer and exhibitor, is heavily tilted in favour of the content producer. While OP-1 had to install equipment costing Rs. 25,00,000/- to Rs. 2,00,00,000/- with an annual maintenance cost of Rs. 2,00,000/- to Rs. 3,00,000/- per projector, the content producer has seen a drastic drop in print cost from Rs. 60,000/- to Rs. 70,000/- per print to approximately Rs. 20,000/-. In addition to the drastic reduction in operational costs, the content producer also benefited from the fact that digital cinema is less prone to piracy. Another benefit of digitization was that it allowed the content producers access to far wider distribution than was possible with physical prints, while the exhibitor ended up incurring higher costs. In light of the above facts, if the Informant has taken a stand not to pay VPF going forward to film exhibitors which is a legitimate source to cover the huge costs being incurred by the film exhibitors, it is a matter to be negotiated and discussed between the parties and the Commission is not the forum for such negotiation.



सत्यमेव जयते



ii. **Revenue Sharing Agreement**

The current revenue share agreement was an outcome of the discussions and deliberations between the two groups of the entertainment industry *i.e.* content producers and the exhibitors in the backdrop of the boycott of the exhibitors by the producers/distributors in 2009. The terms and conditions of the revenue sharing agreement were tilted in favour of the producers/distributors. Given the upper hand that the content creators enjoy in the entertainment industry, it is absurd to state that the exhibitors have unilaterally imposed revenue sharing agreement. Although it is the Informant's contention that the revenue sharing agreement is non-negotiable, the Informant has never approached OP-1 with a request to negotiate the terms of the revenue sharing agreement. Exhibitors like OP-1 have been accepting the terms of revenue sharing agreement as offered by the producers. If the Informant is of the view that the current revenue sharing agreement needs to be reviewed and negotiated, that must be done between the parties and the Commission should not be used as the forum for negotiating such bilateral contracts.

iii. **Release of Payment**

The system of sharing Daily Collection Reports (“**DCR**”) based on which invoices are raised is fully automated and OP-1 cannot interfere with this process. OP-1 uses internationally accepted ticketing software called *Vista*, which collates data and sends such DCRs to content producers via e-mail on a daily basis. Any delay in sharing of such DCR is purely operational in nature and is not a result of collusion. In any event, the content producers have access to the software used for processing DCRs. Further, the Informant has clearly misstated facts as there has never been a delay of 40-60 days by OP-1 in releasing payments to the Informant and OP-1 has released payments on a weekly basis. In fact, in most of the cases requisite share of revenue collected in first three days of release of any movie is shared with the content producers even before they raise their invoices. On a case to case basis, OP-1 also releases advance payments towards the content producer's share in expected box office revenues, prior to release of the film.



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iv. **Advertisement and Intervals**

The allegations with respect to lack of transparency in showing advertisements or inserting intervals in any movie are again baseless and certainly do not arise any competition concern. The Indian audience is habituated to intervals in films and this is well understood by the content producers who place such intervals in the movie. If there are any concerns with respect to screening of advertisement or intervals, OP-1 is open to discussing these with the content producer including the Informant. But as none of these present any competition concern, the Commission is not the relevant forum to discuss them. The allegation that the OPs are colluding to make advertisements and interval longer to earn higher revenues defies commercial prudence. More than 60% of revenue of OP-1 comes from sales of tickets *i.e.*, exhibition of cinema and as such it would be commercially imprudent for OP-1 to act in a manner that negatively impacts movie ticket traffic in lieu of marginal gains through advertisement which accounts for only 10% of its revenue.

13. The counsel for OP-1 submitted that a contravention of the provisions of Section 3 of the Act, requires an agreement between entities engaged in identical or similar trade which leads to an appreciable adverse effect on competition. The identical e-mail sent by the Informant to OP-1, OP-2, OP-3 and OP-4, ahead of release of '*Sonchiriya*' was clearly designed as a trap with an ulterior motive and the diverse responses of each of the OPs to such identical e-mails sent by the Informant shows that there was no meeting of minds amongst the said OPs. This averment was sought to be substantiated by the counsel for OP-1 by citing the e-mail trail between OP-1 and Informant whereby OP-1 invited the Informant for discussions over fixing the VPF and at no time did OP-1 decline the screening of the said movie; OP-4 responded to the same issue raised by the Informant by stating that the booking contract for the movie '*Sonchiriya*' would be on hold. The counsel for OP-1 also illustrated that while OP-1 exhibited the movie *i.e.* '*Mard Ko Dard Nahi Hota*' produced by the Informant, OP-2 did not screen it. In light of the above, the counsel for OP-1 submitted that the Informant has failed to demonstrate any evidence of collusion between the OPs, let alone parallel conduct.



सत्यमेव जयते



14. The counsel for OP-2 responded to the allegations of the Informant as frivolous and denied them vehemently. It was submitted, that primary allegation concerning cartelisation between the OPs has already been examined by the Commission in case of *Film & Television Producers Guild of India v Multiplex Association of India, Mumbai & Ors.* (Case No. 37 of 2011) wherein the Commission has held that the OPs (in the said case) did not have a common design and understanding, or meeting of minds for entering into an unlawful arrangement. In this matter also, there has not been a single instance of coordination amongst the OPs and no evidence to substantiate allegations of collusion has been provided by the Informant.
15. While denying the allegations of the Informant, the counsel for OP-2 submitted that VPF, negotiation of revenue sharing arrangements *etc.* are matters that are purely commercial in nature and Informant has never approached OP-2 for either discussing or negotiating commercial terms pertaining to these issues even when OP-2 made it clear that it would be more than willing to engage in such discussions.
16. The counsel for OP-2 further submitted that the Informant's frivolous allegations that the VPF charge restricts movie production and exhibition of low-budget films is patently false and fictitious. Digital cinema has undoubtedly resulted in a significant increase in the number of films that are made each year from 1274 in 2010 to 1813 in 2017. It was further submitted that the Informant omitted to disclose details such as, other than six Hollywood Producers, all other Hollywood International producers are required to pay VPF to OP-2 for all types of content produced by them, *i.e.* English, Hindi and other vernacular content. In fact, even the six Hollywood Producers presently pay VPF for Hindi and vernacular content produced by them. The counsel for OP-2 substantiated the same by submitting that Disney, a Hollywood production house, did pay VPF for its Hindi movie, '*Dangal*' when it was screened across multiplexes, contrary to the claims made by the Informant.
17. With regard to not showcasing the film '*Mard ko Dard Nahi Hota*', the counsel for OP-2 relied upon copy of the e-mail enclosed with the Informant's interim application dated 25.03.2019, whereby OP-2 only expressed commercial concerns for not being able to



सत्यमेव जयते



exhibit the film. OP-2 explicitly communicated to the Informant that they were unable to accommodate the Informant's demands for additional show timings given the fact that several other movies had to be accommodated in its theatres. In fact, this e-mail communication also indicated OP-2's willingness to discuss the matter.

18. The counsel for OP-3 put forward similar submissions before the Commission, as made by OP-1 and OP-2, while refuting the allegations of Informant. Counsel for OP-3, additionally submitted that OP-3 has always been open to negotiations in relation to the quantum of VPF to be charged as well as the sunset period for imposition of charges in future. In fact, recently, '*Yash Raj Films Private Limited*', approached OP-3 for entering into an agreement for introduction of a slab structure for payment of VPF as well as introduction of a sunset clause.
19. It was also submitted that OP-3's terms of revenue sharing arrangement with all film producers (including the Informant) are the same as that of the terms of the impugned revenue share. As such, the reasons for reduction in revenue share of the film to producers in subsequent weeks, is on account of commercial reasons. Additionally, OP-3 also re-negotiates the incentives payable to a film producer if a film crosses a certain agreed Net Box Office Collection in the first two weeks, on an annual basis.
20. Regarding the allegation of holding up of payments to the producers, counsel for OP-3 submitted that OP-3 operates its business with the highest standards of integrity and business ethics. OP-3 has an automated system for payment of the advances collected, to the film producers. Further, OP-3 has never deliberately held back payment of advances to any film producer. In any event, OP-3 is obligated to pay interest at the rate of 18% per annum to the film producers (including the Informant) for delayed payments. Further, OP-3 screened the Informant's film '*Mard ko Dard Nahi Hota*' without any restriction, although other multiplexes chose not to play it which further substantiates the fact that OP-3 merely adopted certain industry practices and the same does not evidence a collusive agreement amongst the Opposite Parties. It was also averred that the Informant has failed to adduce any plus factor and a mere alleged parallel conduct (based on sound commercial



सत्यमेव जयते



and economic reasoning) in an oligopolistic market is not sufficient to *prima facie* establish collusion amongst the Opposite Parties warranting an investigation by the Commission.

21. Counsel for OP-4 submitted that the allegations of the Informant, as mentioned above, are a wilful misrepresentation of facts, as there was no agreement between Indian producers/distributors and exhibitors concerning VPF. The only agreement concerning VPF existed between an Indian integrator and six Hollywood producers. In this respect, OP-4 follows a different business model from OP-1, OP-2 and OP-3, whereby it has obtained the digital cinema equipment on a long term lease basis from Indian integrators. VPF for movies exhibited by OP-4 is negotiated and charged by Indian integrators. OP-4 does not receive any share in the VPF amount collected by the integrators which means that the allegations made do not hold true for OP-4.
22. Counsel for OP-4 further submitted that the Informant has submitted patently false facts and has concealed material information. This is because, at present, the six Hollywood Producers do not pay VPF only for Hollywood content pursuant to their commercial arrangement with an Indian integrator. They continue to pay VPF for all other forms of cinema including Hindi and regional cinema. All other Hollywood producers (excluding the Six Hollywood Producers) continue to pay VPF on all forms of content (English, Hindi, and regional cinema).
23. Regarding payment to the producers and the allegation of cartelisation in general, OP-4 submitted similar reasoning as that of other OPs.
24. The counsel for OP-5 submitted that it has been wrongly brought in the array of parties by the Informant as OP-5 has conducted all its affairs within the parameters of all applicable laws/rules/regulations. As a trade association, OP-5 only carries on legitimate and positive functions on behalf of the multiplex industry in India, such as regulatory and tax issues in so far as they relate to the industry. OP-5 has never provided a platform to its members to enter into any illegal or unlawful decision, agreement, arrangement, understanding or action in concert. It was also submitted that OP-5 does not mandate or dictate the terms that are followed by each multiplex with respect to any revenue sharing



सत्यमेव जयते



model or the VPF to be charged, since the same is negotiated amongst multiplexes and the producers. Therefore, OP-5 is not involved in the conduct or management of the affairs or day-to-day operations of any of its members.

25. The counsel for the Informant argued at length, on the lines of the allegations mentioned above. The Informant also submitted that the contention of OPs with respect to negotiations on VPF are false and are an attempt to mislead the Commission as it hovers only around extension of the eventual sunset period and not the terms related to pricing in the agreement. The OP-1, OP-2, OP-3 and OP-4, in garb of negotiations on VPF, wanted to further extend the payment of VPF till December 2024, which effectively means that each Indian film producer will be required to pay for capital expenditure (which should be incurred by the OPs on Digital Projection/ Exhibition equipment for multiplex theatres) for a further period of five years.
26. The Commission has carefully analysed the information filed by the Informant, the documents annexed therewith, the submissions of the OPs, the information available in the public domain and the arguments put forth by the respective parties during the course of preliminary conference held on 07.05.2019.
27. The Informant has alleged that OPs in the instant case have colluded among themselves to carry out anti-competitive practices in contravention of the provisions of Section 3(3) read with Section 3(1) of the Act. The Commission notes that contravention of the provisions of Section 3(3) read with Section 3(1) of the Act requires an agreement between entities engaged in identical or similar trade which causes an appreciable adverse effect on competition in markets in India. However, no indication of any such agreement or arrangement or understanding between the OPs has been placed on record. In order to establish a *prima facie* case for contravention of the provisions of Section 3 of the Act, it is important that the evidence on record demonstrates some meeting of minds. In this regard, OP-2 has placed reliance on the order of the Hon'ble National Company Law Appellate Tribunal in *Reprographic India, New Delhi v. Competition Commission of India and Others*, (Competition Appeal (AT) No. 09 of 2019), in which it has been held that the



सत्यमेव जयते



Informant has to discharge the initial burden of proof to warrant an investigation by the Commission. The relevant portion of the order of Hon'ble NCLAT is reproduced as under:

“8. ... It is abundantly clear that causing of investigation to be conducted by Director General is entirely dependent on existence of a prima facie case warranting such investigation. Unless the Commission is satisfied that a prima facie case exists, the Informant (where information has been received from any person) has no vested right to seek investigation into alleged contravention of provisions Section 3(1) or Section 4(1) of the Act. The Informant has to demonstrate that there is substance in the allegations levelled in the information and he will fairly succeed in establishing that the Respondents are engaged in anti-competitive agreements. Raising of competition concerns on the strength of bald allegations without any shred of evidence would not absolve the Informant of his obligation to make out a prima facie case warranting causing of investigation by DG. It is indisputable that direct evidence would seldom be available in cases of bid rigging or collusive bidding. However, inference of complicity in anti-competitive activities would be available only on the basis of proved facts. Merely because the bidders while exercising their choice of quoting products, opt for a particular manufacturer, which may be attributable to a variety of factors, would not necessarily justify meeting of minds. ...”

28. The Commission further notes that the Informant has alleged that all the OPs indulged in parallel conduct and under the garb of standard industry practices acted in an anti-competitive manner. In this regard, the Commission observes that, it is an established principle of competition law that mere parallel behavior, by itself, does not amount to a concerted practice and the Informant has failed to adduce any plus factors. Mere alleged parallel conduct in an oligopolistic market is not sufficient to *prima facie* establish collusion amongst the OPs warranting an investigation by the DG. The Commission now proceeds to examine various allegations of the Informant in the subsequent paragraphs:



सत्यमेव जयते



I. Allegation of Undue imposition of Virtual Print Fee

29. The Commission notes from the submission of the parties that the Indian film industry had been battling with several issues related to theatrical distribution of films including piracy, exorbitant costs for creating and transportation of physical prints, lack of durability of physical prints, *etc.* and in order to overcome these issues, the producers and distributors decided to release their films through digital projection systems. It was between the years 2000 – 2010 that, globally, the multiplexes were moving from the existing projection systems using physical prints, to digital cinema projection systems. Six Hollywood studios namely - *Warner Bros., Sony Pictures, Disney, Universal Pictures, 20th Century Fox & Paramount Pictures* formed a forum called DCI and approved certain specifications on which they would release their content to cinemas using Digital Projectors. This move was initiated to reduce the cost of the print and logistics, curb piracy, and to provide durability to content which otherwise used to get deteriorated with each screening.
30. The Commission notes that the Informant did not allege that VPF is anti-competitive *per se*, rather, the allegation of the Informant pertains to its undue imposition after a certain period. In this regard, the Commission observes that no formal/ written agreement pertaining to imposition of VPF amongst the Informant and the OPs has been submitted either alongwith information or during preliminary conference. The Informant and the OPs have agreed to the fact that the whole process of imposition of VPF is a practice which has originated from Hollywood and adopted in Indian cinema as well, without any formal/ written agreement to back it. Since there is no written agreement, as a corollary, the question of formal arrangement of ‘Sunset-clause’ does not exist.
31. The Commission observes that there is no evidence to indicate that OP-1, OP-2, OP-3 and OP-4 met under the aegis of OP-5 or used its platform to arrive at a common VPF to be charged from producers. The Commission in this regard also notes the e-mail trails between the Informant and the OPs submitted by the Informant in the information and observes that the OPs appeared to be willing to mutually negotiate the concerns of the Informant.



सत्यमेव जयते



32. The Commission further observes that, with respect to the instant case, to determine as to what should be the appropriate fee and till what time period it may be equitable to charge the same, is a question which does not fall within the domain of the Commission. As long as the fee is not the result of a concerted activity among the OPs and has been independently arrived at, it may not be proper for the Commission to delve into the same. Facts and evidence in the present case do not support the stand of the Informant that there was any anti-competitive agreement or understanding leading to imposition of VPF on the Informant. The Commission also notes from the submissions of some of the OPs that efforts were made to negotiate independently with the producers and reach at a consensual level with regard to the rates as well as the time period for imposition of such VPF, indicating no collective action on part of the OPs.

II. Allegation of Arbitrary standard non-negotiable Revenue Sharing Agreements

33. The Commission notes that previously, the revenue sharing model between the producers and multiplexes was extensively discussed in Case No.1 of 2009, *In Re: FICCI – Multiplex Association of India v. United Producers Distributors Forum and Others* (Case 1 of 2009). In the said case the Commission observed that prior to 2009, the average revenue sharing ratio between producers and exhibitors was that film producers were paid (i) 40% to 48% in the first week; (ii) 30% to 38% in the second week; (iii) 30% in the third week; and (iv) 25%- 30% in the fourth and subsequent weeks. In 2009, the film producers under the aegis of United Producers Distributors Forum ('UPDF') had collectively boycotted the exhibition of films through the multiplexes in order to negotiate a better ratio of revenue sharing arrangement between producers and exhibitors. Aggrieved of the act by UPDF, the multiplexes had filed the abovementioned information with the Commission. During the pendency of the information, as a result of joint pressure from the UPDF, a new revenue sharing arrangement was formulated whereby the revenue sharing was fixed as (i) 50% in the first week; (ii) 42.5% in the second week; (iii) 37.5% in the third week; and (iv) 30% for collections thereafter, as the film producer/distributor's share. Further, there was a 2.5% incentive to the producers that was applicable if a film crossed a certain agreed NBOC in the first two weeks. In view of the same, the Commission observes that the revenue sharing arrangement was put in place with the consent and due deliberations between producers and multiplex owners and the Informant has not been able to



सत्यमेव जयते



demonstrate that such an arrangement is pursuant to any anti-competitive agreement among OPs.

34. The Commission further observes that the issues pertaining to the terms of the revenue sharing agreement are commercial/ contractual in nature and without any concerted action or agreement or understanding and do not give rise to any competition concern under the provisions of the Act. This allegation of the Informant also, therefore, does not fall foul of the provisions of the Act.

III. Allegations as regards Delay in payments made to content companies

35. The Commission notes that the Informant has alleged that multiplexes, as a part of a concerted arrangement amongst themselves, are not remitting, in time, the revenue share collected by them from the customers through sale of tickets for the movie. As per the Informant, the concerned booking advances should ideally be transferred to the content creators, however, all multiplexes allegedly hold these booking advances at their end, and delay payments to the content creators by 45-60 days.
36. The Commission observes that the Informant has not placed on record any evidence which substantiates its claim that OPs have acted in concert or out of an understanding for the alleged conduct. The Commission, on this aspect, also notes the submission of OP-3 that multiplexes are obligated to pay an interest at the rate of 18% per annum to the film producers (including the Informant) for delay in such payments. Therefore, this allegation of the Informant also does not have any merit.

IV. Allegations of Lack of transparency in exhibition of trailers and promotions during Intervals

37. The Commission has also noted the allegation of Informant that lack of transparency in advertising policy followed by all multiplexes tends to sabotage the interest of the content creators as the revenue that is generated out of such promotions/ advertisements and trailers, needs to be equally shared with the producers/ distributors.



सत्यमेव जयते



38. In this regard, the Commission observes that the general allegations made in the instant case, including lack of transparency in exhibition of trailers and promotions, do not fall within the ambit of the provisions of the Act.
39. Based on the aforesaid, the Commission does not find alleged contravention of the provisions of Section 3 of the Act against the OPs being made out.
40. In view of the foregoing, the Commission is of the opinion that there exists no *prima facie* case warranting investigation into the matter. The information filed is closed, herewith, under Section 26(2) of the Act. Consequently, no case arises for consideration of interim relief claimed by the Informant under Section 33 of the Act
41. 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
Date: 24/07/2019