



COMPETITION COMMISSION OF INDIA

Case No. 30 of 2015

In Re:

M/s. K Sera Sera Digital Cinema Pvt. Ltd.

Through Mr. Dheeraj Salian

Regional Head -North

Unit No.101 A & 102, First Floor

Plot No.8 17, Morya Landmark -II

Andheri (West), Mumbai

Informant

And

Digital Cinema Initiatives. LLC.

6834 Hollywood Blvd, Suite 500

Hollywood, California 90028

USA

Opposite Party No. 1

The Walt Disney Company India

Building No-S 14,

Solitaire Corporate Park,

Guru Hargovindji Marg,

Chakala, Andheri (East),

Mumbai

Opposite Party No. 2

M/s Fox Star Studios

Star House, Urmi Estate, 95,

Ganpatrao Kadam Marg,

Lower Parel West,

Mumbai

Opposite Party No. 3



सत्यमेव जयते



M/s. NBC Universal Media Distribution Services Pvt. Ltd.

701, CNB Square, Sangam Complex,

127, Andheri Kurla Road, Andheri (East),

Mumbai, Maharashtra

Opposite Party No. 4

Sony Pictures

SPE FilmsIndia Pvt. Ltd.

4th Floor, Interface, Building 7,

Off Malad Link Road

Malad West, Mumbai

Opposite Party No. 5

Warner Bros

4th Floor, Eros Cinema Building,

42, Maharshi Karve Road,

Churchgate, Mumbai

Opposite Party No. 6

Paramount Films India Ltd.

Hague building,

Ground floor, sprott rd,

Ballard estate, Mumbai

Opposite Party No. 7

CORAM

Mr. Ashok Chawla

Chairperson

Mr. S. L. Bunker

Member



Mr. Sudhir Mital
Member

Mr. Augustine Peter
Member

Mr. M. S. Sahoo
Member

Present:

Shri Sudhanshu Batra, Senior Counsel, Shri Rachit Batra, Advocate on behalf of the Informant

ShriRaja Ratan Bhura, Advocate and Rajdeep Lahiri, Advocate on behalf of NBC Universal

Shri Saikrishna Rajgopal, Advocate, Shri Subodh Prasand Deo, Advocate and Shri Radhika Seth, Advocate on behalf of Walt Disney

Shri Amit Sibal, Senior Counsel, Shri Mansi Tewari, Advocate on behalf of Fox Star Studios

Shri Amit Mishra, Advocate and Shri Akshay Nanda, Advocate on behalf of Sony Pictures

Shri Samir Gandhi, Advocate and Shri Rahul Rai, Advocate on behalf of Warner Bros.

Shri Abhishek, Advocate on behalf of Paramount Films



सत्यमेव जयते



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

1. The present information has been filed under section 19(1)(a) of the Competition Act, 2002 (the 'Act') by M/s K Sera Sera Digital Cinema Pvt. Ltd. through its Regional Head (North) Mr. Dheeraj Salian (hereinafter referred to as the 'Informant') against Digital Cinema Initiatives (hereinafter referred to as 'OP 1'), The Walt Disney Company India (hereinafter referred to as 'OP 2'), M/s Fox Star Studios (hereinafter referred to as 'OP 3'), M/s NBC Universal Media Distribution Services Pvt. Ltd. (hereinafter referred to as 'OP 4'), Sony Pictures (hereinafter referred to as 'OP 5'), Warner Bros (hereinafter referred to as 'OP 6') and Paramount Films India Ltd. (hereinafter referred to as 'OP 7') alleging, *inter-alia*, contravention of the provisions of sections 3 and 4 of the Act.

Facts

2. As per the information, the Informant, an ISO 9001 2008 certified company having its head office at Mumbai, is a Digital Cinema service provider. It is engaged in the business of Digital Cinema Services which mainly involve digital projection and screening of films in India through a specific technology known as its proprietary Sky Cinex Technology. It has been submitted that it is among India's leading digital cinema service provider having tie-up with as many as 300 cinema theatres across the country. The technology used by the Informant is stated to be at par with the other leading digital cinema service providers across the world.
3. The Informant has further submitted that it has its projectors and servers installed and connected to over 300 movie theatres across India to provide its services. The cost of installation of one such system is stated



to be Rs.15,00,000/- approx. per theatre, which is borne by the Informant itself being the service provider. The Informant is said to have made huge investment in the course of its business. By means of its services and investments, the Informant is connected to more than 100 million viewers in a year in India through its digital cinema services and technology.

4. It has also been submitted that films constitute almost 30% of the total entertainment industry in India. The film industry is stated to be a relatively unorganised sector with various tiers of processes.
5. The OP 1 is alleged to be a joint venture of OP 2 to OP 7, which has been formed with an object to dominate and monopolise the market of digital cinema exhibition in India and elsewhere. It is further alleged that the studios of OP 2 to OP 7 have entered into an anti-competitive agreement amongst themselves to release their movies in India in digital form only through Digital Cinema Initiatives (DCI) compliant servers and projectors. The cartel constituted by the OPs is alleged to have forced the Indian companies, engaged in the business of digital cinema technology, to adhere to their standards and conditions even if the Indian companies have better technology. The cartel is alleged to have resolved not to distribute movies to the Informant and similarly placed other companies in India. The concerted action of the OPs is alleged to be in violation of the provisions of Act.
6. It is stated that the digital cinema refers to use of digital technology such as hard drives, internet, dedicated satellite links or to distribute or project movies at even the most remote locations. Now a days, a digital movie server and projector is installed at each cinema hall and the companies such as the Informant have their own proprietary technology to convert/



digitalize the movie content into their proprietary format and then deliver the same to their servers from where the movie is played.

7. The whole system is encrypted/ highly protected and can only support the respective server. The same cannot be played or copied on any other medium. It could be opened and operated through keys provided by the digital cinema service providers such as the Informant. After converting such films/movies in respective proprietary formats in state of the art secured labs such films are given in hard disks/pen drives (highly encrypted and protected which can only be inserted and played on fixed servers after decrypting) to various theatres for exhibition, screening and showing.
8. It is also stated that the whole digital cinema has two categories. The first being D-cinema for which technical requirement/specification are defined by DCI. The DCI standard requires 2K or 4K resolution projectors with a defined minimum contrast ratio, precise brightness level on screen and a calibrated minimum colour gamut. The second category is that of E- cinema. It is stated that e-cinema is everything else which is non-DCI compliant. That it typically uses 3-chip DLP projectors, which produce better quality than 35mm film in most situations. It is further stated that the manufacturing and installation charges for DCI compliant equipment are much higher than the non-DCI compliant ones. The Informant also submitted that its proprietary Sky Cinex technology is a non-DCI compliant technology but is not inferior to the DCI approved and promoted technology.
9. It is alleged that the Informant and similarly placed other companies are not allowed by the OPs to exhibit/screen the movies produced by them and subsequently released in India. The OPs have compelled the cinema



theatre owners as well as the digital cinema technology companies across the country to adopt and use servers and projectors specified by them only from their list of manufacturers/vendors or else lose business of screening/ exhibiting the movies produced by them.

10. It is submitted that the theatres in which the systems of the Informant and similarly placed other companies are installed also want to play *Hollywood* movies for their audience but due to the anti-competitive conduct and abuse of their dominant position such theatre owners are being deprived from playing *Hollywood* movies. It is further submitted that the *Bollywood* producers have not placed any such restriction in the disguise of technological conditions on the Informant. The theatre owners are left with two options, either to abstain from playing *Hollywood* movies and play only *Bollywood* movies or to install the expensive equipment technology certified and accredited by the OPs.

11. The Informant has alleged violation of the following provisions of section 3 of the Act:

- a) **Section 3(3)(a)** : That OPs are imposing their revenue sharing agreements on the cinema owners which leads to the increase in the ticket prices in the country.
- b) **Section 3(3)(b)** : That they are not allowed to install the servers and projectors of their own choice, thus, depriving a large number of viewers from enjoying or watching the movie in a theatre of their choice



at a competitive ticket price.

- c) **Section 3(4)(a)** : The OPs conduct and agreement result in tie-in arrangement as they require the cinema owners and digital cinema technology companies to purchase and use the equipment (servers and projectors) as one of the conditions to purchase/play the movie in their theatres.
- d) **Section 3(4)(b)**: OPs are restricting cinema owners to acquire or otherwise deal in equipment of the Informant or similarly placed other companies which are not certified by and accredited to OP 1.
- e) **Section 3(4)(d)**: The conduct of OPs amounts to refusal to deal as their agreements and conditions restrict the cinema theatre owners from dealing with companies such as the Informant company and *vice-versa*.

12. The Informant has alleged violation of the following provisions of section 4 of the Act:

- a) **Section 4(2)(b)**: The conduct of OPs by imposing unfair condition of purchasing, installing and using the DCI compliant equipment by the digital cinema technology companies and the cinema theatres owners limits and restricts the provision of service of movie exhibition/screening and marketing results in the non DCI compliant equipment users inability to exhibit/screen movie. It is averred that compelling consumers to pay high price for ticket to watch movies or limiting their option to watch the movies in theatres of their choice causes prejudice to the interests of the consumers .
- b) **Section 4(2)(c)**: The consumers of cinema theatres which use non-DCI equipment will be denied to watch the *Hollywood* movies in their preferred theatres at competitive ticket prices.



c) **Section 4(2)(e):** The OPs are using their dominant position in the movie production sector to enter into and monopolise relevant market of digital cinema service providers.

13. The Informant has submitted that OP 2 scheduled the release of its movie '*Avengers Age of Ultron*' in India on 24.04.2015 only through the DCI compliant theatres. It is alleged that on its inquiry as to whether the said movie will be provided to the Informant also, no response was received from OP 2.

14. The Informant alleged that in order to defeat competition in the digital cinema market, control the prices for cinema services and to prevent other market players, the OPs have entered into ant-competitive agreement to restrict the rights to release the said movie digitally only through companies certified and accredited to their technologies thereby crushing the relatively small and technologically independent players in the market.

15. In view of the above information and allegations, the Informant has prayed, inter alia, for the issuance of order under section 26(1) of the Act.

16. The Commission perused the material available on record including the information, additional information, facts and data placed on record by the Informant. The Commission also heard the counsel on behalf of the Informant and OPs. Facts of the case reveal that the grievances of the Informant primarily pertain to cartelization of the OPs and abuse of their dominant position, which is alleged to be in contravention of the provisions of sections 3 and 4 of the Act.



17. It is noted from the arguments advanced by the OPs as well as the information available in public domain that DCI compliant is better than non-DCI compliant format as far as quality and security is concerned. Piracy is difficult in case of DCI compliant format. DCI compliant projectors gives 2,048 dots or pixels across the projected image, whether the screen is 20-foot or 100-foot wide. The equivalent resolution in film, depending on the physical size of the film stock is in the range of 8,000 to 20,000 dots, or pixels, of information across the width of the screen.

18. Further, it has been submitted by the OPs that “... *DCI was created in March 2002 as a joint venture between Disney, Fox, Paramount, Sony Pictures Entertainment, Universal and Warner Bros. DCI’s primary purpose is to establish and document voluntary technical specifications for an open architecture for digital cinema that ensures a uniform and high level of technical performance, reliability and quality control. As per the DCI specifications, which are freely available on its website, each DCI member company may independently decide the extent to which it will adhere to these specifications for a digital cinema system. Thus, no member company is forced to comply with DCI specifications and there is no agreement among the constituent members of DCI that they will do so in licensing their content to exhibitors...*”.

The OPs have also contended that the uniform specifications for digital cinema ensure that the product and services of all industry participants are compatible, secure and interoperable. Another crucial element behind the development of DCI technical specifications is to protect intellectual property.



19. Considering the written submissions of the parties and arguments advanced at the time of hearing, the Commission notes that no material has been placed before it to infer anti-competitive agreement as envisaged in section 3 of the Act. The OPs have also drawn attention of the Commission regarding increase in the efficiency of distribution and exhibition of movies and quality of images. The Commission also notes that the Informant has not been able to show that the alleged conduct is likely to have appreciable adverse effect on the competition (AAEC). Taking the totality of the facts and circumstances, the Commission is of the view that *prima-facie* no infringement of section 3 of the Act is made out.
20. The Informant has not submitted any cogent material to show that any of the Opposite Parties is dominant in the market. However, in view of the facts and circumstances obtaining in the present case, the Commission does not deem it necessary to define the relevant market as the alleged conduct of the OPs do not appear to fall in the category of abuse in terms of the provisions of section 4 of the Act.
21. In the light of the above analysis, the Commission finds that no *prima facie* case of contravention of the provisions of section 3 and 4 of the Act is made out against the OPs in the instant matter. Accordingly, the matter is closed under the provisions of section 26(2) of the Act.
22. As the Commission is of the opinion that there exist no *prima-facie* case, the question of issuing interim order under Section 33 of the Act to restrain OPs does not arise. The application and prayer made by the Informant stands disposed of accordingly.



23. The Secretary is directed to inform all concerned accordingly.

Sd/-
(Ashok Chawla)
Chairperson

Sd/-
(S. L. Bunker)
Member

Sd/-
(Sudhir Mital)
Member

Sd/-
(Augustine Peter)
Member

Sd/-
(M. S. Sahoo)
Member

New Delhi

Date: 22.04.2015