A RESEARCH PROJECT

ON

COMPETITION CONCERNS IN FILM INDUSTRY

UNDER THE GUIDANCE OF

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DISCLAIMER

This project report has been prepared by the author as an intern under the Internship Programme of the Competition Commission of India for the period of one month from 7th January 2013 to 31st January 2013, for academic purposes only. The views expressed in the report are personal to the intern and do not reflect the views of the Commission or any of its staff or personnel and do not bind the Commission in any manner. This report is the intellectual property of the Competition Commission of India and the same or any part thereof may not be used in any manner whatsoever, without express permission of the Competition Commission of India in writing.
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RESEARCH QUESTIONS

After briefly placing them in context as regards the film industry in their country (structure, production level, etc.) these questions should be considered:

i) How the market in question has been analysed and how the degree of substitutability is assessed;
ii) What type of entry barriers (regulations or practices) have been detected;
iii) What market share appear and present the risk of market power and why;
iv) What market power has been abused;
v) What horizontal restrictions have been identified as likely to exclude competitors from the market;
vi) What vertical restrictions have been identified as likely to exclude competitors from the market;
vii) Whether these vertical and horizontal restrictions lead to economic progress;
viii) What remedial measures have been implemented and an assessment of the results.
RESEARCH METHODOLOGY

Research Methodology in this project is doctrinal and secondary sources of information are relied upon. Articles, case laws and books by various writers are referred to.

Aims and Objectives:
The aim of the project is to present a detailed study of laws related to competition concerns in relation to film industry in India and the legal framework related to it through different writings, articles and case comments. This research project aims to study the Competition Concerns in Film Industry with special regard to whether Film Industry can be considered to be an ‘enterprise’ and how far the Competition Law shall be applicable. This research project further seeks to check the viability of Compulsory licensing order under Competition Act 2002.

Scope and Limitations:
The project is basically based on the doctrinal method of research as no field work is done on this particular topic. The whole project is made with the use of the secondary sources. Though the topic is an immense project and pages can be written over the topic but because of certain restrictions and limitations I was not able to deal with the topic in great detail.

Method of Writing:
The method of writing followed in the course of this research paper is primarily analytical and descriptive.

Mode of Citation:
The researcher has followed a uniform mode of citation throughout the course of this research paper.

Sources of Data:
The following secondary sources of data have been used in the project-
1. Articles
2. Books
3. Websites
INTRODUCTION

Competition Law is vital to the efficient functioning of markets in a free market economy. In the absence of such laws or policies there may be either anti-competitive practices prevailing or lack of an incentive mechanism to promote competition.

The globalized and liberalized Indian economy is witnessing cut-throat competition. To provide institutional support to fair and healthy competition, there is a requirement of better regulatory and adjudicatory mechanism. To this effect, India has enacted the new competition law which shall replace the earlier law. This is a shift from curbing monopolies to encouraging competition. The design of the new law carves out a very important role for the Competition Commission of India. Indian experience with the competition regime has so far vindicated it. For years after independence, India followed the strategy of planned economic development. The broad policy objectives were achieving self-reliance and promoting social justice. Self-reliance, over time came to mean import substitution. There were government-imposed controls over entry and exit in the market. Plant and firm size were subject to statutory limitations, and imports and foreign investment were restricted. Government-owned businesses enjoyed protections and preferences and dominated the “commanding heights of the economy” in various sectors. These policies were reflected in many of the state’s economic policies, including its industrial, trade, labor, exchange controls, financial sector, entertainment sector and several other policies. In this system, there was little place for competition policy. India is not a market like the US or Europe, where anti-competitive laws are so strict that nobody can just go and acquire any company. In fact, companies invest to keep their competitors alive. We have all heard the stories of Google keeping independent browsers such as Mozilla and Opera alive through back-door funding, even though they can go ahead and take over the king’s share of the market with Chrome.¹

The OECD Competition Committee debated competition policy and cinema and television film distribution in November 1995. Competition in film distribution, which has long been a concern, is now affected by the development of alternative methods of film distribution through television and video. Competition analysis of film distribution must examine:

¹http://voices.halabol.com/2012/11/04/movie-titans-locking-horns-over-fair-play
i) the relevant market definition, including substitutability between “first run” and other films and between different distribution media, including cinema, television and video;

ii) the degree of concentration in the distribution of substitute products; and

iii) the existence of barriers to entry, including those due to regulation or industry practice.

There are risks for competition posed by horizontal concentration at the distributor level, vertical relationships between distributors and producers and vertical integration between distributors and cinema owners. Competition authorities dealing with this sector must also take into account politically sensitive concerns over cultural issues.\(^2\) A governance structure resting on a legal framework and a set of control and incentive mechanisms regulates the transactions between the collaborators and is designed to ensure coordination.

In India, the European and American models may not work, as India has a unique chemistry and very different socio-political and economic conditions. The setting up of the competition regime in India has so far proved to be a much more difficult task than envisaged. Since 1 May 2004 not only the European Commission, but also the Office of Fair Trading (OFT) has the power to apply and enforce Articles 81 and 82 of the EC Treaty in the United Kingdom. The OFT also has the power to apply and enforce the Competition Act 1998. In relation to the regulated sectors the same provisions are applied and enforced, concurrently with the OFT, by the regulators for communications matters, gas, electricity, water and sewerage, railway and air traffic services (under section 54 and schedule 10 of the Competition Act 1998) (the Regulators). Section 52 of the Competition Act 1998 obliges the OFT to prepare and publish general advice and information about the application and enforcement by the OFT of Articles 81 and 82 of the EC Treaty and the Chapter I and Chapter II prohibitions contained in the Competition Act 1998. This guideline is not a substitute for the EC Treaty nor for regulations made under it. Neither is it a substitute for European Commission notices and guidelines. Furthermore, this guideline is not a substitute for the Competition Act 1998 or the Enterprise Act 2002 and the regulations and orders made under those Acts. It should be read in conjunction with these legal instruments, Community case law and United Kingdom case law. Anyone in doubt about how they may be affected by the EC Treaty, the Competition Act 1998 or the Enterprise Act 2002 should seek legal advice.

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\(^2\) Policy Roundtables, OECD, 1995
INDIAN FILM INDUSTRY

One hundred years after its conception the cinema remains a popular art form and in the developed countries appears to be the most widely practised cultural activity. Because of advances in technology -- and much is yet to come in this regard -- a critical period will be reached where, at the same time as the development of the industry is being promoted, different questions from those seen so far are likely to be raised as far as competition is concerned, questions linked to the horizontal concentration and vertical integration of companies operating in film distribution markets. Like any other trade, the trade of cinema runs on supply and demand. Where there is a demand for certain products and services, there will be suppliers willing to supply them for profit.

The Indian film industry produces more movies than any other and is characterized as being on the threshold of emerging as a big market internationally with an expected growth rate of close to 20% per year. In 2001, the film industry was granted “industry” status, which has helped to move it to more professionally approach financing, production and other allied activities. In recent years, the Indian film industry has witnessed marked improvements on all fronts, viz., technology, themes, exhibitions, finances, marketing and business environment. Indian film industry is also getting corporatized. FDI in all film related activities such as film production, distribution, exhibition, marketing etc. is permitted up to 100% for all companies under the automatic route.

Until the end of the 1990s, the Indian film industry received a lot of its finances from shady sources and criminal circles. Still in 2002, it was described as bearing “a striking resemblance to the Hollywood of the 1930’s, when big-shot producers, financed by shady Las Vegas businessmen, made star-driven extravaganzas for an audience seeking temporary diversion from a life of grinding poverty.” Investment into a film was and still is risky. In 1999, only 11% of the films released made good business; and the number is only up to 23% now.

4 Bollywood Cinema, p.241, Indian Popular Cinema, pp.114, 115
6 CASE No. 01/2009 before the Competition Commission of India (FICCI- Multiplex Association of India v. United Producers/ Distributors Forum)
7 http://www.capitalideasonline.com/articles/index.php?id=707&PHPSESSID=d8b680b6e4cfl7355872748c8a41eb32
Lately, the granting of industry status has made financing much more accessible to producers and the ambivalent financiers have nearly disappeared. This “commercialization” and Bollywood’s increasing financial transparency is one fundament for international cooperation.\(^8\) The Mumbai film industry (Bollywood) is star-centric and actors like Amitabh Bachchan are worshiped like half-gods by their numerous fans. This is why, although they are the largest stakeholders in film production, producers do not dictate terms. Most contractual agreements are verbal, and those which are on paper are rarely enforceable. Even when stars sign up for films, it does not imply anything beyond a loose commitment, which very often they do not stick to.\(^9\) Also, the cost structure of Indian movies is hard to estimate, since the majority of the commercial dealings are cash transactions. Stars also often work on several sets during the same period of time, which can cause delays. Disciplinary efforts by the producers come to naught, and because of the absence of insurance models, completion guarantors and gap financing systems, they have to bear all the financial risks.\(^10\)

Factors like rising consumerism, increase in disposable income, favourable demographics, lower penetration of multiplexes within the country and boom in retail sector throw up excellent opportunities for the multiplex sector in India. The multiplex business segment is, however, still in its nascent stage of growth. This is the reason multiplexes have mushroomed in many parts of the country over the past few years.

**RECOGNISING COMPETITION IN FILM INDUSTRY**

**Film Exhibition Platforms**

With the advance of technology, in addition to the traditional distribution of films in cinemas, television and video are now also available to producers. Television plays an increasingly important role in film exhibition thanks to the emergence alongside traditional broadcast channels financed by advertising and/or licence fees, of encoded channels for which a charge is made and whose arrival has been made possible by the development of cable and satellites.\(^1\) This new category of channels may itself be divided in two, those charging by monthly subscription (premium channels) and pay per view channels. Similarly, the video sector is an expanding method of film exhibition as most households now have a video

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\(^8\) [http://www.ukfilmcouncil.org.uk/filmindustry/india/](http://www.ukfilmcouncil.org.uk/filmindustry/india/)

\(^9\) Entertainment Law, p.169

\(^10\) Entertainment Law, p.170
recorder. This sector principally covers the purchase and rental of pre-recorded film cassettes. However, the traditional vehicle for distribution remains the cinema, though this sector has seen significant changes. There is a trend towards the grouping of cinemas within a small number of national or regional circuits with independent cinemas not part of a circuit now being the exception. This development is explained primarily by the very substantial investment entailed by the modernisation of existing cinemas and the appearance of cinema complexes. Cinemas in these networks, mainly located in urban areas, either in town centres or in the suburbs, are designed to meet the new demands of the public in terms of comfort and services. Thus, the new complexes have comfortable auditoria with large screens, offer easy access and parking, and are well-served by shops, restaurants and other related services.

To assess the competitive conditions in which films are distributed in the three different sectors, an analysis in several stages is required. Firstly, the market concerned should be defined and the degree of concentration of that distribution activity determined. Secondly, it must be found whether there are regulations or practices which prevent market entry; where such barriers co-exist with high concentration, there will be the risk of exercise of market power, which will make further horizontal concentration and, in some cases, vertical integration, threatening to competition.  

Market definition

Market definition entails distinguishing between new films shown exclusively in cinemas, known as "first run films", and others, and examining the different film distribution sectors -- television, video and cinema -- endeavouring to identify any relevant sub-sectors.

First, a distinction must be made between first run films, which are shown exclusively in cinemas, and films which are no longer first run and which may be exhibited by any one of the three sectors, or even all three at once. Given that first run films are available only in cinemas, do consumers consider older films (or indeed other forms of entertainment) available on other media, as close substitutes? That is an empirical question, of course. Despite continuing advancements in home entertainment technology, however, the cinema

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11 Notably multichannel distribution technologies such as cable networks, Direct Broadcast Satellites (DBS), Satellite Master Antenna Television (SMATV), and Multichannel Microwave Distribution Systems (MMDS).
12 For a theoretical description of methods of analysis and market definition which may be applied to the film industry, see Competition Policy and a Changing Broadcast Industry, OECD (1993) pp. 102 et seq.
13 Some films are made exclusively for television, and are not exhibited in all three sectors. However, in certain circumstances they may affect the broadcasting of films on television.
continues to be a popular form of entertainment. As long as producers continue to choose to exhibit new, mass market films only in cinema houses, a good argument can be made for first run exhibition as a distinct product market. Thus it must be asked whether producers are likely to consider television or video as alternatives to cinema houses for new films. In the near future such a change does not appear to be likely. As discussed further below, new technology could alter such a calculation in the longer run, however.

For first run films, distributed in cinemas, the producer must determine whether certain cinemas are preferable to others because of their location or the ancillary services they offer. Thus, cinemas situated in key markets will be preferred, since box office results -- in light of which the value of television and video rights and foreign sales is negotiated -- are often based on fairly limited markets; likewise, cinemas which offer greater financial guarantees, for example, will be sought after by producers.

For films which are no longer first run, the producer has to assess whether the return would be the same if the film were distributed in the cinema, on television or on video, or whether one of these media is preferable to the others. On this point, the producer may find it useful to observe consumer behaviour. For older films, the film viewer’s order of preference is likely to be television, then video and finally the cinema.

There is evidence that once new techniques and available frequencies allow films to be broadcast on television and on video, the latter become close substitutes for the cinema. Films can now be viewed at home continuously in the same version as in the cinema soon after their release as first runs; because of the potential return which these new opportunities offer, the time-lag between when a film is shown in the cinema and when it is broadcast on television and video is continuing to decrease significantly.

However, when considering television, the producer must distinguish between encoded and Un-encoded channels. Subscribers to encoded television channels, who have to pay more than for un-encoded television, are greater consumers of films on television than un-encoded television viewers, since although their main motivation seems to be to have a wider selection of programmes; an important factor remains the opportunity to see more films. However, the regular viewer of pay-per-view film channels is the biggest consumer of films. Pay-per-view
film channels, which are only now becoming prevalent as a result of new technology, offer the producer a significant new source of revenue. These channels may someday compete with, or supplant, first run exhibition.

The pre-eminence of television and video in the exhibition of films which are not first runs must be qualified, however, in certain cases where exhibition in the cinema appears to regain its specific character. For a section of the public as for certain films, broadcasting on television does not have the same impact as in the cinema. Certain film viewers still feel that impressions are stronger in a cinema auditorium; this is particularly true of "big screen" films where the picture, sound and spectacle are of decisive importance and the experience is enhanced by the comfort of a cinema auditorium and the special feeling of a visit to the cinema. To assess whether these media are of equal value for film distribution the producer/distributor must also determine whether they are accessible on the same terms to all consumers everywhere. The area where the film viewer lives will determine how often he/she visits the cinema and the extent to which television is general, and encoded subscription or pay-per-view channels in particular, or indeed video, are available as a substitute.14

**Horizontal concentration**

Once the film distribution market has been defined together with its particular components, the degree of concentration of the industry is an important element to be taken into consideration. Some firms in the film industry are quite large by absolute standards, and there appears to be a trend toward the creation of even larger enterprises by merger. In competition analysis, however, it is not the absolute size of a firm which by itself is important, but the resulting market share. In the cinema industry there has been a trend toward consolidation into a limited number of circuits, each of which may control several cinemas in a given market. In many markets a relatively few independent cinemas survive. Television broadcasting is highly concentrated in most markets, with relatively few broadcast channels available. The advent of cable television, which provides many more channels, and of direct satellite broadcasting, is rapidly altering the television environment, however. Film production, on the other hand, appears to be less highly concentrated in many countries. Alongside the large, well established production companies exist a number of independent

14 In rural areas, certain channels may not be accessible, as cable services and certain over-the-air channels do not always cover an entire country.
producers, which produce successful films from time to time. The trend toward vertical integration in the industry, discussed further below, may adversely impact this situation, however. In competition analysis, of course, high concentration and substantial market shares are not by themselves a cause for concern; they may in themselves reflect welcome economic efficiency. The analysis should be taken further in order to find out whether possible barriers to market entry exist which could exclude, or reinforce the exclusion of, competitors.

**Barriers to entry**

Various barriers to entry to film exhibition may be erected, whether of a regulatory nature, thus constituting barriers to entry in the more traditional sense, or relating to the implementation of practices.

Examples include:

i) regulations, which exist in some countries, intended to protect distribution in the cinema from the development of television and video; such regulations may provide that new films released in the cinema may not be shown on television or marketed on video for a fixed clearance period; they may also provide for the following hierarchy in film distribution: cinema, video and finally television. Regulatory clearance periods may also vary according to the nationality and box office success of a film, thus creating further discrimination, as marketing on video may increase the film producer’s return. Thus, many producers tend to demand longer clearance periods between marketing on video and the broadcasting of their films on pay-per-view and premium television channels in order to increase video retailers’ returns and consequently their own;

ii) in the second category of barriers, the growing dominance of large cinema circuits in many markets may operate to squeeze cinemas which do not belong to a circuit out of the schedule of film releases. Not only may independent cinemas thus be deprived of first-run films to show on their screens but they may also be forbidden to exhibit older films which are no longer being shown as first runs by competitors who are members of a circuit. The circuit members keep this option, plus the corresponding revenues for themselves, thus controlling all of a film’s revenues until its box office value is exhausted. Similarly, through their

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15 This discrimination will be continued if a shorter clearance period is granted more readily to successful national films than to foreign films; the producer may then increase profits through good video sales.
programming, these major circuits may squeeze out small producers, showing films by powerful producers only;\textsuperscript{16}

iii) In other respects, however, entry barriers in cinema exhibition may be considered relatively insignificant. It does not appear unduly difficult in most markets simply to build and operate a cinema complex, any more than any other type of large retail establishment. Those entry barriers that exist appear to be centred on the ability to acquire the rights to exhibit popular first run films;

iv) Entry barriers in television are quite different, and probably more significant than in cinema markets. The number of available broadcast channels is limited, and closely regulated. In most markets, television cable service is a regulated monopoly. The cable network has aspects of a natural monopoly, although new entry by direct broadcast satellite service and possibly by local telecommunications operators are bringing about changes in this regard.

Finally, while direct broadcast satellite service promises to offer new and dramatic competition to traditional cable service, entry into DBS itself is difficult, and is characterised by large economies of scale, regulatory barriers, and possible shortages of available programming.

**Vertical integration**

Vertical integration may take the form of a system of common ownership or of contractual provisions. In either case, co-ordination of production, distribution and exhibition decisions upstream and downstream are the result, and these replace or supplement the incentives that existed when competitors in these industries were acting independently. These vertical relationships may be efficiency-enhancing; they have the advantage for the companies concerned of ensuring the better co-ordination of production and distribution decisions. However, where market conditions upstream or downstream -- concentration, barriers to market entry etc. -- allow, these vertical relationships may lead to co-ordinated decision-making, resulting in more complete exploitation of market power or to decisions which disadvantage rival companies.\textsuperscript{17}

\textsuperscript{16} This applies in particular where there is a fairly close relationship between the producer and the cinema network (Vertical Integration)

\textsuperscript{17} For an analysis of the effects of vertical integration, see Competition Policy and a Changing Broadcast Industry, OECD (1993) pp. 123 et seq.
In the film industry, vertical integration is not a new phenomenon, since producers and cinema operators long ago realised that their operations could be enhanced by joint control of distribution and exhibition. With the advent of new distribution media (television and video), this vertical integration was extended and has now taken a more complex turn with the sometimes inextricably linked ownership of the three film distribution sectors. By controlling the distribution of their films, producers and distributors can improve economic efficiency and ensure that their films are shown. But in addition, if concentration in these industries is high, and entry difficult, vertical integration may squeeze out competition from independent producers and exhibitors. When examining the principal restrictive practices implemented, it is therefore important to distinguish between those which improve efficiency and those which have a negative effect on competition. Cinema operators claim that producers and distributors treat cinemas differently according to whether or not they are integrated. Cinemas belonging to circuits and also vertically integrated allegedly are given greater opportunity to exhibit blockbusters, and are also granted deductions in rental fees when they show two films, an extended exhibition period and special preview exhibitions. On the other hand, cinemas which are not part of a circuit and not vertically integrated may find themselves subject to a number of constraints, in particular as regards:

i) first runs, which allow maximum revenue to be gained from films shown in the form of a series of distribution in cinemas across the country; producers generally reserve this type of distribution for cinemas with a high turnover, most often belonging to a powerful circuit. Films are then distributed in cinemas with a lower turnover until their box-office potential is exhausted;

ii) the length of the distribution period; the requirement that this period be relatively long (4 weeks or more) as a condition of licensing popular films reduces the ability of cinemas with a limited number of screens to meet consumer demand and aggravates the problems encountered by independent producers;

iii) the setting of a clearance period between the end of a film’s first run and the time when it may be re-shown in cinemas which, particularly if this is a long period, allows more income to be obtained from the first run. If the clearance period is very long a film will exhaust its box office value and in consequence the operators who have negotiated subsequent distribution of the film will in reality be out in the cold. Moreover, what income there is to be earned from redistribution will be captured by video and television;
iv) zoning, which consists of setting geographic boundaries within which a given cinema will have exclusive exhibition rights. This practice ensures that the cinema operator will obtain the largest possible audience for his film and will prevent other cinemas nearby from competing for the viewers who want to see that particular film. In defence of the practice, however, it is pointed out that a reasonable zone of exclusivity is necessary to induce the cinema operator to provide adequate promotion for the film;

v) block booking, which is a form of tying, and which is the practice whereby authorisation to show a film or a package of films is granted on condition that the operator also takes one or more other films from the distributor. This provides an outlet for poorer quality films or those with limited box-office potential. Where a producer is linked by contract with the biggest stars, cinema operators are well-advised to take his less commercial films if they want to have the more commercial ones. This practice, which prohibits bidding for films cinema by cinema, makes it impossible for small competitors to obtain first runs and gives an advantage to those who are affiliated to a major network;

vi) blind bidding, which is the practice whereby a distributor requires an operator to order a film without prior viewing;

vii) advance payments, which are made by the cinema operator before distribution of the film as security or to effect payment under a distribution agreement;

viii) a guarantee, which is a minimum amount the cinema operator guarantees the distributor in return for authorisation to show a given film.

Similarly, by buying out or taking a substantial share in a television channel, a producer can secure outlets for his catalogue of films and, in so doing, enhance the value of his less popular films. However, this benefit to the producer may be accompanied by a corresponding exclusion of other producers who will find outlets for their own production correspondingly more difficult to find.

As far as broadcasters are concerned, television companies, for example, may find it in their interests to control film production as this will enable them not only to extend their profit base\textsuperscript{18} but in particular to obtain a competitive advantage. By obtaining priority over its

\textsuperscript{18} In the case of a co-production, when a television channel finances a film it purchases two things: a share in the co-production and priority broadcasting rights. Its interest is therefore twofold: financing films which, if successful, may pay back its production costs but also and more
competitors it may also bring about more competition between television and cinema, to the extent the integrated producer elects to exhibit relatively new films on television. Non-integrated cinemas may be adversely affected, on the other hand. Declining audiences lead cinemas, which also have to pay off modernisation costs, to increase ticket prices, thus giving film-viewers another reason to desert the cinema.

Moreover, although control of film production by television companies may benefit the integrated film producers, it may also lead to the exclusion of certain producers who do not make films considered suitable for television audiences. This may lead independent producers to become employees of major groups and thus to lose their independence. The adverse negative effects from vertical integration described above are not inevitable, however. The integration of a film producer and a television network may foreclose other television networks from access to the integrated producer’s films, for example, but that will be of little consequence if there remain a significant number of independent producers whose films are available to other networks. The same analysis applies to access to television and other means of film exhibition. It is not clear, for example, that merely because a television company is integrated with a film producer it would be unwilling to consider exhibiting the products of independent producers. Such a policy could be self-defeating, particularly if the products of the captive producer turn out to be unpopular with the public. These questions and others, particularly those involving the effects of vertical integration on conditions of entry, will be considered by competition officials as they confront the current trend toward vertical integration in the film industry.

importantly, taking out an option for the first showing on television.

19 Or shorter clearance periods between cinema release and broadcasting on television when these periods are set to protect cinemas from competition from television and video.

20 Which may lead video clubs to prefer to market foreign films or those which did not enjoy box office success.

21 Producer channels could suffer from this phenomenon, however, as it seems that films have to be seen in a cinema if they are to have an authentic aura, and box office success is needed in order to create a television audience.

22 Foreign producers in particular are likely to be discriminated against in countries where television is obliged to abide by specifications which, inter alia, impose a quota for the broadcasting of national films. Producers who make unusual films which are not to the taste of television viewers or spectaculars which the public prefer to see on the big screen, may also be affected.
THE PRESENT REGULATORY FRAMEWORK

The film industry consists of the technological and commercial institutions of filmmaking: i.e. film companies, film cinematography, film production, screenwriting, pre-production, post-production, film festivals, distribution; and actors, film directors and other film crew personnel.

Though the expense involved in making movies almost immediately led film production to concentrate under the auspices of standing production companies, advances in affordable film making equipment, and expansion of opportunities to acquire investment capital from outside the film industry itself, have allowed independent film production to evolve. Central Board of Film Certification (CBFC) is a statutory body under Ministry of Information and Broadcasting, regulating the public exhibition of films under the provisions of the Cinematograph Act 1952.

Film censorship becomes necessary because a film motivates thought and action and assures a high degree of attention and retention as compared to the printed word. The combination of act and speech, sight and sound in semi darkness of the theatre with elimination of all distracting ideas will have a strong impact on the minds of the viewers and can affect emotions. Therefore, it has as much potential for evil as it has for good and has an equal potential to instil or cultivate violent or bad behaviour. It cannot be equated with other modes of communication. Censorship by prior restraint is, therefore, not only desirable but also necessary.

With the growing importance of India as a global economic player, western interest in social realities and developments in India will increase. Foreign themes represent the classical content of documentaries and art films and are consequently predestined to be subject to co-productions not only with government funded agencies and maverick independent producers, but, due to a broadening market for Indian cultural content, also mid-size and big commercial production companies. A hurdle for these potentially “free-minded” independent productions in India is that their scripts must be cleared by the Ministry of External Affairs in advance.

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23 http://www.obs.coe.int/online_publication/expert/coproduccion_aspectos-juridicos.pdf.en
24 (PDF) [www.obs.coe.int/about/oea/pr/mif2009_cinema_pdf.pdf.en European Audiovisual Council].
25 http://cbfcindia.gov.in/
"Anupam Kher is new chief of censors"
The Film Federation of India (FFI) is an apex body for film trade in India constituting of Indian producers (around 18,000), distributors (around 20,000), exhibitors (around 12,000) and studio owners, headquartered in Mumbai.28 The current chairman is Vinod K. Lamba.29 Film Federation of India works to promote commerce in general and in particular to promote, protect and watch over the interests of the Indian Film Industry and allied industries and trades, including the interests of producers, distributors and-exhibitors of films and of all other persons connected with the film industry, to regulate their method or doing business, to establish just and equitable principles in the film industry to maintain uniformity in rules, regulations and usages of the film industry, to provide forms of contract and regulate the nuking and carrying out, enforcement or cancellation of contracts, to adjust by arbitration or otherwise controversies between the members of the Federation inter se and between the members and other persons or between persons interested in the film industry and to fix or adopt rules and regulations for the film industry, or any part or branch thereof.30 The Film Federation of India is a Company and claims to be an apex federating body of several associations from different States, such as Producers Councils, Distributors Councils etc. It is also directly and intimately connected with the film industry whose members earn their livelihood through the film industry. It is the most appropriate body to espouse the cause of the film industry since the film industry is interested in upholding the validity of the Constitution of India.31

The film industry is still an unregulated sector where they enjoy over-arching jurisdiction and the market is scooped up by major producer guilds. There are various Trade Associations such as Karnataka Film Federation, Karnataka Film Chamber of Commerce, Telangana Telugu Film Distributors Association, United Producers/ Distributors Forum, Multiplex Association of India, Eastern India Motion Pictures Association, Central Circuit Cine Association etc. They are sector specific, area specific or even random in their making. There are a number of such associations running the different sectors of film making and there is no regulation on the whole but the members to the same comply by the rules laid down by their associations.

The business of film making consists of various stages involving pre-production, production, post-production, distribution and exhibition. A distributor acquires distribution rights from

29 http://dearcinema.com/article/who-selected-barfi-as-indian-entry-for-oscars/1140
30 http://www.filmfed.org/
31 The Film Federation Of India vs Union Of India, AIR 1986 Mad 43
the producer and thereafter recovers his costs from the revenues earned through the
exhibition of that film. For the purposes of assignment of film distribution rights, territory of
entire India at present is divided into 12 circuits. In each of these circuits, associations of film
distributors and exhibitors have generally been formed either under section 25 of the
Companies Act, 1956 or under the Societies Registration Act, 1860. These associations
regulate the business of film distribution and exhibition in their area of control and have their
own Memorandum and Articles of Association. In addition, rules and regulations to regulate
the activities of film distribution and exhibition have also been framed by them. These
associations mainly consist of the persons engaged in the business of film distribution and
exhibition.\(^{32}\)

These associations under the garb of trade associations make explicit agreements of the
nature of “tie-in” or “exclusive distribution” and “refusal to deal.” They adopt a coercive
mechanism for ensuring the compliance of anti-competitive agreements amongst themselves.

Vide a notice filed on October 18, 2012, ADF alleged that YRF had made exhibitors agree to
monopolistic pre-conditions at the time of release of its last film ‘Ek Tha Tiger’ that such
exhibitors would give preference and priority to YRF’s Diwali release over others.
Bollywood film market is not new to allegations of or attempted abuse of dominance and
monopolistic behaviour. On an earlier occasion, CCI had to intervene in July 2009 by
initiating a cartel investigation against Bollywood film producers and distributors on a plea
by multiplex companies alleging anti-competitive practices and cartelization and misuse of
dominance in film distributions & revenue sharing amongst Bollywood film produces,
distributors and multiplex owners. The CCI had then pointed out that Bollywood producers
and distributors could not have arrangements which violated free market environment for
multiplex owners and had imposed fine in the region of 10% of revenues on the producers
and distributors. The purported onset of monopolistic arrangements to acquire advantage over
competitors and also thus denying free market and free access to competitors, stakeholders
and cinema viewers, has led to issues of these anti-competitive practices being raised and
looked into by the CCI.\(^{33}\)

\(^{32}\) Eros International Media Limited V. Central Circuit Cine Association and Ors. 52 and 56/2010 (Competition
Commission of India)

\(^{33}\) Ajay Devgan Films v. Yash Raj Films and Ors. Case No. 66/2012 (Competition Commission of India)
COMPETITION COMMISSION OF INDIA AND THE FILM INDUSTRY

The purported onset of monopolistic arrangements acquire advantage over competitors and also deny free market and free access to competitors, stakeholders and cinema viewers, leading to issues of these anti-competitive practices being raised and looked into by the Competition Commission of India.

HISTORY - United States v. Paramount Pictures, Inc., 334 US 131 (1948) (also known as the Hollywood Antitrust Case of 1948, the Paramount Case, the Paramount Decision or the Paramount Decree) was a landmark United States Supreme Court antitrust case that decided the fate of movie studios owning their own theatres and holding exclusivity rights on which theatres would show their films. It would also change the way Hollywood movies were produced, distributed, and exhibited. The Court held in this case that the existing distribution scheme was in violation of the antitrust laws of the United States, which prohibit certain exclusive dealing arrangements.

In a 1946 ruling of RKO Radio Pictures, the United States Supreme Court held an arrangement to be anti-competitive (anti-trust laws as known in the USA) wherein a movie was distributed only among multiplexes owned by parties to this arrangement who were then able to exclusively show those movies during a certain ‘first run’ period before other multiplexes screen the same movie. Subsequently, in 1948, the United States Supreme Court passed the landmark Hollywood Anti-trust case ruling that changed the future of working of the Hollywood Film producers also owning their own multiplexes and retained exclusive rights as to which multiplex would show their films and which would not. The 1948 ruling held that such monopolistic practices were in violation to competition (anti-trust laws as known in the USA) which did not allow such exclusive arrangements. This landmark ruling changed the way cinema production, distribution and exhibition was done in Hollywood permanently.

CCI shall look into any alleged violations under the Act,
(a) either on its own motion, or
(b) on receipt of a complaint from any person, consumer or their trade association, or
(c) on references made by the Central Government, State Governments or any statutory authority.
CCI is not bound by the procedure laid down by Code of Civil Procedure, 1908 and must only follow the principles of natural justice. CCI, thus, has the power to regulate its own procedure. If any party to such agreement is outside India; or if any enterprise abuses its dominant position is outside India; or a combination has taken place outside India; or any party to combination is outside India; or any other matter or practice or action arising out of such agreement or dominant position which causes an appreciable adverse effect on competition in the relevant market in India.

The Supreme Court held that the Competition Commission of India has authority to direct investigation pertaining to fair trade practices and its directions cannot be challenged before the Competition Appellate Tribunal (COMPAT).  

Ficci-Multiplex Association of India had complained that United Producers & Distributors Forum, The Association of Motion Pictures and The TV Programme Producers and the Film and Television Producers Guild of India were behaving like a cartel in refusing to release movies unless the multiplexes agreed to change the revenue share agreement. UTV Software Communications, Reliance Big Entertainment Ltd., Eros International and FICCI Multiplex Association of India have been granted a relief by CCI (Competition Commission of India) on laws which restricted production houses with unreasonable hold backs for all other rights outside theatrical rights. The CCI has also imposed a penalty of more than Rs. 46 lakh on seven trade associations. The order was based on the findings of the Director General (Investigations) who probed the matter after receiving separate complaints from four Mumbai-based distributors, exhibitors and producers.

In 2010, UTV had filed a case against distributor associations like KFCC (Karnataka Film Chamber of Commerce) for putting a restriction on the number of cinemas to release a non Kannada film and BJMPA (Bihar and Jharkhand Motion Pictures Association) for demanding unreasonable hold backs for registering its films. It barred studios from exploiting satellite and home video rights in the respective regions and compelled the studio to register films with the trade body and bend to their archaic rules. As a result, this constrained the market access of the studio for unfettered distribution of its films on non theatrical platforms. The

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34 http://www.thehindu.com/news/national/article622907.ece
35 http://articles.economictimes.indiatimes.com/2012-07-08/news/32578276_1_cartels-ugly-word-cci/2
36 http://www.koimoi.com/bollywood-news/cci-verdict-state-associations-will-have-to-make-amends/
regional film bodies are known not just to restrict the exhibition of movies on the basis of language but to also dictate terms for the release of films through other media like CDs or television.

The CCI ruled that the anti-competitive behaviour of any entity needs to be condemned heavily for effective function of the market. Further, it said that the associations are taking decisions and engaging in practices which are anti-competitive. Consequently, in Feb 2012, the CCI has imposed a hefty penalty on these distributor associations; to be deposited with immediate effect to the commission. The order clarifies that the associations will have to stop (a) Compelling the producers/distributors/ exhibitors to become their members as a pre-condition for exhibition in their territories;

(b) Discrimination between regional and non-regional films and imposing discriminatory conditions against non-regional films;

(c) Screen restrictions based on language or manner of exhibition of a film to be done away with;

(d) Holdbacks on satellite and home video, with studios are free to decide such holdbacks;

(e) Compulsory registration of films as pre-condition to release to be done away with.

The CCI has also directed the associations to not make any discrimination between regional and non-regional films. It added that the number of screens or the manner in which the film should be exhibited shall not be determined by these bodies. At the same time, the condition of compulsory registration of films as a pre-condition for release shall be dispensed with.

Apart from KFCC and BJMPA, Reliance, Eros and FICCI-MAI had filed complaints against other associations. The other trade associations which will be affected by this combined order are Eastern India Motion Picture Association, Central Circuit Cine Association (Amravati, Jaipur and Indore), Hyderabad State Film Chamber of Commerce, Northern India Motion Pictures Association, Indian Motion Pictures Distributors Association, Orissa Film Distributors Syndicate and The Chennai Kanchipuram Thiruvallur District Films Distributors Association.

The Karnataka Film Chamber of Commerce has long been protecting “interests” of Kannada film-makers by restricting the number of theatres in which non-Kannada films are released. According to unwritten rules of the KFCC, non-Kannada films have to been screened in only
24 theatres across Karnataka. Consequently, distributors of Hindi, Telugu, Tamil, Malayalam and English films cannot release more than 24 prints in Karnataka. However, Reliance Big Pictures had approached the Competition Commission of India (CCI) when KFCC wanted Maniratnam’s Raavan to be screened in only 24 theatres. The CCI ruled in favor of Reliance Big Pictures and directed the KFCC not to intervene in the matter. Subsequently, Raavan was released in 36 theatres in Karnataka.\(^{38}\)

The chamber questioned the legality and validity of the commission's order in asking it to allow Raavan to be exhibited in Karnataka without any restriction.

The chamber said it had several months ago entered into an agreement with the film-makers that Raavan would be released in only 24 theatres in one of the three distribution areas in Karnataka, including Mysore region.

This, the chamber said, was as per its policy of allowing exhibition of non-Kannada films in certain number of theatres only. However, Big Cinemas flouted the agreement and decided to release the film in more than 24 theatres. When the chamber banned the film in Karnataka, Big Cinemas petitioned the CCI and argued that no restriction could be placed on screening or exhibiting cinemas. The commission had upheld the contention of Big Cinemas and directed the chamber not to interfere with the exhibition of the film.\(^ {39}\)

Kamal Haasan's Rajkamal Films International had scheduled release of 'Vishwaroopam' first on DTH platform on January 10. Tamil Nadu Theatre Owners Association and Madurai-based Ramanathapuram United Film Distributors had threatened not to release it in theatres.

There are a total of 1134 theatres in that area, among which 698 theatre owners come under the purview of Tamil Nadu Theatre Owners Association. When the agreement is made there is no guarantee amount that is decided to be paid to the exhibitors. Therefore a producer is to sell the rights to his movie as he pleases. The rules that the member of the TNTOA was “Not to lend cooperation for screening ANY film that is released even before it comes to the theatre, through DTH or any other technology.” This is in absolute contravention of section 19(1) (a) and section 3(1) read with 3(3)(b) of the Act.

CCI looks into anti-competitive practices across sectors and the Tamil actor is believed to have complained against theatre associations forming a kind of cartel to restrict release of the

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\(^ {39}\) http://www.thehindu.com/todays-paper/tp-national/tp-karnataka/article624264.ece
This is clearly against section 3 and 4 of The Competition Act, 2002. Finding prima facie evidence of abuse of dominant market position, the Competition Commission decided to investigate actor-director Kamal Haasan's complaint against Tamil Nadu theatre owners for allegedly restricting release of his film 'Vishwaroopam'.

Film Industry is considered an unregulated sector and therefore there is no issue of jurisdiction of the Competition Commission of India with regard to film industry especially when CCI has delved into almost all service sectors. Sectoral regulators specialize in mandating pricing, quality control etc within their sectors and CCI comes into the picture ex post when an activity leads to appreciable adverse effect on competition, therefore there is no reason why they cannot complement each other. Two trends have emerged in the Competition Law:

i) a stronger focus on 'core competition objectives',
ii) a related increase in the use of economic-based tools in competition law assessment.

Both result in other policy considerations being cast aside. Yet, I believe that in communications markets, the goal of competition law is not only to safeguard a competitive market process (i.e., the efficient production of commoditised media), but also to ensure a democratic communications order.

The parties involved are basically associations of film distributors, exhibitors and producers. The allegations relating to infringement of provisions of Competition Act have been found to be correct. Their importance in the film distribution business cannot be denied. Certain positive aspects of all these associations like creating an effective distribution system in India deserve appreciation. Their role as arbitrator has also proved to be of great advantage to film industry by avoiding lengthy battles. It is observed that the members of the Association are using the platform of the Association to come to an agreement or understanding by which they may decide to boycott any member or non-member not to deal with him or her unless terms and conditions formulated by the association are accepted in full. The activities such as issuing circulars, caution letters among the members and compelling the Producers to accept their directions films cause

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41 Raaj Kamal Film International v. M/s Tamil Nadu Theatre Owner Asso.
harm to free-market since at many instances the associations had decided not to deal with any member or non-member, if directions of executive committee of the association are not followed. Therefore the conduct of the associations were found to be anti-competitive in violation to section 3(1), 3(3)(b) and 3(4) of the Act.

CONTRIBUTION FROM UNITED STATES

The business of licensing movies for exhibition in cinema houses (called "theatres" in the U.S.) has traditionally been handled by "distributors," many of whom are operated by major film studios. By the 1930s the major distributors, and through them the studios themselves, were vertically integrated into exhibition, or ownership and operation of movie theatres. In the late 1930s and 1940s the Antitrust Division brought a series of cases against eight distributors alleging various horizontal and vertical violations of the Sherman Act. Eventually, judicial decrees were entered in the cases, collectively called the "Paramount" decrees (Paramount, Inc. was one of the defendant distributors). The decrees are not identical, but they share many common elements. Those distributors that were vertically integrated into exhibition were required to divest their theatre assets, and some (but not all) were prohibited from re-entering the exhibition business. The decrees also contained certain injunctive provisions intended to prevent discrimination against small, independent exhibitors and to prevent vertical re-integration by contract. The distributors could not engage in "block booking," or conditioning the licensing of a desired film on the simultaneous licensing of other films, or in other specified types of contractual arrangements that effectively bound a theatre or chain of theatres to a distributor. See U.S. v. 20th Century Fox. Most of the decrees contained a requirement that defendants license their films "theater by theatre, solely upon the merits and without discrimination ... ." This language gave rise to much litigation under the decrees.

The decrees remain in effect, but in the intervening almost half century the markets have changed significantly. Film distribution has remained moderately concentrated, with eight to ten large distributors existing at any given time. Individual market shares are not stable, however. The exhibition business has changed significantly as well. In the years following the entry of the Paramount decrees, movie exhibition markets were characterized by the

existence of small, independent theatre operators, though there were a few very big chains even in the 1950s. The operators were considered to be disadvantaged in their dealing with the distributors, upon whom the operators depended for films ("product") to exhibit. Distributors often required exhibitors to bid against one another for films. Moreover, the bidding was often "blind;" exhibitors had to bid without having seen the film, knowing only what they had learned from the advance publicity, such as the story line and the cast. Blind bidding was considered so onerous that exhibitors succeeded in having the practice declared illegal in several states. Where films were licensed through negotiations instead of bidding, however, the distributors were thought to have undue leverage against the independent exhibitors.

To counteract this perceived imbalance, exhibitors instituted the practice of "splitting" in many markets. (Geographic markets in exhibition were, and probably still are, localized, consisting of towns or metropolitan areas.) Splitting was simply a form of horizontal market allocation. Groups of exhibitors in a market met periodically and allocated ("split") among themselves those films that were coming up for licensing. Subsequently, the members of the cartel negotiated for only those films that were allocated to them. Splitting was conducted more or less openly, and was condoned by the antitrust authorities in situations where the distributors acquiesced. In the 1970s, however, the Antitrust Division declared that it considered splitting to be per se illegal and would begin to prosecute it, initially in civil suits. This effort culminated in the Capitol Services case. It was held that splitting was indeed a per se violation of the Sherman Act. Subsequently the Division brought several criminal suits against splitting, and the practice has effectively ceased. More recently, exhibition markets have undergone changes resulting from another phenomenon - Horizontal mergers. Where there used to be many individual theatre operators or small chains of theatres, today there are more large independent chains of theatres that operate regionally or nation-wide. The major studios dominated many markets in the 1950s, and today many individual markets are still highly concentrated. Even in large metropolitan markets where there are many theatres there may be a relatively few distinct owners, sometimes only one or two. In the Syufy Enterprises case the Antitrust Division unsuccessfully challenged a series of theatre acquisitions by a chain in Las Vegas, Nevada.

which resulted in the defendant having virtually all of the theatres suitable for "first run exhibition" in the city.

Today there is very little bidding by exhibitors for exhibition rights. Negotiation is the preferred method. Further, many of the terms of film licenses have become fairly standard. Longer term, formal and informal arrangements between distributors and exhibitors are much more common.

**Current Issues**

Traditionally the relevant product market in movie exhibition cases has been "first run movie exhibition," that is, exhibition of new, mass market films in movie theatres. ("First run is to be distinguished from "sub run," or re-release of older films.) Some have argued that the relevant market must now include video tape rentals, television movie channels and/or television pay-per-view, or, for that matter, non-movie television entertainment or even other forms of entertainment. Clearly, a first run exhibition market still exists from the perspective of distributors. Most new films are first exhibited only in theatres. It is said that the success of a film in the theatre is vital to the later stages of exhibition on home video, network television, or cable, even if theatre exhibition no longer accounts for the bulk of the income from a film. Thus, for these reasons distributors who suffer an Anti-competitive five or ten percent decline in theatre rentals might not forgo first run theatre exhibition in favor of direct sales to cable or video tape.

An interesting question is whether a discrete first run exhibition market exists for consumers, or theatre-goers. Again the question of substitutability of video tapes, movie channels, or television entertainment for consumers is relevant. It could be of interest currently, given the concentration in ownership of movie theatres in many markets today.

Consideration of conditions of entry into movie exhibition might also bear re-examination under current circumstances. In many metropolitan markets it may not be so easy to acquire the necessary land and official permits to construct new theatre buildings, at least in the centre city. The trend toward longer term formal and informal relationships between film distributors and exhibitors could also inhibit entry by new exhibitors.
CONTRIBUTION FROM UNITED KINGDOM

In 1994 the Monopolies & Mergers Commission (MMC) report on the supply of films in the UK was published. The main focus of the investigation was on various vertical links which existed between film distributors and exhibitors. The primary concern of the Director General of Fair Trading (DGFT) in making the reference was that these links might reduce the overall level of competition in film markets both through dampening competition amongst distributors and exhibitors and by making it more difficult for non-vertically integrated or small companies to gain access to popular films and cinema screens. The MMC concluded that two particular vertical relationships operated against the public interest: alignment, the practice whereby a distributor normally offers its films to one only of the two major circuits of exhibitors, and the imposition of long minimum exhibition periods.

Analytical Approach

The first step in the analysis is to define the relevant market. The MMC then examines the market structure, including the extent of barriers to entry, and then makes an assessment as to whether firms either individually or collectively have market power. Vertical links and other alleged anti-competitive practices are then examined within this context using what is essentially a rule of reason approach.

The Relevant Market

The MMC defined two relevant product markets: film distribution and film exhibition. In reaching this conclusion the MMC paid particular attention to the fact that cinemas provided the only means of watching first release films and that viewing a film collectively at a cinema was quite a different experience to watching a film at home on video or television. The geographical extent of both markets was taken to be the UK. One of the main factors in this decision was the existence of national chains of exhibitors who negotiated for films on a UK basis and who operated a national pricing policy.

Market Shares

The market shares of distributors and exhibitors can be heavily influenced by the success of an individual film. The MMC thus considered that averaging market shares over the previous four years provided a better indicator of current market power.

Legal Position

Only MGM, with 26.7 per cent of the exhibition market, qualified as a scale monopolist (that is, accounted for 25 per cent or more of the market). However the MMC identified complex
monopolies in both film distribution (the nine distributors named above) and in exhibition (MGM and Odeon only) in that these companies together had 25 per cent or more of the market and engaged in practices which limited competition.

**Vertical Linkages**

All the major Hollywood production studios are vertically integrated into distribution. Their in-house distributors do however compete to distribute films made by independent producers. Only two production studios, UIP (which owns UCI) and Warner, are vertically integrated into exhibition. The only other vertical integration is between the Odeon exhibition chain and Rank, an independent distributor with no links to production. Although vertical integration is relatively recent in the UK, historically the major distributors have been aligned to one of the two major exhibition circuits. UIP and Warner, the two leading distributors, are aligned to the MGM chain, whilst the other leading Hollywood distributors are aligned with Odeon.

**Remedies**

The MMC recommended the following remedies:

i) Alignment: The practice should be banned. They also recommended that the parties should submit information to the DGFT to demonstrate compliance.

ii) Minimum exhibition periods: These should be restricted to two weeks for films on first release and one week for all others. The film could be retained by the exhibitor at the end of the minimum exhibition period by mutual consent.

**Other recommendations**

Although in the case of refusal to supply, conditional booking and restrictions on screen use no adverse findings were made, the MMC recommended that an independent tribunal should be set up to consider complaints. They also recommended that the extent and effects of vertical integration should be monitored by the Office of Fair Trading.

**Government response**

The Corporate Affairs Minister accepted the MMC’s findings and after considering the advice of the DGFT, he invited him to negotiate undertakings with the companies concerned to cease the practice of alignment and to limit minimum exhibition periods. He also asked the DGFT to pursue with the industry the question of monitoring, and encouraged the industry to set up a panel combining industry and independent representatives to draw up guidelines and consider complaints.
CONCLUSION

Competition is the process of rivalry between business enterprises for customers. It is a fundamental characteristic of a flexible and dynamic market economy. By responding to the demand for goods and services at lower prices and higher quality, competing businesses are spurred to reduce costs, increase productivity, make investments and innovate in products and processes. The implementation of the Competition Act in May 2009 marks the beginning of the modern competition law regime in India. The 2007 amendment to the Competition Act created an appellate tribunal headed by a sitting or retired Supreme Court judge or a chief justice of a high court, while leaving the regulatory space for the Competition Commission as an expert body. Notwithstanding litigation in the Supreme Court relating to the constitution of the Competition Commission, for its part the commission continued primarily with competition advocacy (42) during the interregnum period from 2003 to 2007, together with drafting most of its implementing regulations under the Competition Act. After the reconstitution of the full Competition Commission under the amended act and the enforcement of the key provisions relating to anti-competitive agreements and abuse of dominant positions, the pace of disposal of complaints received by the commission had been rather slow but its pacing really fast.

Thus, the development of competition law jurisprudence has begun in India. However, given the nascent stage of its development and the high penalties contemplated under the Competition Act, international businesses with existing activities in or with India or those contemplating investing in business in India are advised to have their contracts and business practices reviewed to ensure that they reflect the changes brought about by the new law and that they will comply with it in future.

Independent cinema in India is in really bad shape. Unlike countries like Italy, Spain and even Iran, where extremely refined good movies get made every year by independent film makers, supported by their government and quasi-governmental bodies, in India what gets made by big production houses gets sold anyway (by hook or crook). Maybe that’s why there have been many movies winning in the Best Foreign Film category at the Oscars from these countries, but none from India.
One of the major reasons for a large number of films being produced and released is stated to be the proliferation of quality film exhibition infrastructure through multiplexes since 2001. Development of multiplexes has in fact revived the lifestyle of theatre going, which had taken a hit during the previous decade. Increased cinema attendance and gross box office collections, thus, improved the business economics across the film value chain. Factors like rising consumerism, increase in disposable income, favourable demographics, lower penetration of multiplexes within the country and boom in retail sector throw up excellent opportunities for the multiplex sector in India. Now this has led to the film industry earning a huge amount of money and where there in money, there ought to be litigation.

There have been various cases in front of Competition Commission of India where the activities of the associations are restrictive in nature and are in contravention of the provisions of the section 3 of the Competition Act 2002. There had been a number of activities that have been found to be violating the provisions of the Competition Act:

i) Controlling the film distribution business by putting restrictive clauses in the Articles of Association that the members can only deal with the members of the Association only. Dealing with the non-members is prohibited by these Associations. These provisions create a situation where all the businessmen engaged in the business of film distribution and exhibition have to become the member of these Associations to conduct the business smoothly and also to have access to all the films released in their territories. This situation leads to refusal to deal as per the provisions of section 3(4) of the Act.

ii) Another method by which these Associations are controlling the film distribution business is by way of compulsory registration. Refusal to register the film hampers the release of film which results in tremendous pressure on the producers. Therefore the producers are compelled to get their films registered in each territory.

iii) Imposing certain conditions to regulate the business of film distribution and exhibition in their territory is also found to be anti-competitive. These Associations are forcing the terms and conditions for the business of film distribution which otherwise should be decided between the producer and distributor.
iv) By issuing circular/information among the members these Associations boycott a producer and thereby pressurize him to accept the directions and orders of these Associations.

v) These associations are also found to enter into joint agreement with other associations to control the film distribution business in India. Their conduct indicates concerted action to restrict the market and impede the competition by controlling the market.

vi) There have been major disputes between producers and multiplex owners in order to demarcate the profit share.

The Preamble of the Competition Commission of India also provides for freedom of trade and practice hence it is very important that the scope of the business is left open to the option of the producers and exhibitors as their own ends. The film industry sometimes exercises overarching jurisdiction and is not sector specific. Producers, distributors, exhibitors (multiplex owners + single screen owners) all constitute trade associations among themselves and work on implied cartels. They generally put an arbitration clause in their Articles of Association and resolve their disputes as per that agreement. But there are various instances where the associations come together in large groups to carry on anti-competitive agreements and abuse their dominant position in that particular area. They also decide upon their dominant position the manner in which overseas and satellite rights would be distributed. It is very important to follow the guidelines laid down by the Competition Commission of India with regard to the distribution and exhibition of films and television series. Dynamic efficiency is very important in such cases and till date Competition Commission of India has been very pro-active in resolving competition concerns arising out of the entertainment sector. The brief analysis above gives some indications of the elements to be taken into account in determining whether film distribution conditions are satisfactory from the point of view of competition. It omits one important feature of the industry however, which very often gives rise to government intervention, namely, the preservation and encouragement of pluralism and the expression of a diversity of views, together with the affirmation of a country’s cultural identity.