



**COMPETITION COMMISSION OF INDIA**

**Case No. 45 of 2012**

**In Re:**

**Kerala Cine Exhibitors Association  
Film Chamber Building, M.G. Road,  
Ernakulam, Cochin, Kerala**

**Informant**

**And**

- 1. Kerala Film Exhibitors Federation  
Cee Pee Building, Kalabhavan Road,  
Ernakulam, Cochin, Kerala** **Opposite Party No. 1**
- 2. Film Distributors Association (Kerala)  
Door No. CC 41/1604, Sopanam Square,  
Arangath Cross Road,  
Ernakulam, Cochin, Kerala** **Opposite Party No. 2**
- 3. Kerala Film Producers Association  
Film Chamber Building, 2<sup>nd</sup> Floor,  
M.G. Road, Ernakulam, Cochin, Kerala** **Opposite Party No. 3**
- 4. Kerala State Chalachitra Academy  
Sasthamangalam,  
Thiruvananthapuram, Kerala** **Opposite Party No. 4**
- 5. State of Kerala  
Department of Cultural Affairs,  
Government Secretariat,  
Thiruvananthapuram** **Opposite Party No. 5**

**CORAM**

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**Mr. Ashok Chawla**  
**Chairperson**

**Mr. S. L. Bunker**  
**Member**

**Mr. Sudhir Mital**  
**Member**

**Mr. Augustine Peter**  
**Member**

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

**Mr. M. S. Sahoo**  
**Member**

**Appearances:**

**For the Informant:** None

**For the Opposite Party No. 1:** Shri Harshad V. Hameed, Advocate and Shri P. V. Basheer Ahmed (President of OP-1)

**For the Opposite Party No. 2:** Advocates Shri Pradeesh Chacko, Shri Arvind Gupta, Shri S. S. T. Subramanian, Shri Debopriyo Pal and Shri Santosh Paul.

**For the Opposite Party No. 3:** None

**For the Opposite Party Nos. 4 & 5:** Shri S. Rajendran Nair



## **Order under Section 27 of the Competition Act, 2002**

The present information was filed under section 19(1)(a) of the Competition Act, 2002 (the 'Act') by Kerala Cine Exhibitors Association (hereinafter, the 'Informant'/ 'KCEA') against Kerala Film Exhibitors Federation (hereinafter, 'OP-1'/ 'KFEF'), Film Distributors Association, Kerala (hereinafter, 'OP-2'/ 'FDAQ'), Kerala Film Producers Association (hereinafter, 'OP-3'/ 'KFPA'), Kerala State Chalachitra Academy (hereinafter, 'OP-4'/ 'KSCA'), and the State of Kerala (hereinafter, 'OP-5') (collectively hereinafter, the 'Opposite Parties') alleging, *inter alia*, contravention of the provisions of sections 3 and 4 of the Act in the matter.

### **2. Brief facts of the Case**

2.1 The Informant is stated to be an association of about 171 cinema theatre owners in the State of Kerala and the members of the Informant are engaged in exhibition of cinema/ running of theatres under licences in Kerala.

2.2 OP-1 is an association of film theatre owners exhibiting new films/ fresh releases having around 315 theatres in Kerala as its members. OP-2 is a trade association of film distributors with about 221 film distributors as its members. OP-3 is an association of film producers in the Malayalam film industry and works to promote, aid, help, encourage and develop the production of Malayalam films. OP-1, OP-2 and OP-3 are registered under Travancore Cochin Literary, Scientific and Charitable Societies Registration Act, 1955. OP-4 is a department under the Government of Kerala which is fully funded by Government and acts as an intermediary between the industry and the State. Board of Directors of OP-4 is appointed by the Government from well known directors, producers, writers, artists *etc.* with one government nominee in the Board. OP-5, the Government of Kerala, is not directly involved in the day to day business of the film industry in the State.



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2.3 The allegations of the Informant are largely directed towards OP-1 and OP-2.

The Informant has alleged that the theatres in Kerala have been classified as Class A & B as per report of a committee set up by OP-4. However, the theatres which are member of the Informant despite having classification of A or B class theatre, do not get fresh releases due to anti-competitive practices adopted by OP-1, OP-2 and OP-3. It has been alleged that members of OP-1 and OP-2 have formed a cartel and are denying the members of the Informant release of new films in their theatres. This conduct also deprives the viewers in far flung areas, where only the members of the Informant have theatres, of new films.

2.4 The Commission after examining the facts and material placed on record *prima facie* noted that members of OP-1 and OP-2 have acted in a concerted manner to ensure that there is a denial of market access to members of the Informant. The Commission *vide* its *prima facie* order dated 09.01.2013 directed the DG to conduct an investigation into the matter.

### **3. Investigation by the DG**

3.1 During the course of investigation, DG *inter alia* relied on information furnished by the Informant, the Opposite Parties and third parties in the form of replies to probe letters, affidavits *etc.*, to examine the role of the Opposite Parties in denying release of new movies in the theatres of the members of the Informant.

3.2 The DG took into account letter dated 12.08.2013 submitted by the Informant which contained undertakings from various theatre owners (members of the Informant) who are eligible to get release of the films as per the norms formulated by OP-5, but are not getting fresh releases. Out of a total of 18 theatres, the theatre owners such as Jaya Vinayaka Theatre, Sangam Theatre, Sree Ram Movies, Subha Theatre, Paratha Movie House, Ganam Movie House, NVP Cinema, GEJO Theatre, M.T. Cinema, Aswathy Movie Theatre, VARSHA Theatre, Sree Lakshmi Theatre and Santosh Theatre in their



respective letters have submitted that they are unable to release movies due to anti-competitive conduct of OP-1. Based on the submissions of the above mentioned theatre owners, DG observed that despite having necessary infrastructure like Air-conditioner, DTS, cafeterias, toilets *etc.* and appropriate classification/ grading from the Government Committee appointed under OP-4, the theatres owned by members of the Informant are not getting fresh releases/ new movies because of the interference from OP-1.

3.3 Shri Basheer Ahmed, President of OP-1 submitted that as per the agreement between OP-1, OP-2, and OP-3, new movies are to be released only in the agreed release centres which have modern facilities. The DG found the response of Shri Basheer Ahmed factually incorrect as many theatres run by members of the Informant have all modern facilities as per the classification report of the Government Committee under OP-4 but were denied new releases. Shri Basheer Ahmed also conceded before the DG that in a joint meeting of the three associations *i.e.*, OP-1, OP-2 and OP-3 on 27.07.2006, it was decided to fix the number of releasing stations of new movies to 48. Further, as per the meeting held on 04.10.2008, the releasing centres were extended to 70. Thus, in a nutshell, the President of OP-1 has taken the defence that wide release cannot be implemented on account of the agreement between the OP-1, OP-2 and OP-3.

3.4 The DG took note of another document submitted by OP-1 which was purportedly an agreement between OP-1, OP-2 and OP-3. As per the said document, in their earlier meeting dated 04.10.2008, OP-1, OP-2 and OP-3 decided to fix the release stations at 70.

3.5 The DG observed that by deciding to exclude many theatres from the ambit of fresh releases, the agreement between OP-1, OP-2 and OP-3 was capable of controlling the supply of new movies in Kerala. It was further held that because of the said agreement, the consumers were not able to watch new movies unless they travel long distances to watch movies in cinema halls in other areas. Besides, the DG also noted that the members of the Informant are



not getting new films/ releases because of which they are suffering losses. Further, as many theatres of Kerala get poor turnout of viewers, the production and sale of pirated CDs, DVDs *etc.* is increasing leading to revenue losses to the State Government.

3.6 The DG also relied on the news clipping of Hindu Newspaper (Kochi edition) dated 16.09.2014 regarding prohibition of wide release of movies on the occasion of Onam and concluded that OP-1 was opposing vehemently the wide release of movies in theatres of 'B' and 'C' categories which are not its members. Further, the DG took into account audio transcription of news report on TV pertaining to the wide release controversy and found that OP-1 is totally against the wide release of movies in the theatres other than its own members.

3.7 Shri Vishwanathan, General Secretary of the Informant filed an affidavit with the DG on 11.11.2014 stating that recently three movies were released in Kerala which were given for exhibition to the members of the Informant months after their being released in the theatres of the members of OP-1. Taking into account all the evidence, the DG concluded that OP-1 by its conduct, has not allowed release of new movies in the theatres which are the members of the Informant.

3.8 The DG also looked into the allegation of the Informant that if any producer(s)/ distributor(s) release new movies in the theatres of the Informant, then the OP-1 bans their movies in its members' theatres and at times even bans/ boycotts the future movies of such producer(s)/ distributor(s). The DG gathered details of the films that were boycotted/ banned by OP-1 for allowing fresh release in theatres of the members of the Informant. In April 2013, Aishwarya Movies informed the Informant that its movie '*Mahatma Ayyankali*' was denied exhibition in the theatres which are under the control and command of OP-1. Another theatre, S. K. Films, informed the Informant *vide* letter dated 30.07.2012 that they are not in a position to exhibit their films



in the Informant's theatres due to the ban imposed with regard to exhibiting new releases in theatres other than those approved by OP-1.

3.9 Though Shri Basheer Ahmed submitted that the movie '*Raasaleela*' was released in the theatres of non-members of OP-1 also, he could not produce any evidence to substantiate the same. He also averred that OP-1 never boycotted or denied the release or exhibition of the film '*Mahatma Ayyankali*' and '*Raasaleela*'.

3.10 As regards the ban on '*Vishwaroopam*', the DG examined the reply of Shri Suresh Kumar, President of OP-3; OP-4; and OP-5. Shri Suresh Kumar, in his statement dated 16.10.2014 stated that OP-1 banned his movies '*Chattakari*' in 2012 as he was trying for a wide release of the movie. Similarly, OP-1 adopted a similar practice for the films '*Kurukshetra*', '*Mayabazar*' in 2008 and Kamal Hassan's film '*Vishwaroopam*' in 2012. OP-4 and OP-5 also confirmed the boycott of the movie '*Vishwaroopam*'. The DG further relied on the affidavit dated 02.12.2014 filed by Shri Shaji Vishwanathan, General Secretary of the Informant stating that the movie '*Vishwaroopam*' was not released in the theatres of OP-1 but was only released in the theatres of the Informant as the producer, Shri Kamal Hassan wanted a wide release of the movie and had not agreed to demands of OP-1 for releasing '*Vishwaroopam*' only in theatres of OP-1.

3.11 To further probe into the allegations of boycott of the movie '*Vishwaroopam*', the DG relied upon the evidences such as Kochi Edition of '*The Hindu*' dated 26.01.2013; statement on oath dated 14.10.2014 of Shri Siyad Koker, President of OP-2; statement on oath dated 20.10.2014 of Shri Basheer Ahmed; and letter dated 22.01.2015 received from Sh. Chandra Hassan, Partner of M/s Raajkamal Films *etc.* Another movie namely, '*Loomier Brothers*' produced by Shri K. J. Antony of M/s V.M.R.P. Productions was also not released by the members of OP-1 as the producer wanted to release in M/s Ganam Movie House, which is a member of the Informant. OP-1 also banned future releases of M/s V.M.R.P. Productions.



3.12 The DG after considering the aforesaid submissions, affidavit on oath of Presidents of OP-2 and OP-3, news clipping of 'The Hindu' and the reply of M/s RaajKamal Film International concluded that the film 'Vishwaroopam' was not displayed in the theatres of OP-1. As such, the allegation levelled by the Informant against OP-1 on this issue was found to be confirmed.

3.13 The DG further looked into the allegations of the Informant that certain producers/ distributors viz. M. M. Hamsa, Kala Sangham Films, Kottayam; K. A. Jaleel, Galaxy Multi Media, Ernakulam; P. Sreekumar, Remya Movies, Palakkad; and Anto, Play House, Ernakulam had not given fresh releases to the members of the Informant. M. M. Hamsa of Kala Sangham Films, in his reply to the DG's notice stated that he had distributed only one film since 2009. It was submitted that the film 'Janapriyan' was not given to the Informant's members as their theatres were not upgraded. He submitted another affidavit *suo-moto* dated 09.01.2015 wherein it was stated that he could not release his film in small towns due to the budget constraints *etc.* Shri K. A. Jaleel, Galaxy Multi Media, Ernakulam also furnished an affidavit dated 09.01.2015 wherein he stated that release of new films was not permitted due to restrictions imposed by OP-1.

3.14 The DG also sent notices to Shri Basheer Ahmed, President of OP-1. He denied any influence on release of movies by producers/ distributors. Shri Siyad Koker, President of OP-2 however categorically stated that distributors are unable to provide new movies to the theatres of the Informant. He stated that the movies are to be firstly supplied to OP-1 theatres and only then films can be supplied to theatres which are the members of the Informant. He also cited an instance wherein Mr. Kamal Hassan actor, producer and director of the movie 'Vishwaroopam' decided for an all India release of his movie in all possible theatres. OP-1 opposed his decision to release the movie in all theatres and wanted the movie to be released only in theatres which are its members. Mr. Kamal Hassan's movie could not be released in OP-1 theatres and as such he incurred heavy losses.



3.15 Shri Siyad Koker also stated that as per State rules/ regulations no NOC/ clearance certificate is required for distribution of films in Kerala but OP-1 is illegally insisting and compelling them to provide a list of all the theatres with whom the film is to be released. He also submitted letters dated 28.10.2008, 23.06.2009 and 07.10.2010 of General Secretary of OP-1 wherein OP-2 was asked to provide the list of release stations and also warned that the mistake of not providing the list of release stations should not be repeated in future.

3.16 Shri G. Suresh Kumar, President of OP-3 submitted before the DG that the Producers are not free to release movies in the theatres of the members of the Informant and movies can be released only in limited agreed theatres of the members of OP-1. Even if theatres of the Informant are well equipped with modern amenities as per the classification made by the committee deputed by the Government of Kerala, movies cannot be released there. He further stated that if the Producers try to release movies in theatres of the Informant, OP-1 boycotts them, leading to huge financial loss for the Producers. Shri G. Suresh Kumar stated that OP-1 has banned his movie 'Chattakari' in 2012. Further, OP-1 had also banned movies like 'Kurukshetra', 'Mayabazar' in 2008 and 'Vishwaroopam' in 2012.

3.17 The DG also took into account the letters received from OP-4. Vide letters dated 26.04.2013 and 06.01.2015, OP-4 stated that OP-1 has not been allowing fresh release of movies in the theatres of the members of the Informant. These theatres get movies belatedly after they have been released and exhibited in the theatres of the members of OP-1 due to which they get much less audience, less revenue, suffer losses and eventually close down. OP-4 highlighted that from 1500 theatres earlier, the number of theatres has now come down to nearly 500. It was mentioned that theatres of Kerala State Film Development Corporation (hereinafter, 'KSFDC') are also not getting fresh releases, even though it owns good quality theatres because OP-1 does not allow release of new movies in theatres other than its members.



3.18 The DG took note of the circular dated 08.02.2008 issued by General Secretary, OP-1 to its members calling for boycott of a film distribution company namely, Pyramid Samira Theatre Ltd. for not following its directions regarding not releasing movies outside the permitted list.

3.19 The OP-5 submitted that the movie 'Vishwaroopam' was boycotted by OP-1 and all its members withdrew from screening that movie. Further, OP-1 banned Pyramid Saimira Theatre Ltd. from Kerala as they released their cinema 'Sound of Boots' in some cinema halls which were not associated with OP-1. Before the DG, KSFDC alleged that OP-1 is blocking producers from releasing their films in the good quality cinema halls owned by it.

3.20 Based on the evidence mentioned above, the DG concluded that OP-1 is prohibiting the release of new movies in the theatres owned by the members of the Informant and also prohibits any distributor/ producer from doing so. Further, it has also banned the release of the movies which were released in the theatres run by members of the Informant. It was concluded that due to large number of theatres of the members of OP-1 and threat of loss of revenue, film distributors are succumbing to the pressure and not giving fresh release to theatres of the members of the Informant or to the theatres of KSFDC. The DG, therefore, reported that the understanding between OP-1, OP-2 and OP-3 for release of fresh movies only in select theatres/ centres was anti-competitive and that the agreement between OP-1, OP-2 & OP-3 to restrict the release of new movies in specified theatres/ centres was violative of section 3(3)(b) read with section 3(1) of the Act.

3.21 The DG further examined whether any cartelisation was perpetrated under the aegis of OP-2. Shri Siyad Kokkar, President of OP-2 in his statement recorded on 14.10.2014 admitted that fresh releases are not being given to members of the Informant and if individual distributors try to release new movies to non-member of OP-1, the film would not be exhibited in the theatres of OP-1 members, resulting in a substantial loss of revenue to the



distributors and producers. In his affidavit on oath dated 28.01.2015 and reply dated 06.01.2015, he further stated that the reasons for such conduct was due to pressure from OP-1.

3.22 The DG, however, found that OP-2 denied release of fresh movies to members of the Informant. Further, it was concluded that OP-2 has entered into an understanding with OP-1 and OP-3 in 2006 and 2008 by which the distribution and exhibition of new movies was to be limited to pre-determined release centres. The DG opined that even though the understanding was reached prior to 2009, the members of OP-2 continued to act as per the mandate of that understanding.

3.23 The DG further examined whether any collusive/ anti-competitive conduct took place under the aegis of OP-3. It is revealed from the DG investigation that even though OP-3 entered into an agreement with OP-2 and OP-1 restricting the release of new movies to specified release centres; from the statement on oath of Shri G. Suresh Kumar, President of OP-3, it is clear that the members of OP-3 want to release movies with the Informant's theatres but due to threat of boycott by OP-1 they are not able to do so. Accordingly, the DG has reported that OP-3 has no direct role in deciding the theatres in which movies are to be released. Further, the DG noted that although OP-3 is a signatory to agreement (in 2006 and 2008) along with OP-1 and OP-2, the agreement is for period prior to 2009. The DG concluded that OP-3 is not actively involved in the alleged cartel along with OP-2 and OP-1 as far as its current conduct is concerned.

3.24 The DG further examined whether any anti-competitive conduct can be attributed to OP-4 and OP-5. As regards OP-4, the DG found that it did not have any direct role in production, distribution or exhibitions of films. A committee was formed by State Government for categorization of various theatres in the State of Kerala and categorized the theatres into three categories *i.e.*, A, B and C based upon facilities and infrastructure such as air conditioner, cafeteria, parking, clean toilets and whether the theatres are fit to



be used as releasing centres. The DG further noted that the categorisation had little effect on the wide release of movies. As such OP-4 was not found guilty of contravention of provisions of section 3 of the Act. As regards OP-5, the DG observed that it has little role in controlling production/ distribution or exhibition of movies. The DG reported that OP-5 has no supportive role in the cartelization between OP-1, OP-2 and OP-3. Accordingly, it was concluded that OP-4 and OP-5 are not guilty of any anti-competitive conduct.

3.25 The DG has identified the key persons/ office bearers of OP-1 and OP-2. In respect of OP-1, though DG indentified all the office bearers to be involved in the functioning of OP-1, it was reported that Shri P.V. Basheer Ahmed, President and M. C. Bobby, General Secretary were mainly responsible for the contravention. Similarly, in case of OP-2, the DG stated that Shri Siyad Koker, President (2012 onwards); Shri M. M. Hamsa, General Secretary (2012 onwards); Shri V.C. George, President (2010-2012); and Shri Jose C. Mundadan, General Secretary (2010-2012) were responsible for the contravention.

#### **4. Reply/ objections of the Parties to the DG report**

##### **Submissions of the Informant**

4.1 The Informant, *vide* affidavit dated 21.04.2015, through their General Secretary submitted that several films were released on the occasion of the festival Vishu during April 2015; none of these films were permitted to be released in the theatres affiliated to the Informant at the instance of OP-1. Therefore, as per the Informant, the anti-competitive conduct of OP-1 continues to prevail.

##### **Reply/ objections of OP-1**

4.2 OP-1 submitted that initially there was only one association of theatre owners *i.e.*, KCEA/ the Informant and it had about 1348 members. Nearly 150 of its



members were releasing movies and others were shifting the movies one after another. OP-1 has submitted that finance for a movie is usually provided by distributors and exhibitors of the films. Once a producer/ distributor had given rights of exhibition to one exhibitor, he could not give rights of exhibition to another exhibitor. At times, huge amounts used to accumulate and theatres owners were not able to continue their operations. Due to such circumstances, the theatres that were advancing huge amounts to producers/ distributors formed another organization namely KFEF *i.e.*, OP-1. The numbers of film release stations were restricted because cost of one centre print was about Rs. 50,000 as well as other expenses. As such, for more prints, producer/ distributor was required to invest more amount of money.

4.3 Over the years, the release stations were increased from 18 in the year 1969 to 70 in the year 2008. The release theatres were fixed by Kerala Film Chamber of Commerce (hereinafter, 'KFCC'), an apex body of Kerala Film industry, consisting of Kerala Film Producers Association, OP-2, the Informant and OP-1. OP-1 has submitted that non-inclusion of KFCC as a necessary party to the proceedings before the Commission has seriously hampered the outcome of the investigation report.

4.4 OP-1 has further contended that DG, during the investigation, placed heavy reliance upon statements/ affidavits of Sh. Siyad Koker, President of OP-2 and Sh. G. Suresh, President of OP-3. Sh. Koker and Sh. Suresh concealed the fact about formation of a body called Self Regulation Council, which consists of 10 members out of which 5 (each) are representatives from OP-2 and OP-3 and they dictate the terms of release *i.e.*, release dates, number of release stations *etc.* in Kerala. OP-1 is not a participant in this Self Regulation Council. OP-1 has further submitted that in movie making business, the distributors and exhibitors provide substantial amount of funds for production of a movie. The associations formulated bye-laws as well as worked as dispute redressal agencies to mediate disputes between exhibitors, producers, distributors *etc.* and functioned in such a manner that once a producer/



distributor agreed to give the business of exhibition to an exhibitor, the producer/ distributor could not then give the rights to another exhibitor.

4.5 In order to justify its conduct, OP-1 submitted that it decided not to exhibit films of such producers in theatres of OP-1 which were exhibited in the theatres of the members of the Informant to avoid unnecessary clashes. It was submitted that since the members of OP-1 had advanced about Rs. 10 crores for Onam Movies, OP-2 and OP-3 decided that these movies will be released only in 303 theatres of OP-1. With regard to the movie 'Mahatma Ayyankali', it was averred that the movie was not banned from theatres of OP-1 but poor collections affected the movie. To defend a ban on the film 'Vishwaroopam', it was submitted that due to pressure by anti-social elements against the movie, the same was not released in the theatres of OP-1.

#### **Reply/ objections of OP-2**

4.6 OP-2 placed written submissions dated 27.04.2015 wherein it was submitted that its Self Regulation Council *i.e.*, Kerala Film Chamber of Commerce (KFCC) is only an apex body and it does not fix the number of theatres for release of movies. The allegations of OP-1 that KFCC is controlling the release of films in Kerala were denied as baseless. Its role in business activities in film industry is only to mediate disputes between trade bodies and members. One of its other functions is to negotiate with Central Government and State Government to avail concessions and benefits for film industry. OP-2 has supported the investigation report to the extent that it implicates OP-1 for controlling and restricting the release of new movies.

#### **Submissions by Shri Siyad Koker, President of OP-2**

4.7 Shri Siyad Koker submitted that OP-2 is not controlling its members in supplying pictures to the theatres in Kerala. Distributors supply pictures to the theatres according to merit of the movie. On 04.10.2008, in a joint meeting of OP-1, OP-2 and OP-3, it was decided to release new pictures in upto a



maximum of 70 theatres. Previously, movies were getting released in 48 theatres. In the last five to six decades, movie theatres have been classified into A, B and C categories. It is a regular practice of distributors to prefer and supply films in 'A' category theatres as they generate maximum footfall and revenue. When the projector system was replaced by the digital system of screening movies, distributors started supplying pictures to more theatres. Bigger theatres were converted to two-three smaller cinema halls. From 1400 theatres, the number has now reduced to about 520 theatres, which are members of OP-1. During Onam festival in 2014, OP-2 requested its members to supply movies to new theatres but due to restrictions from OP-1, members of OP-2 were not able to supply. Shri Siyad Koker further submitted that because of the threats from OP-1 they could not provide new releases to the theatres other than the theatres approved by OP-1.

### **Reply/ objections of OP-3**

4.8 OP-3 was supplied with a copy of the DG report but it has neither filed any written submissions nor presented any oral arguments in the instant matter.

### **Reply/ objections of OP-4 & OP-5**

4.9 OP-4 and OP-5 filed brief submissions to the Commission without making any concrete comments/ objections to the DG report. Further, OP-4 filed its financial statements.

## **5. Issues and Analysis**

5.1 The Commission has perused the DG report, the replies/ objections filed by the Informant and the Opposite Parties along with the material available on record, besides hearing the counsel appearing for the parties. On careful consideration of the matter, the Commission is of the opinion that in order to arrive at a decision, the only issue that needs to be determined in the matter is



as to whether the Opposite Parties have infringed any of the provisions of section 3(3) read with section 3(1) of the Act.

5.2 From the material placed on record, it is an uncontroverted fact that OP-1 was restricting/ limiting the release of new movies in certain theatres. As per OP-1, such restriction stemmed from an agreement between OP-1, OP-2 and OP-3 whereby it was agreed that the new movies will only be released in theatres which had modern facilities like AC, DTS, cafeterias, toilets *etc.*

5.3 The aforesaid issue requires determination of two points — firstly, whether OP-1, OP-2 and OP-3 acted contrary to the provisions of the Act by entering into such an agreement wherein they decided the criteria for short listing theatres which would be getting fresh releases and secondly, whether the justification proffered by them *i.e.*, the criteria of modern facilities was actually used as a basis in a non-discriminatory manner. On the latter, the DG has found enough evidence to show that there were many theatre owners, who are the members of the Informant and equipped with modern facilities and were eligible to get release of the films as per the norms formulated by OP-5, but were not getting fresh releases. The members of the Informant have unanimously submitted before the DG that they are unable to release movies due to the anti-competitive conduct of OP-1. Further, documents have also been placed before the Commission which show that some of the members of OP-1 were getting fresh releases in spite of the fact that they did not own the infrastructure required as per the classified list of the Committee appointed under OP-4. The DG has placed on record undertakings from various theatre owners (members of the Informant) who were eligible to get fresh releases but were denied instead. Further the DG also placed on record the list of theatre owners (members of OP-1) who were ineligible to get fresh releases as per the classification done by the Committee appointed by the Government of Kerala under OP-4 but were getting fresh releases. A combined reading of both these facts *i.e.*, despite having necessary infrastructure and appropriate classification/ grading from the Committee appointed by the Government of Kerala under OP-4, the theatres owned by members of the Informant were not



getting fresh releases/ new movies and the members of OP-1 were getting new releases despite not having such facilities and classification/ grading leads to only one inference that the same happened because of the interference from OP-1.

5.4 The next point which requires determination, *i.e.*, whether OP-1, OP-2 and OP-3 acted contrary to the provisions of the Act by entering into such an agreement. There is no denial that an agreement was entered into between OP-1, OP-2 and OP-3. The Commission has taken note of the document submitted by OP-1 in this regard before the DG. As per the said agreement, in their meeting dated 06.10.2008, OP-1, OP-2 and OP-3 fixed the number of release stations at 70 and it was further decided that the new releases will not be given to any other theatre apart from the 70 theatres agreed upon. It was further decided that in case any other theatre comes up with modern facilities such as AC, DTS infrastructure, there shall be a joint meeting of OP-1, OP-2 and OP-3 to take a decision in this regard. Further, in the English translation of the meeting held on 06.10.2008 where OP-1, OP-2 and OP-3 took such decision, it was stated as follows:

*'The Joint Directors at the meeting of the office bearers and members of the Managing Committee of the Kerala Film Exhibitors Federation, Kerala Film Producers Association, Film Distributors Association (Kerala), held on 06.10.2008 at the Conference Hall of the Gokulam Park, Ernakulam, pursuant to the decisions of the joint meeting held on 04.10.2008 at the Grand Hotel Ernakulam to decide which are the 70 release stations fixed in Kerala and to discuss the other matters relating thereto.'*

5.5 A plain reading of the terms of the agreement makes it clear that OP-1, OP-2 and OP-3 were trying to control the new releases under the garb of ensuring modern facilities. Further the same was signed by the representatives *i.e.*, the respective Presidents of OP-1, OP-2 and OP-3.



5.6 The Commission has already noted that the modern facility plea taken the OP-1 was a ruse as many theatres of the members of OP-1 which did not have these facilities were getting new releases whereas many theatres of the members of the Informant which have these facilities were denied new releases. Even otherwise, the Act condemns such decisions taken by the associations which limits/ restricts the supply of goods/ services and affects competition in the market.

5.7 Undoubtedly, the trade associations are for building consensus among the members on policy/ other issues affecting the industry and to promote these policy interests with the government and with other public/ private players. The activities of any Association(s) should not be intended to restrain competition or to harm consumers. Neither the Association nor any of its committees or activities should be used for the purpose of bringing about or attempting to bring about any understanding or agreement, written or oral, formal or informal, express or implied, between and among competitors with regard to practices of limiting or controlling production, supply, markets *etc.* The trade associations provide a forum for entities working in the same industry to meet and to discuss common issues. They carry out many valuable and lawful functions which provide a public benefit *e.g.*, setting common technical standards for products or interfaces; setting the standards for admission to membership of a profession; arranging education and training for those wishing to join the industry; paying for and encouraging research into new techniques or developing a common response to changing government policy. However, when these trade associations transgress their legal contours and facilitate collusive or collective decision making, with the intention of limiting or controlling the production, distribution, sale or price of or trade in goods or provision of services by its members, it amounts to violation of the provisions of the Act. This has happened in the instant case.

5.8 The Associations *i.e.*, OP-1, OP-2 and OP-3 have transgressed their legal contours and indulged in collective decision making to limit and control the exhibition of films in the theatres other than the ones owned by the members



of OP-1. The Commission does not see any rational justification for prescribing such criteria which is exclusionary in nature. The Commission observes that the Committee formed under OP-4 physically inspected various theatres in the State of Kerala and categorized them into Category A *i.e.*, the best theatres (approved as releasing centres), Category B (approved as releasing centres) and Category C (not fit as releasing centres). This categorization was based on the existing facilities at the theatres like UFO, DTS systems, QUBE systems, air conditioning, cafeteria, parking, clean toilets and other facilities. The objective of the categorization was to give wide release to those theatres which are fit for getting new releases. Further, this would also act as an incentive to the C category theatres to improve their facilities and to qualify as release centres.

5.9 However, the agreement between OP-1, OP-2 and OP-3 in limiting the theatres to 70 without any logical basis was nothing but the manifestation of their anti-competitive conduct to benefit the members of OP-1 at the expense of other theatre owners and movie goers *i.e.*, consumers. The Commission has already discussed that some of these selected theatres did not have the modern facilities while some of the other theatres which were not included in this list were well equipped with modern facilities as per the categorization of the Committee formed under OP-4. Therefore, the agreement is in contravention of section 3(3)(b) read with section 3(1) of the Act as the same is limiting/restricting and controlling the supply of new releases in the market. The Commission agrees with the DG that although this agreement is of period prior to 2009, the same was perpetuated/ followed even post 2009 as is evident from the material placed on record. Thus, the plea taken by Shri Basheer Ahmed, President of OP-1 that wide release can only be given in theatres having modern amenities like AC, DTS, cafeterias, toilet, spacious parking *etc.* as per classification done by OP-4 is liable to be rejected.

5.10 Having established that the agreement dated 06.10.2008 entered into between OP-1, OP-2 and OP-3 is anti-competitive in violation of section 3(3)(b) read



with section 3(1) of the Act, it is pertinent to determine the liability of OP-1, OP-2 and OP-3 in the said arrangement.

5.11 The Commission has noted the observations of the DG and response of OP-1, OP-2 and OP-3 in this regard. It is relevant to note that OP-1, OP-2 and OP-3 are associations and practice carried on or decision taken by any of these associations would individually also bring their conduct to be liable under section 3(3) read with section 3(1) of the Act. OP-2 and OP-3 have denied their active involvement in the agreement dated 04.10.2008 and averred that they acted under the pressure and threat from OP-1.

5.12 There is enough evidence on record which shows that the conduct of denial of fresh release to the members of the Informant was perpetrated by OP-1. Audio transcription of the news report on TV channel 'Reporter' was submitted by the DG which was telecasted before Onam. In the said TV programme, Shri P.V. Basheer Ahmed, President of OP-1 stated that *'Nothing will happen, tomorrow only federation's 303 theatres will screen Onam movies, nobody will give any movie to any other theatres. In no way will wide release be allowed'*.

5.13 This statement shows that OP-1 was ensuring that the theatres other than its members would not get any new releases. It is clear that OP-1 also ensured the same by spreading the said diktat through television. There were similar instances mentioned in the DG report, as highlighted in earlier part of this order, substantiating active involvement of OP-1 in ensuring that members of the Informant do not get new releases. Therefore, active involvement of OP-1 is beyond doubt. The activities and conduct of OP-1 have resulted in limiting/restricting the distribution of film in the market. Further, it is evident from the findings of the DG that OP-1 took the decision to boycott all such films which were displayed in the theatres of the members of the Informant. Therefore, it is revealed that OP-1 and its members wanted to display the movie only in their theatres exclusively and not in the theatres of the



members of the Informant. Such conditions of exclusivity go against the spirit of competition.

5.14 Further it was also noticed by the Commission that OP 1 was keeping a track as to whether the decision i.e. the agreement entered into between OP-1, OP-2 and OP-3 is being complied with or not. It will be pertinent to illustrate a letter dated 23.06.2009, sent by Shri M.C. Bobby, General Secretary of OP-1 to the General Secretary of OP-2. In the said letter, OP-1 directed OP-2 to direct its members not to violate the decision taken by them jointly with regard to releasing film only in theatres decided upon by them. A similar letter was again sent by OP-1 to OP-2 on 07.10.2010 indicating displeasure of OP-1 regarding violation of the decision taken by the joint agreement in 2008 by members of OP-2.

5.15 From the aforesaid, it is clear that OP-1 has imposed restrictions to limit the market of film distribution/ exhibition business in the State of Kerala. The above conduct and action of the OP-1 has led to controlling the film industry in the instant case causing an adverse effect on competition within the film exhibition market in Kerala and such conduct is in contravention of section 3(3)(b) read with section 3(1) of the Act.

5.16 OP-2 has submitted that it succumbed to the dictates of OP-1. It is to be noted that OP-2 is the association of film distributors who are responsible for the release of the films to the individual exhibitors. Sh. Siyad Koker has accepted before the DG that fresh releases are not being given to the members of the Informant. Further, he also highlighted that though individual distributors may release new movies to any theatre which is not a member of OP-1, such film would not be displayed in the theatres of the members of OP-1, resulting in a substantial loss of revenue to the distributors and producer.

5.17 The Commission acknowledges that even though OP-2 acted under the pressure of OP-1, there is no denial of the fact that OP-2 indeed entered into an agreement with OP-1 *vide* which they have agreed to release the movies



only at the pre-determined release centres. Therefore, as an association they have agreed not to release fresh movies to the members of the Informant. Thus, it is apparent that the allegation against OP-2 for non-supply of new release to the members of the Informant is correct. It is a matter of record that OP-2 has been a party to the agreements signed in 2006 and 2008 *vide* which the distribution and exhibition of new movies were to be limited to pre-determined release centres. President of OP-2, Shri Siyad Koker in his statement on oath before the DG stated that there is no formal agreement. However, admittedly there was an agreed list of theatres pertaining to the members of OP-1, and members of OP-2 were supposed to release the movies in these theatres only.

5.18 The Commission is of the view that the arrangement accepted by Shri Siyad Koker *i.e.*, informal arrangement/ decision taken at a meeting by the OP-1, OP-2 & OP-3 suffices the essentials of an 'agreement' as defined under the Act. As per the provision of section 2(b) of the Act;

*"Agreement includes any arrangement or understanding or action in concert: - (i) whether or not, such arrangement, understanding or action is formal or in writing; or (ii) whether or not such arrangement, understanding or action is intended to be enforceable by legal proceedings."*

5.19 The aforesaid decision to release the new movies only in the theatres of the members of OP-1 clearly falls within the ambit of an agreement as per the section 2(b) of the Act. Although the agreement itself is said to have taken place prior to 2009, however OP-2 by its conduct has been perpetuating/ following the essence of this agreement even thereafter by not allowing release of new films to the members of the Informant. Since OP-2 is an association of distributors and it entered into the agreement on behalf of its members, the agreement/ understanding or practice carried on by it is liable to be looked into under section 3(3) of the Act. From the evidence placed on record, it is clear that OP-2 is guilty of not distributing movies to the theatres

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of the members of the Informant and thus violating section 3(3)(b) read with section 3(1) of the act. This conduct of OP-2 has led to controlling of the market as well as limiting the distribution/ supply of new releases in the market. Accordingly, the Commission is of the view that such conduct clearly falls within the mischief of the provisions of section 3(3)(b) read with section 3(1) of the Act.

5.20 In view of the foregoing, it is clear that OP-2 was following the diktats of OP-1 and acting in pursuance of the agreement that was entered into between them in 2008. The aforesaid has been noted to be factually correct as the film 'Vishwaroopam' which was displayed in the theatres of the members of the Informant was not allowed to be released in theatres of the members of OP-1. Similarly other movies like 'Loomier Brothers', 'Mahatma Ayyankali' etc., were not allowed to be displayed in the theatres of the members of OP-1 because the distributors had given release to the members of the Informant. The Commission has no doubt that OP-2's conduct post-2009 in denying fresh releases to the theatres of the members of the Informant was anti-competitive in nature. OP-2 has submitted that theatres of the members of OP-1 are in revenue yielding districts, corporations and municipalities and as such a film cannot gain much revenue if it is not displayed in the theatres of OP-1 members. Therefore, it was claimed that OP-2 has no option but to succumb to the diktats of OP-1 to protect the commercial interest of its members. This, in view of the Commission, can at best be a mitigating factor while prescribing penalty in the instant matter. The same cannot absolve OP-2 of its liability under the Act.

5.21 Thus, OP-2 association is guilty of acting in tandem with OP-1 by denying fresh release to the theatres of the Informant. It is also guilty of signing and complying with an anti-competitive agreement with OP-1 and OP-3, limiting the distribution of movies to pre-determined release centres thus, violating the provisions of section 3(3)(b) read with section 3(1) of the Act. Further, it is to be noted that OP-1 and OP-2 have not been able to rebut the



presumption raised under section 3(3) of the Act by showing that these agreements do not have appreciable adverse effect on competition.

5.22 As regards OP-3, the evidence on record shows that though it entered into the agreement with OP-1 and OP-2 in 2006 and 2008, it tried wide release of few films without bothering about the diktats of OP-1. From the public statements supporting wide release given by Shri G. Suresh, President of OP-3 there is opposition to the agreement to not release the films in the theatres of the members of the Informant.

5.23 OP-3 is an association of producers and as such the producers do not appear to have a direct role in the distribution of movies to the exhibitors who get new releases from the distributors. The Informant has also submitted the same while including OP-3, along with OP-4 and OP-5 as necessary parties in the proceedings. With regard to OP-3, the agreement placed before the Commission certainly shows that OP-3 was the party to the agreements dated 27.07.2006 and 06.10.2008. However, both these agreements pertain to a period prior to 20.05.2009 *i.e.*, the date when the relevant provision of the Act (section 3) came into force. The liability of OP-1 and OP-2, as established in preceding paragraphs, emanates mainly from their conduct post-2009 which was found to be anti-competitive. The agreements of 2006 and 2008 were relied upon by the DG and the Commission to show that their conduct post-2009 was certainly an extension of their past collusion agreement to act in an anti-competitive manner. Therefore, the liability of the OP-3 would also arise only when it is shown that the conduct of OP-3 pursuant to this agreement post-20.05.2009 is anti-competitive. The Commission notes that though OP-3 signed the agreement with OP-1 and OP-2 in 2006 and 2008, it did not comply with the decisions taken therein. Shri G. Suresh also denied complicity of OP-3 in any anti-competitive conduct which shows that the producers were having no issues with releasing the movies in the theatres of the members of the Informant.

5.24 Further, the members of OP-3 and its President by their conduct do not seem to be opposing the wide release to members of the Informant. Rather, the



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statements and affidavits of Shri G. Suresh Kumar, President of OP-3, as collected by the DG, are supportive of wide release. Considering the above, the Commission is of the view that OP-3 is not said to be actively involved in the alleged anti-competitive along with OP-1 and OP-2. It is observed that although OP-3 is a signatory to the agreement along with OP-1 and OP-2 (in 2006 and 2008), the agreement pertained to a period prior to 2009 and there is nothing on record to indicate that OP-3 indulged in any anti-competitive conduct post-2009. On the basis of aforesaid, the Commission is of the view that OP-3's conduct is not in contravention of the provisions of the Act.

5.25 The Commission notes that OP-4 *i.e.*, Kerala Chalachitra Academy is a society which is fully funded by the government by way of grants. It is an organ of the State which is formed to facilitate the film industry in the State. The Commission is of the view that OP-4 as such does not have any role in the activities of production, distribution or exhibitions of films and does not seem to be acting in any anti-competitive manner in the instant case.

5.26 As regards the allegations of cartelization against OP-5, the Commission observes that the functions of OP-5 are limited to regulating the exhibition of the movies in terms of the Kerala Cinema Regulation Act, 1958 and the Rules made there under. The Commission is of the opinion that OP-5 has no role in controlling the production/ distribution or exhibition of the movies and the allegations of cartelization against OP-5 are not tenable.

5.27 Thus, based on the above analysis, the Commission arrives at the conclusion that by controlling and limiting the distribution of movies to pre-determined release centres in Kerala through an agreement, OP-1 and OP-2 have infringed the provisions of section 3(3)(b) read with section 3(1) of the Act. However, OP-3, OP-4 and OP-5 are not found to be in contravention of any of the provisions of section 3 of the Act in the present case.

5.28 The persons in charge of and responsible for the conduct of contravening company/ association are also deemed to be liable under section 48 of the



Act. The DG has identified persons who were in charge of and responsible to OP-1 and OP-2 for the conduct of their business during the time when the alleged act of contravention was committed for the purpose of determining liability under section 48 of the Act. The Commission has noted the findings of the DG in this regard and forwarded the copies of the DG report to the identified officials for filing their respective reply/ objections. After considering the material placed on record, it is found that Shri P.V. Basheer Ahmed (President, OP-1), Shri M.C. Bobby (General Secretary, OP-1), Shri V.C. George [Former President (2010-12), OP-2], Shri Jose C. Mundadan [Former General Secretary (2010-12), OP-2], Shri Siyad Koker [Present President (2012-till date), OP-2] and Shri M.M. Hamsa [Present General Secretary (2012-till date), OP-2] are responsible for the contravention on the part of OP-1 and OP-2. During the period of contravention, they were actively involved in the affairs of their respective associations and as such they are responsible for the anti-competitive decision making by their respective associations. Therefore, the Commission is of the opinion that these office bearers are liable under section 48 of the Act.

### **Order**

6. Considering the findings elucidated in the earlier part of this order, the Commission directs OP-1 and OP-2 and its office bearers listed above to cease and desist from indulging in the practices which are found to be anti-competitive in terms of the provisions of section 3 of the Act in the preceding paragraphs of the order.
7. With regard to penalty under section 27 of the Act, the Commission is of the considered view that the said anti-competitive conducts require to be penalized to cause deterrence in future among the erring entities engaged in such activities. It has been seen that the present OP-1, OP-2 and many similar associations at different levels in the film industry indulge in such anti-competitive activities. Accordingly, it is required that the penalty is adequate enough to create deterrence.



8. Having regard to all these factors, the Commission feels it appropriate to impose a penalty on OP-1 at the rate of 7% of its receipts based on the financial statements for two years filed by it as follows:

<b>Year</b>	<b>Turnover/ Receipts During the Year (In Rs.)</b>
2010-11	779684.22
2011-12	824145.24
<b>Total</b>	<b>1603829.46</b>
<b>Average</b>	<b>801914.73</b>
7% of Average Turnover (Penalty Amount)	56,134/- (rounded)

9. Resultantly, a penalty of Rs. 56,134/- (Rupees Fifty Six Thousand One Hundred Thirty Four only) — calculated at the rate of 7% of the average income of OP-1 for two financial years 2010-11 and 2011-12 is hereby imposed on OP-1.

10. With regard to OP-2, it is evident that OP-2 succumbed to the diktats of OP-1 to protect the commercial interest of its members. Keeping in view this mitigating factor, the Commission feels it appropriate to impose a penalty at the rate of 3% of its receipts based on the financial statements filed by them as follows:

<b>(Year)</b>	<b>Turnover / Receipts During the year (In Rs.)</b>
2011-12	1149144.70
2012-13	1513154.68
2013-14	1856591.00
<b>Total</b>	<b>4518890.38</b>
<b>Average</b>	<b>1506296.79</b>
3% of Average Turnover (Penalty Amount)	45,189/- (rounded)



11. Resultantly, a penalty of Rs. 45,189/- (Rupees Forty Five Thousand One Hundred Eighty Nine only) — calculated at the rate of 3% of the average income of OP-2 for three financial years 2011-12, 2012-13, and 2013-14 is hereby imposed.
12. With regard to individual liability under section 48 of the Act, the Commission has already identified persons who were in charge of and responsible to OP-1 and OP-2 for the conduct of their business during the time when the alleged act of contravention was committed for the purpose of determining liability under section 48 of the Act. The Commission directed them to file their income statements/ Income Tax Returns of the last 3 financial years. Based on the reasoning provided in earlier parts of this order, the Commission feels it appropriate to impose a penalty at the rate of 7% of the income on the office bearers of OP-1. Keeping in view the penalty imposed on OP-2, a penalty at the rate of 3% of the income on the office bearers of OP-2 may be imposed accordingly. The respective penalties of the office bearers based on the income statements filed by them are provided as follows:

**Office Bearers of OP-1 (Income in Rs.)**

<b>Year</b>	<b>P.V. Basheer Ahmed</b>	<b>M. C. Bobby</b>
2011-12	920227	-
2012-13	771685	490490
2013-14	0	683510
2014-15	-	259358
<b>Total</b>	1691912	1433358
<b>Average</b>	563970.67	477786
7% of Average Income (Penalty Amount)	39,478/- (rounded)	33,445/- (rounded)



**Office Bearers of OP-2 (Income in Rs.)**

<b>Year</b>	<b>M. M. Hamsa</b>	<b>V. C. George</b>
2011-12	-	270000
2012-13	16209	300000
2013-14	3755268	300000
2014-15	861578	-
<b>Total</b>	4633055	870000
<b>Average</b>	1544351.67	290000
3% of Average Income (Penalty Amount)	46,331/- (rounded)	8,700/-

13. Resultantly in case of office bearers of OP-1, a penalty calculated at the rate of 7% of the average income for financial years, Rs. 39,478/- (Rupees Thirty Nine Thousand Four Hundred Seventy Eight only) is imposed on P.V. Basheer Ahmed and Rs. 33,445/- (Rupees Thirty Three Thousand Four Hundred Forty Five only) is imposed on M. C. Bobby. Similarly, in case of office bearers of OP-2, a penalty calculated at the rate of 3% of the average income for financial years, Rs. 46,331/- (Rupees Forty Six Thousand Three Hundred and Thirty One only) is imposed on M. M. Hamsa, and Rs. 8,700/- (Rupees Eight Thousand Seven Hundred only) is imposed on V. C. George. No penalty is imposed on Mr. Siyad Koker and Mr. Jose C. Mundadan as their income during the above stated financial years was shown nil in the income statements filed by them.

14. Before parting with this order, it may further be noted that the Commission started proceedings under section 43 of the Act against OP-2 and some of its office bearers for non-compliance of the orders of the Commission. The Commission intends to dispose of the said proceedings by a separate order.



15. OP-1, OP-2 and their office bearers identified above are directed to deposit the amount of penalty imposed upon them within 60 days of the receipt of this order.

16. The Secretary is directed to inform the parties accordingly.

**Sd/-**  
**(Ashok Chawla)**  
**Chairperson**

**Sd/-**  
**(S. L. Bunker)**  
**Member**

**Sd/-**  
**(Sudhir Mital)**  
**Member**

**Sd/-**  
**(Augustine Peter)**  
**Member**

**Sd/-**  
**(U. C. Nahta)**  
**Member**

**Sd/-**  
**(M. S. Sahoo)**  
**Member**

**New Delhi**

**Dated: 23/06/2015**