



**COMPETITION COMMISSION OF INDIA**

**Case No. 11 of 2020**

**In Re:**

**PF Digital Media Services Ltd.**

**Informant No. 1**

Building H, 2<sup>nd</sup> Floor, Mainframe IT  
Park, Royal Palms,  
Near Arrey Colony  
Goregaon, East,  
Mumbai-400065

**Ravinder Walia**

**Informant No. 2**

10<sup>th</sup> Floor, Menoti Mahal,  
Behind Being Human Showroom,  
Santacruz (West)  
Mumbai-400054

**And**

**UFO Moviez India Ltd.**

**Opposite Party No. 1**

Plot No. 53/1, Road No.07,  
Marol MIDC, Andheri (East),  
Mumbai-400093

**Scrabble Digital Ltd.**

**Opposite Party No. 2**

Plot No. 53/1, Road No.07,  
Marol MIDC, Andheri (East),  
Mumbai-400093

**Qube Cinema Technologies Pvt. Ltd.**

**Opposite Party No. 3**

No.42, Dr. Ranga Road  
Mylapore  
Chennai-600004



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## CORAM

**Mr. Ashok Kumar Gupta**  
**Chairperson**

**Ms. Sangeeta Verma**  
**Member**

**Mr. Bhagwant Singh Bishnoi**  
**Member**

### **Present**

*For PF Digital Media Pvt. Ltd. (IP-1)*  
*& Ravinder Walia (IP-2)*

Ms. Nancy Roy, Advocate  
Ms. Niyati Kohli, Advocate  
Ms. Megha Bengani, Advocate  
Mr. Shashank Trivedi, Advocate  
Mr. Niraj Sanghai, Authorised Representative

*For UFO Moviez India Ltd. (UFO*  
*Moviez/OP-1)*

Mr. Arun Kathpalia, Senior Advocate  
Ms. Bani Brar, Advocate  
Mr. Karan Singh Chandhiok, Advocate  
Mr. Avinash Amarnath, Advocate  
Mr. Upender Thakur, Advocate  
Mr. Rajesh Mishra, Party-in-person  
Mr. Zameer Nathani, Party-in-person

*For Scrabble Digital Ltd. (Scrabble*  
*Digital/OP-2)*

Mr. Arun Kathpalia, Senior Advocate  
Ms. Bani Brar, Advocate  
Mr. Tejveer Bhatia, Advocate  
Mr. Rahul Rai, Advocate  
Ms. Prachi Agarwal, Advocate  
Mr. Salman Qureshi, Advocate  
Mr. Sanjay Jain, Party-in-person



*For Qube Cinema Technologies Pvt. Ltd.* Mr. Bharat Budholia, Advocate  
(*Qube Cinema Technologies/OP-3*) Ms. Aishwarya Gopalakrishnan, Advocate  
Ms. Mahalakshmi. S, Party-in-person

**Order under Section 26(1) of the Competition Act, 2002**

1. In the present case, an information has been filed by PF Digital Media Services Ltd. (“**PF Digital Media/Informant No. 1**”) and Mr. Ravinder Walia (“**Informant No. 2**”) under Section 19(1)(a) of the Competition Act, 2002 (the “**Act**”) against UFO Moviez India Ltd. (“**UFO Moviez/Opposite Party No. 1**”), Scrabble Digital Ltd. (“**Scrabble Digital/Opposite Party No. 2**”), Qube Cinema Technologies Pvt. Ltd. (“**Qube Cinema Technologies/Opposite Party No. 3**”), Globe Theatres Pvt. Ltd. (“**Globe Theatres /Opposite Party No. 4**”), Imperial Cinema Pvt. Ltd. (“**Imperial Cinema/Opposite Party No. 5**”), FICCI Multiplex Association of India (“**MAI/Opposite Party No. 6**”) and Indian Film and TV Producers Council (“**IFTPC/Opposite Party No. 7**”) alleging contravention of the provisions of Sections 3 and 4 of the Act.

***Facts and allegations, in brief, as per information***

2. Informant No. 1, *i.e.* PF Digital Media, a listed company incorporated under the Companies Act, 1956, is a subsidiary of Prime Focus Limited (“**PFL**”) and is engaged in the business of post-production processing of cinematograph films. It converts cinematograph films from their traditional formats to digital formats. PF Digital Media entered the field of post-production activities in November 2018, although the company has been involved in other activities since 2011.
3. Informant No. 2, *i.e.* Mr. Ravinder Walia, is a producer, who has produced a movie by the name *Roam Rome Mein*. He has been in the field of cinematograph films for more than 15 years and has produced many movies. PF Digital Media has carried out post-production processing for his film *Roam Rome Mein*.



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4. Opposite Party No. 1, *i.e.*, UFO Moviez, is a company incorporated under the Companies Act, 1956 and is, *inter alia*, involved in the supply of Digital Cinema Equipment (“DCE”) to Cinema Theatre Owners (“CTOs”). Opposite Party No.2, *i.e.* Scrabble Digital is the wholly owned subsidiary of UFO Moviez and does the same work as PF Digital Media. It has been stated that, as per the statement of Scrabble Digital, available on its website, it controls almost 90 per cent of the post-production activities in the country.
5. It has been alleged that UFO Moviez has entered into anti-competitive agreements with CTOs to help and assist the business of Scrabble Digital. It has been alleged that such agreements are in violation of competition law and are aimed at maintaining/enhancing the market for Scrabble Digital.
6. Opposite Party No. 3, Qube Cinema Technologies, a company incorporated under the Companies Act, 1956 is also a supplier of DCE like UFO Moviez and is alleged to be under the control of UFO Moviez. It has been stated that a merger of UFO Moviez and Qube Cinema Technologies was attempted but was withdrawn in terms of order dated 24.10.2019, passed by the Hon’ble National Company Law Appellate Tribunal in Company Appeal (AT) No. 48 of 2019.
7. Globe Theatres and Imperial Cinemas are CTOs who were arrayed as Opposite Party No. 4 and Opposite Party No. 5, *i.e.*, who are stated to have entered into equipment lease agreements dated 12.10.2015 and ‘Nil’ with UFO Moviez, respectively. These are stated to be instances of agreements executed by UFO Moviez which are alleged to be in violation of provisions of the Act. As per the Informants, there are 1064 CTOs with whom such agreements have been executed. It has been alleged that all CTOs using DCE supplied by UFO Moviez have anti-competitive clauses in their agreement.
8. MAI, which was arrayed as Opposite Party No. 6, is the only body of multiplex cinema operators. IFTPC, arrayed as Opposite Party No. 7, is stated to be one of the largest industry associations with the maximum number of active film and television producers, a body



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representing a total of more than 500 members. IFTPC is also alleged to be aggrieved by the illegal strategies adopted by UFO Moviez and Scrabble Digital. IFTPC had joined the cause of the Informants by filing an impleadment application in the commercial suit filed by the Informants before the Hon'ble Delhi High Court being CS(Comm) 233 of 2019.

9. It has been stated that the Informants are aware of only two equipment lease agreements executed between UFO Moviez, Globe Theatres and Imperial Cinemas, which contain exclusivity clauses. Accordingly, only two cinema theatre owners have been arrayed as parties in the present information.
10. It has been stated that the journey of a cinematograph film starts from its shooting at the locations, to its post-production processes in the laboratory, to distribution to the cinema theatre owners, to the ultimate public viewing. There are various entities involved at each stage of the journey of a cinematograph film. Due to the advent of technology, the distribution of a cinematograph film to various cinema theatre owners has transitioned to digital distribution from distribution through cinematograph film rolls. The digitally distributed cinematograph film can be played by cinema theatre owners only through a DCE, and only a digitised version is played. Such compatible digitisation is achieved through post-production processing by digital cinema laboratories like PF Digital Media and Scrabble Digital.
11. Digital distribution of cinematograph films could be achieved only if all the DCEs were to follow a particular international standard. To maintain a level playing field amongst the various entities involved, standardisation of digital formats is necessary. In order to achieve standardisation, an association of all major producers formed an entity called Digital Cinema Initiatives (“DCI”), which consists of seven motion picture studios, namely, Disney, Fox, MGM, Paramount Pictures, Sony Pictures Entertainment, Universal Studios and Warner Brothers Studios. This association was formed to establish uniform specifications for digital cinema.



12. It has been stated that DCE, which is compliant with international standards dictated by DCI, displays every digital print of any cinematograph film in compliance with such international standards. It has been alleged that no person is entitled to tamper with these standards to claim a monopolised market. Accordingly, no fetter can be imposed by any party on such digital display of a cinematograph film through a software lock. Any such lock placed by the equipment supplier would defeat the purpose of digitisation and the efforts of DCI.
13. It has been stated that DCE can either be purchased outright or taken on lease. In view of the fact that DCE is an expensive equipment to be purchased by a CTO, it is usually taken on lease.
14. UFO Moviez executes an equipment lease agreement with the CTOs if DCE is taken on lease from it. One such equipment lease agreement contains the following clauses:

*“E The Exhibitor, in consideration of the Lessor giving Equipment(s) on lease basis, irrevocably agrees to exclusively source the Content from the Lessor or its Affiliates and further permits and grants the right to Lessor or its Affiliates to exclusively collect and retain Virtual Print Fee (defined hereinafter), on the terms and conditions as enumerated herein below in this Agreement.*

*5.1 Throughout the Equipment Lease Term, the Exhibitor shall not do or prevent from doing or omit to do any act which may result in a failure of a Contracted Property to be DCI Compliant Property, if at the time of installation of the Equipment(s) in such Contracted Property is declared as a DCI Compliant Property (including, without limitation, uninstalling any Equipment(s) that has been installed by the Lessor.*

*5.2 During the Agreement Term, the Exhibitor shall not exhibit any Content other than Content provided by the Lessor or its Affiliates and shall use the Equipment(s) only for the purposes of exhibiting the Content supplied exclusively by the Lessor or its Affiliates.*



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7.1 *The Parties agree that UFO shall have the exclusive right to provide the Content to all the Theatre Auditorium(s)/Screen(s) in the Contracted Properties of the Exhibitor. The Exhibitor hereby irrevocably agrees to exclusively source the Content from UFO and undertakes neither to engage itself, nor to engage the services of any third party for providing the Content in any of their Theatre Auditorium(s)/Screen(s) in the Contracted Properties.*

7.2 *In consideration of the Equipment being provided by UFO on lease to the Exhibitor and UFO's exclusive right to provide the Content to the Exhibitor, the Exhibitor shall during the FPF Term irrevocably agrees to exclusively source the content from the UFO and further permits and grants the exclusive right to UFO to collect and retain the Virtual Print Fee with respect to the provisioning and delivery of the content to the Exhibitor at the Theatre Auditorium(s)/Screen(s) in the Contracted Properties as detailed in "Schedule-3" to this Agreement.*

7.3 *The Exhibitor further agrees that it shall neither charge Major Hollywood Studios or any of its Affiliates nor permit any third party to charge Virtual Print Fee or any other similar charges/fees for exhibition of a Content Title in digital form in the Theatre Auditorium(s)/Screen(s) in the Contracted Properties, whether such exhibition occurs during or after the expiration of the VPF Term.*

7.4 *During the Agreement Term, the Exhibitor shall use the Equipment(s) deployed by the Lessor only for the purposes of exhibiting the Content exclusively provided by UFO or its Affiliates and shall not exhibit any Content other than the Content provided by UFO.*"

15. The Informants have stated that Scrabble Digital is in the business of post-production processing of cinematograph films. It has been alleged that, in order to restrict the availability of a DCE, UFO Moviez has disabled the DCE that it has supplied on lease to CTOs from accepting or playing any cinematograph film which has not been post-production processed by Scrabble Digital. This is achieved through the acceptance of a Key Delivery Message ("KDM") generated only by Scrabble Digital. Informants have stated



that this has been admitted by UFO Moviez. According to the Informants, the illegal conduct of Opposite Parties No. 1 and 2 is evident from emails dated 18.03.2019 issued by Scrabble Digital to Viacom 18 and Zee Studios, wherein the said Opposite Parties have admitted their illegal conduct and stated as follows:

*“Considering the fact the DCE are owned by UFO and VPF collection is to be done by UFO, in order to synchronise this activity, it is an agreed position that UFO’s DCN will exclusively receive KDM and exhibit content which are processed and /or supplied by UFO or its authorized labs, which also ensures that the digitized content is played on UFO owned DCEs in a seamless manner and is not affected by any quality of services and/or technical issues. We also ensure content released in cinemas is free from any legal encumbrance and in respect of which many times we are approached by financiers and processing labs to assist in their business process. In the absence of any control over the content and KDM delivery, we are left in a very precarious position.*

*It had come to our knowledge that certain unauthorized parties, surreptitiously and illegally have been supplying content to UFO’s DCN, by intentionally concealing from the producers/ distributors that cinemas under UFO’s DCN have a contractual arrangement with UFO whereby only the content provided by UFO can be exhibited through the DCEs owned and installed by UFO in the cinemas under UFO’s DCN. Even cinemas under UFO’s DCN were unaware that the content and KDM had been supplied by such unauthorized parties. In this regard, we have already cautioned the cinemas under UFO’s DCN and have also notified the concerned unauthorized party. Despite our best efforts, such third parties are deliberately and mischievously supplying the film contents and KDM to UFO’s DCN with an intent to cause wrongful loss to UFO and derive wrongful gains for themselves. It is also not out of place to state that in the past, there have been issues in quality of services provided by such unauthorized parties as well as technical issues in exhibition of such content on screens which*





*form part of UFO's DCN, which had caused wrongful losses not only to UFO but also to cinemas under UFO's DCN and to the producers and distributors, Left with no alternative due to the continuous misuse of our DCE, we are constrained to curb the misuse of the DCEs owned and installed by UFO in cinemas under UFO's DCN and in this regard we wish to inform you that we are upgrading our systems pursuant to which, any content and KDM processed and supplied by any unauthorized party and played on DCEs owned and installed or where UFO is collecting the VPF, will not be compatible with our upgraded security systems. In a nutshell, the upgraded technology will restrict any misuse by DCEs by unauthorized parties, and should you use the services of such unauthorized third parties, the playback of your film might not be exhibited in the process. We have also taken this step as a necessity to ensure that the quality of the services provided to UFO's DCN is maintained and we do not suffer any loss of reputation because of the issues in the content supplied by unauthorized parties. The above is applicable with immediate effect.*

*We request you to kindly take note of the above and caution you to not fall prey to any attempts made by unauthorized parties to illegally seek out your content for display in cinemas under UFO's DCN. In view of this communication, UFO shall not assume any liability or responsibility for any consequences that may follow from any unlawful attempt to exhibit content processed by unauthorized parties on UFO's DCN, including non-exhibition of the film.*

*We wish to inform you that Scrabble Digital Limited (SDL) having its office at 703-704, Janaki Centre, 7<sup>th</sup> Floor, Off Veera Desai Road, Andheri (West), Mumbai 400053 is presently authorized by UFO to deliver content and KDM on behalf of UFO, its subsidiaries and its affiliates to UFO's DCN.*

*We also request you to inform us immediately if any unauthorized party approaches you for content processing, delivery of KDM and/or supplying/delivering any content to UFO's DCN....”*



16. With respect to the alleged illegal conduct of Opposite Parties cited above, the Informants filed a Civil Suit before the Hon'ble Delhi High Court being CS (Comm) No. 233 of 2019, titled "*Ravi Walia and another vs M/s UFO Moviez India Ltd. and another*". On 01.10.2019, the Informants withdrew the suit filed before the Hon'ble Delhi High Court for filing the present information before the Commission.
17. As per the Informants, DCE leased to CTOs have been disabled from accepting content from any source other than Scrabble Digital, which has been admitted by UFO Moviez in its affidavit dated 15.05.2019 and written statement filed before the Hon'ble Delhi High Court. This prohibition is achieved through the acceptance of KDM generated only by Scrabble Digital, which is incorporated in the digital format of a cinematograph film. KDM is necessary for displaying the film on DCE as per DCI's standard. Thus, the KDM supplied by PF Digital Media is not accepted by the DCE supplied by UFO Moviez.
18. It has been stated that the post-production processing fee charged by PF Digital Media per digital print of a cinematograph film is Rs. 1800/-, whereas Scrabble Digital charges a higher fee of Rs. 2400/-.
19. In view of the foregoing, it has been alleged that Opposite Parties are in contravention of provisions of Sections 3 and 4 of the Act.
20. As per the Informants, UFO Moviez is dominant in the relevant market of cinema theatre screens playing the digital format of cinematograph films. In this regard, as per the Directorate of Advertising and Visual Publicity of the Government of India ("**DAVP**"), the total number of cinema screens in India is 8563. This figure also includes non-digital cinema screens. The number of screens under the control of UFO Moviez is approximately 61.50 percent of the total screens. It has also been stated that UFO Moviez also sought to acquire Qube Cinema Technologies to augment the number of screens it controls. This fact has been admitted by UFO Moviez in its own press reports and has also been shown in the reports of other entities as well. As per the press release dated 01.11.2017, Qube Cinema Technologies



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has 3300 digital cinema screens across India. The report of ICRA on UFO Moviez, dated 31.01.2019, states that the collective screens of UFO Moviez and Qube Cinema Technologies account for 95 per cent of the total digital screens in India. It has also been stated that there are in all 1400 locations in which Bollywood films are sent for exhibition and display for viewing by the general public, which is the market in which PF Digital Media operates. Out of these 1400 locations, 1064 are serviced by UFO Moviez by way of supply of DCE. It has been submitted that the other 335 locations are serviced by entities like PVR Cinemas, Inox and Cinapolis which have their own DCE, and in these locations, no exclusivity clauses such as those contained in the impugned agreements exist. Hence, cinematograph films where PF Digital Media has conducted post-production processing can only be played in these 335 locations. It has been alleged that PF Digital Media is completely blocked out of 76 per cent of the locations owing to the exclusivity clauses contained in the Equipment Lease Agreements which have been executed between UFO Moviez and CTOs. The Opposite Parties, by way of technical overlay, have made it impossible for cinematograph films post-production processed by PF Digital Media to be displayed in these 1064 locations.

21. As per the Informants, UFO Moviez is in a dominant position as it has obtained a position of strength in the relevant market of cinema theatre screens which enables it to operate independently of the competitive forces in the relevant market in a manner that it is able to impose conditions on CTOs which would restrict the CTOs from obtaining digital cinematograph films which have not been post-production processed by Scrabble Digital. It has been alleged that the impugned agreement between UFO Moviez and CTOs has resulted in denial of access to all cinematograph films which have not been post-production produced by Scrabble Digital, resulting in a contravention of the provisions of Section 4(2)(c) of the Act. The impugned agreement also seeks to protect the other relevant market of Scrabble Digital, *i.e.* the market for post-production processing through the dominant position of UFO Moviez in the relevant market of supply of DCEs to CTOs for displaying digital cinematograph films. Thus, the conduct of Opposite Parties is in contravention of provisions of Section 4(2)(e) of the Act. Scrabble Digital, due to the conduct of UFO Moviez, is



controlling 90 per cent of the post-production processing market and is thus dominant in the relevant market of post-production processing of cinematograph films. Accordingly, the Informants have alleged abuse of dominant position by the Opposite Parties.

22. It has been further stated in the information that Scrabble Digital is a wholly owned subsidiary of UFO Moviez and there is an understanding between them which is actionable. Also, in order to promote Scrabble Digital's business, UFO Moviez has disabled the DCE from accepting or playing any cinematograph film which has not been post-production processed by Scrabble Digital. Thus, the agreement between UFO Moviez and Scrabble Digital is covered under Section 2(b) read with Section 3(3)(c) of the Act.
23. The Informants have stated that UFO Moviez and Scrabble Digital are both enterprises at different levels of the production chain of cinematograph films. UFO Moviez executes an agreement with CTOs to supply DCE on lease. CTOs are also at a different level of the production chain of cinematograph films as they are involved in the distribution of cinematograph film itself. It has been stated that Clauses 5 and 7 of the Equipment Lease Agreement executed between UFO Moviez and CTOs supplying DCE is in the nature of a tie-in arrangement, exclusive supply agreement, exclusive distribution agreement and refusal to deal as provided under Section 3(4) of the Act and has also resulted in appreciable adverse effect on competition under the provisions of the Act.
24. The Informants have submitted that, due to the impugned exclusive agreement, Informant No. 2 will not be able to exhibit its cinematograph film or any film in the future if DCE is supplied by UFO Moviez and post-production processing is not done by Scrabble Digital. The Informants have stated that if the effect of the anti-competitive agreements executed by the said Opposite Parties with CTOs are not stayed, the Informants will suffer irreparable harm and injury, and Informant No. 2 will not be able to exhibit his film *Roam Rome Mein*. Thus, Informant No. 2 will suffer a direct loss of the total revenue that the film stands to earn from its exhibition. The Informant No. 2 is the producer of the film and should be the sole person to decide who will do the mastering and digital lab services and which company



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will do the last mile delivery of his film in cinemas in India, but by prohibiting exhibitors and tampering of DCE, UFO Moviez is forcing Informant No. 2 and other producers to use the services of Scrabble Digital, without which the film will not be exhibited on screens where DCEs supplied by UFO Moviez are installed. The Informants have sought interim relief from the Commission under Section 33 of the Act, *inter-alia*, to the effect of staying the operation of the impugned anti-competitive agreements executed by UFO Moviez and Scrabble Digital with the CTOs where the DCE has been supplied by UFO Moviez during the pendency of the information.

25. In view of the above, the Informants have, *inter alia*, prayed to the Commission to undertake an investigation with regard to the alleged anti-competitive agreements executed between UFO Moviez and Scrabble Digital with CTOs for exhibition of content on DCE supplied by UFO Moviez and post-production processed by Scrabble Digital and pass an order under Section 27 of the Act directing UFO Moviez to amend and alter all agreements executed between itself and any CTOs.
26. The information filed in the matter was considered by the Commission in its ordinary meeting held on 13.04.2020, wherein the Commission directed the Informants to file certain additional information, which was filed by them on 10.05.2020.
27. Thereafter, the Commission considered the information as well as the additional information filed by the Informants on 20.05.2020 and 26.05.2020 and decided to call the parties for a preliminary conference on 04.08.2020. The Commission also directed that a complete copy of the information alongwith additional information filed by the Informants on 10.05.2020 in electronic form be sent to the Opposite Parties.
28. The matter was considered by the Commission in its ordinary meeting held on 30.07.2020. In view of the exigencies and health concerns arising out of the outbreak of COVID-19, the Commission decided to reschedule the preliminary conference with the Parties on 15.09.2020.



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29. Subsequently, separate emails dated 10.09.2020 were received from the authorised representatives of the Informants as well as UFO Moviez, *inter alia*, expressing inability to attend the preliminary conference stating that certain counsel and parties have to come from Mumbai during the pandemic and there is a risk associated on account thereof.
30. The requests made by the authorised representatives of the Informants and UFO Moviez *vide* respective emails dated 10.09.2020, seeking adjournment of the preliminary conference scheduled on 15.09.2020, were considered by the Commission on 11.09.2020. In view of the requests made by the Informants and UFO Moviez, the preliminary conference scheduled on 15.09.2020 was cancelled. The Commission directed the Opposite Parties to file their respective responses/comments on the information filed by the Informants along with relevant documents, if any, latest by 15.10.2020 and provide an advance copy of their responses/comments to the Informants. The Informants were directed to file their counter responses, if any, with a copy to the Opposite Parties latest by 06.11.2020. The matter was directed to be listed before the Commission post-receipt of responses/comments/counter responses from the parties.
31. The Commission notes that in terms of order dated 11.09.2020, passed by the Commission, MAI filed its response to the information on 13.10.2020. UFO Moviez and Scrabble Digital filed their common preliminary response (confidential and non-confidential version) to the information on 13.10.2020. Qube Cinema Technologies also filed its preliminary response (confidential and non-confidential version) to the information on 02.11.2020. The Informants also filed their respective counter-responses in terms of order dated 11.09.2020, passed by the Commission.
32. The Commission notes that an application dated 30.07.2020 was filed by Globe Theatres, wherein it has been, *inter alia*, stated that they are not a concerned party as 'monopolistic and restrictive practice' is not related to them as they are a single screen theatre and the matter is between PF Digital Media Services Limited, Mr. Ravinder Walia and UFO Moviez



and others. Accordingly, Globe Theatres Pvt. Ltd. requested to not to be made a party in the case and be excused from the hearing. The Commission further notes that MAI also filed an application dated 11.09.2020, seeking its name to be struck off from the array of Opposite Parties. In the said application, it has been stated that the present dispute is a commercial/contractual dispute between the Informants, UFO Moviez and Scrabble Digital and does not relate to MAI in any manner. Further, no cause of action lies against MAI and there is no allegation against MAI. Also, no specific reliefs have been sought by the Informant against MAI.,

33. In its counter-response, Informants have stated that while no specific allegation has been directed at MAI, being the association of cinema theatres, it is nevertheless a necessary and proper party since the specific allegations have been levelled against member CTOs. It has been stated that MAI has been a party not because it is acting in an anti-competitive manner but in furtherance of prayer of the Informants, wherein a direction has been, *inter alia*, sought from the Commission to direct the said Opposite Party to disclose all other agreements between UFO Moviez and CTOs in addition to agreements dated 12.10.2015 and 'nil', executed between UFO Moviez and Opposite Party No. 3 and Opposite Party No. 4, respectively, which contain exclusivity clauses for sourcing content as stipulated hereinabove.
34. On 17.11.2020, an application was received from the authorised representative of UFO Moviez and Scrabble Digital seeking the listing of preliminary conference, as the pleadings were complete in the matter. On 03.12.2020, the Commission considered the above-mentioned responses/counter-responses and applications filed by the parties as aforementioned and decided to pass an appropriate order in due course.
35. Subsequently, on 07.01.2021, UFO Moviez and Scrabble Digital filed an application seeking to list the matter for preliminary conference. On 28.01.2021, the Commission considered the request of UFO Moviez and Scrabble Digital and decided to hear the Informants, UFO Moviez, Scrabble Digital and Qube Cinema Technologies in a preliminary



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conference on 03.03.2021 through video conferencing, which was rescheduled to 11.03.2021, at the request of UFO.

36. On 28.01.2021, the Commission also noted from the records that Globe Theatres and MAI, *vide* their separate applications dated 30.07.2020 and 11.09.2020, respectively, have sought deletion of their names from the array of parties. The Commission, having considered the respective applications of Globe Theatres and MAI, was of the view that since no allegations were made against the said Opposite Parties in the information nor any specific reliefs have been sought against them, it may be appropriate to delete the name of said parties from the proceedings at this stage. The Commission further observed that, though no formal requests seeking deletion of their names from array of parties have been made by Imperial Cinema and IFTPC, however, since these Opposite Parties also appear to be similarly placed to that of Globe Theatres and MAI, as neither any allegations nor any relief has been claimed against them, similar treatment be accorded to the said parties and they also be dropped from the proceedings in the present case. Accordingly, four Opposite Parties namely, Globe Theatres, Imperial Cinema, IFTPC and MAI, stand deleted from the array of parties in the present matter.

37. On 11.03.2021, the Commission heard the detailed submissions made on behalf of UFO Moviez, Scrabble Digital, Qube Cinema Technologies and Informants by their respective counsel, and the preliminary conference was concluded. During the course of the conference, the senior counsel for UFO Moviez, *inter alia*, based his submissions on the aspect of market power of UFO Moviez and also relied upon on certain figures/data pertaining to the installation of DCI equipment on a lease basis. In addition to the figures so relied upon during the conference, UFO Moviez and Qube Cinema Technologies were also directed to file the information pertaining to State-wise installation of DCI equipment on lease basis and sale basis, on affidavit, in various cinemas across India during the past four financial years, *i.e.*, 2016-17, 2017-18, 2018-19 and 2019-20. The Commission also gave liberty to the Parties to file their written submissions/synopsis of their oral arguments.





38. In terms of order dated 11.03.2021, the Informants filed their common written submissions on 19.03.2021. UFO Moviez and Scrabble Digital filed their submissions on 22.03.2021 and 05.04.2021 in confidential and non-confidential versions. Qube Cinema Technologies filed its written submissions in confidential and non-confidential versions on 05.04.2021.
39. On 18.05.2021, the Commission considered the written submissions as well as the additional information filed by the Informants, UFO Moviez, Scrabble Digital and Qube Cinema Technologies and decided to pass an appropriate order in due course.
40. A summary of submissions made by UFO Moviez and Scrabble Digital in their common preliminary response, written submissions as well as additional information dated 22.03.2021 and 05.04.2021 and oral arguments advanced during the preliminary conference dated 11.03.2021, is as under:
- a. PF Digital Media is primarily engaged in post-production processing services offered to cinema studios and its holding company Prime Focus Limited is a dominant player in post-production processing services and with a market share of 50-60 percent. PF Digital Media (or its parent company) has been in such business at least for the last twenty years.
  - b. The Informants have not provided basic information to indicate the existence of anti-competitive vertical agreement under Section 3(4) of the Act. The allegations pertaining to tie-in arrangements with CTOs are *exfacie* incorrect. CTOs purchase the entire package of services from UFO Moviez as a bouquet/set of services, all of which are coalesced as one service. Package of services constitutes one composite service, and therefore, it cannot be said that there is any condition imposed by UFO Moviez requiring the purchaser of goods as a condition of such purchase to purchase some other goods. PF Digital Media has, in the past, and continues to have, the ability to provide the content to such CTOs who have bought the equipment from UFO Moviez or any other supplier.



Further, CTOs are free to procure the package of DCE and related services from any other supplier of DCE.

- c. CTOs catered by UFO Moviez's leasing agreements are less than 30 percent, and therefore, 70 percent of the markets remains open for PF Digital to provide content. The Informants' allegations that UFO imposes an exclusive supply agreement with CTOs and an exclusive distribution agreement with CTOs and imposes refusal to deal are not correct for the reasons stated above. Further, there is no evidence of harm to competition.
- d. The Informants have not provided any meaningful information to warrant an investigation for abuse of dominance. The Informants have not defined the relevant market. Only unsubstantiated phrases/terms have been used in place of well-reasoned and empirically supported definition of the market, such as market for post-production processing ("**PPP**") of digital cinematograph film and market for digital cinema services and market for cinema theatre screens. PPP comprises services such as editing, colour correction, insertion of special effects and VFX services in relation to the raw video file containing the cinematographic film. Once post-production processing is completed, it is submitted to the Central Board of Film Certification ("**CBFC**") for certification of the film. Post-CBFC certification, the process of its distribution in the digital format to CTOs as required by producer/distributor begins. This process entails mastering, encryption/decryption, generation of KDM, digital cloning, KDM management and transport of encrypted digital content. These services may be categorised as "*Post-Certification Services*" ("**PCS**").
- e. UFO Moviez, through Scrabble Digital, offers PCS as one amongst the bouquet of services. In 2020, Scrabble Digital offered these services only in relation to two films and two web series with a revenue of Rs. 5 lakh approximately. PF Digital Media has been present in the PPP business since 2011 and its parent



company PFL has been in the business of PPP for the last twenty years. PFL, which is the parent company of PF Digital Media, is a dominant player in the PPP business. The total number of screens which exhibit cinematographic films in DCI-compliant format is 4794. Out of these 4794 screens, UFO Moviez owns and has installed DCE in only 1091 screens on a lease basis and 186 screens wherein UFO has an agreement for providing services such as maintenance, supply of content and KDM, collecting VPF and sharing the same with CTOs. UFO caters to a maximum of 27 percent screens (23 percent UFO Moviez DCI equipment on lease basis + 4 percent VPF) and is not in a dominant position.

- f. Qube Cinema Technologies has a market share in the range of 20-30 percent of the total DCE screens in India. Other competitors such as TSR, Cinematica, *etc.* hold a market share in the range of 0-10 percent. The CTOs which themselves own DCI equipment such as PVR Limited, Inox Leisure and Cinopolis, together enjoy a market share in the range of 30-40 percent of the total DCE screens in India.
- g. It has been stated that the agreements between UFO and CTOs are inherently pro-competitive and do not cause any harm to competition. It has also been stated that UFO's business model of offering expensive DCE and related services as a package to CTOs on a leasehold basis has spurred digitisation in the cinema exhibition business. UFO's business model is also essential to stem free riding and piracy and increasing accountability and to ensure access to DCE at meagre lease rent for CTOs, who are unwilling or unable to undertake significant capital investment/expenditure. UFO Moviez does not enjoy any market power.
- h. There is no coercion or unlawful imposition in UFO's leasing agreements with CTOs. These agreements are contracts which are negotiated with the CTOs and CTOs sign of their free will. It has been submitted that out of total screens where UFO has leasing agreements, lock-in period under the leasing agreements for



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certain screens has expired, and there are more screens where the arrangement can be terminated anytime. However, with respect to the screens where lock-in period has expired or the arrangement can be terminated, the CTO's have voluntarily agreed to continue with the leasing arrangement with UFO, which brings out that these contracts benefit the CTOs. It has also been stated that UFO has lost certain screens to competitors from 2017-2020 due to the highly competitive nature of the business.

- i. Further, illegal and unauthorised access and use by PF Digital Media of the DCE owned by UFO Moviez for exhibiting content by CTOs will also create non-compliance and legal issues for UFO.
- j. UFO has also provided data on the installation and deinstallation of DCE for financial years 2016-17, 2017-18, 2018-19 and 2019-20 which evidences the competitive nature of this business.
- k. A number of CTOs have decided to deinstall the DCE provided by UFO. UFO Moviez has also provided data on State-wise installation of DCE on lease and sale basis for financial years 2016-17, 2017-18, 2018-19 and 2019-20.
- l. The Informants have not made a case for grant of interim relief.

41. Qube Cinema Technologies, in its response to the information as well as response dated 05.04.2021, while stating that the entire information is baseless, devoid of merit, *etc.*, has, *inter alia*, stated as under:

- a. Qube Cinema Technologies has been arrayed as a party to the information only because of proposed merger with UFO Moviez. Given that proposed merger between UFO Moviez and Qube Cinema Technologies has been



withdrawn/called off, there remains no reason to investigate the conduct of Qube Cinema Technologies in the present matter.

- b. Generally, an agreement is entered into between multiple Digital Cinema Service Providers (“DCSPs”) such as Qube Cinema Technologies and the producer of a film entailing the scope of services and costs for the same. The scope of services provided by DCSPs include content encoding and encryption into multiple formats and conversion to a Digital Cinema Package (DCP) for both DCI and non-DCI compliant formats. This process is called mastering. Subsequent to this, based on various commercial agreements entered into between producers and distributors, and under instructions from producers/authorised distributors, the DCP is dispatched (either physically, *via* satellite and now broadband internet to CTOs).
- c. DCSPs also issue licenses, referred to as KDMs, which allow for playback on their equipment in a particular theatre for a given period, as instructed by producer/authorised distributor. At this point, the producer/authorised distributor decides on the nature of licenses for each of the screens based on the prevailing rate card, and these charges are known as VPF charges.
- d. Contrary to the allegations of the Informants, anyone can master and provide the DCSP with the Distributor KDM (Master KDM), and the DCSPs can send KDMs to individual theatres as per the VPF option chosen by the distributor. Thus, there is no restriction on accepting content mastered by other labs such as the Informant, where Qube Cinema Technologies has issued the Master KDM which can then be used to generate KDMs.
- e. All DCSPs generally have arrangements with CTOs, with similar terms and conditions for supply, installation and operation of the DCE. While broadly, the arrangements with CTOs are similar, the agreements differ depending upon the



business models and underlying commercials. Among the many business models, the arrangements with theatres may be classified on the extent of investment made in the DCE. Accordingly, the business models are broadly divided into (a) Sale model; and (b) Deployment model. Irrespective of the business models, all the agreements entered into with CTOs are for a fixed term with the right to exit available to both the parties. The parties also have the right to terminate the agreement in case of breach of agreement by either party, with a shorter notice period. Apart from commercials, in the deployment model, it becomes essential to provide a lock-in arrangement to secure the investment assumed by Qube Cinema Technologies.

- f. The agreements entered into by Qube Cinema Technologies with CTOs provide for an eventuality that if Qube Cinema Technologies is unable to provide digital film content for exhibition to the CTO, the CTO shall, after informing Qube Cinema Technologies before have the discretion to procure such content from other sources and pay a certain amount to Qube Cinema Technologies for each screen where such content is exhibited.
- g. For FY 2019-20, out of a total of approximately 6000 DCI screens across India, Qube Cinema Technologies provides DCE to approximately 1100 screens on a lease basis which accounts for approximately 10-20 percent. Further, Qube Cinema Technologies provides DCE to approximately 500 screens on a sale basis. Qube Cinema Technologies has also provided data on State-wise installation of DCE of Qube Cinema Technologies on lease basis and sale basis for the FY 2016-2020.

42. The Informants, in their counter response to the response filed by UFO Moviez and Scrabble Digital as well in their written submissions, have, *inter alia*, stated as under:



- a. While the relevant market to assess UFO Moviez's dominance is the market of cinema theatres playing digital format of cinematograph films, the relevant market for Scrabble Digital is post-production processing. The definition suggested by UFO Moviez "*Post certification services*" is denied. The activities which the present information pertains to is Digital Cinema Package ("**DCP**"), which includes duplication, mastering and KDM management services.
- b. No misleading or contradictory figures have been stated by the Informants. On the contrary, all figures have been supported with evidence, unlike UFO Moviez, which has made an unsubstantiated claim that its leasing market only forms less than 30 per cent of the total market share. Further, UFO Moviez has not denied any tabulation or document relied upon by the Informants to arrive at the percentage of market share. Even Scrabble Digital having 90 per cent share in post-production has not been denied.
- c. The statement of UFO Moviez that PF Digital Media is free to provide digitisation services to CTOs who are dealing with UFO Moviez is false and completely against the impugned agreements entered into between UFO and the CTOs.
- d. The impugned agreements between UFO Moviez and the CTOs result in denial of market access to all cinematograph films which have not been post-production processed by Scrabble Digital. Thus, there is a violation of Section 4(2)(c) of the Act. The impugned agreement also seeks to protect the other relevant market, *i.e.*, the market of post-production processing through the dominant position of UFO Moviez in the relevant market of supply of DCEs to CTOs for displaying digital cinematograph films. Thus, the conduct of UFO Moviez and Scrabble Digital is in contravention of provisions of Section 4(2)(e) of the Act.



- e. UFO Moviez and Scrabble Digital have entered into an agreement in violation of Section 3(3)(c) of the Act which is legally untenable. In order to promote Scrabble Digital's business, UFO Moviez has disabled the DCE from accepting or playing any Cinematograph Film which has not been post-production processed by Scrabble Digital. Accordingly, this agreement between UFO Moviez and Scrabble Digital, whether it is oral or a mere understanding, is actionable under Section 2(b) read with Section 3(3)(c) of the Act.
- f. The Informants have not suggested that Qube Cinema Technologies is currently controlled by UFO Movie; however they have sought to inform that the merger of the same had been proposed and the same has been specifically clarified in the additional affidavit.
- g. The impugned agreements entered into between UFO and the CTOs are in fact, against the very objective of the DCI. DCE which is compliant with the international standards dictated by DCI displays/plays/projects every digital print of any cinematograph film complying with such international standards. No fetter can be imposed by any party on such digital display of a cinematograph film through a software lock.
- h. The sole intention behind the impugned agreement is to acquire greater revenue by disrupting competition in the market, and the same is evident from UFO Moviez's submission in paragraph 87 which is as under:

*“87. Additionally, UFO under the lease model is the owner of the DCI Equipment and has a right to control its usage in order to prevent misuse and to obtain maximum possible revenue from the DCI Equipment owned by UFO...”*

- i. While UFO Moviez may go on about being the torchbearer of digitisation in cinema theatres, its primary and, in fact, only objective is to create maximum





revenue for itself, even if that means that such revenue comes at the cost of anti-competitiveness.

- j. During the course of arguments, UFO Moviez and Scrabble Digital have submitted that, as per their data, UFO Moviez controlled around 30 percent of the market, whereas Qube Cinema Technologies controlled 45 percent of the market, making their market share more than 70 percent in the leased compliant DCE market.
- k. Based on the foregoing, an investigation must be conducted into the affairs of UFO Moviez lease agreements. In the interim, PF Digital Media should be allowed to provide post-production processing services for cinematograph films which would be able to be exhibited on the DCE supplied by UFO Moviez, and Informant No. 2 should be allowed to choose which post production provider service it seeks to engage for its cinematograph film.

43. In its counter-response to the response filed by Qube Cinema Technologies, the Informants, while denying the submissions made by Qube Cinema Technologies, have, *inter alia*, stated as under:

- a. UFO Moviez had also sought to acquire Qube Cinema Technologies further augmenting the number of screens it controls. This has been admitted by UFO Moviez in its own Press Releases and Reports along with Reports of other independent entities as well.
- b. Just like UFO Moviez, Qube Cinema Technologies also has exclusive agreements with CTOs; similarly, other DCE suppliers and providers of cloning and mastering services may also be having similar arrangements. The impugned arrangements are made to control specific and exclusive territories to the prejudice of the general public and the Informant.



- c. Merger between UFO Moviez and Qube Cinema Technologies, has been withdrawn; however, its participation is necessary to demonstrate how, if the impugned arrangements are allowed, other players would ape the same and eventually, a producer of a cinematograph film such as Informant No. 2 would have to get mastering, cloning and KDM management services from multiple post-production processing providers to ensure that his cinematograph film is exhibited in every cinema theatre. The result of the above would be an unnecessary duplication of work leading to higher costs for producers, and such higher costs would eventually translate into higher price paid by the general public/consumers to watch a particular cinematograph film in Cinema Theatres.
- d. UFO Moviez has restricted the ability of CTOs to acquire any film which has not been post-production processed by Scrabble Digital thereby restricting the supply of KDM exclusively in favour of Scrabble Digital. By way of this action, UFO Moviez has ensured that Scrabble Digital remains the sole supplier of KDM and sole provider of post-production services for the DCE supplied/leased by UFO Moviez. Similarly, Qube Cinema Technologies is engaging in similar arrangements with CTOs.
- e. The only possible intention for the incorporation of exclusivity clauses is to capture the market for Scrabble Digital. Such actions are also being aped by Qube Cinema Technologies, who have also admitted that they have entered into similar arrangements with CTOs. Not only do they have such arrangements but CTOs can get post-production processing services done from other providers only in cases where Qube Cinema Technologies fails to provide the same. Furthermore, in such circumstances, the CTOs are additionally punished by being charged some amount by Qube Cinema Technologies per content that is exhibited without being post-production processed by Qube Cinema Technologies itself.



### **Analysis of the Commission**

44. The Commission notes that the present matter concerns alleged imposition of technological fetters and restrictions in the DCE given on lease by UFO Moviez to CTOs through execution of Equipment Lease Agreement. By virtue of this restriction, it appears that UFO Moviez ensures that only KDM, which is necessary for displaying the film on a DCE as per DCI standards, generated by Scrabble Digital, is incorporated into the digital format of the cinematograph film. It has been alleged that KDM inserted by PF Digital Media is not accepted by DCE supplied by UFO Moviez in order to garner/maintain the business of Scrabble Digital, which is a subsidiary of UFO Moviez. It appears that UFO Moviez, which is a supplier/seller of DCE to CTOs, through alleged imposition of anti-competitive clauses in the Equipment Lease Agreement, makes sure that PPP activity of cinematograph films becomes the domain of Scrabble Digital, and all other competitors of Scrabble Digital stand excluded. PF Digital Media has claimed that its fee for PPP is much cheaper than that of Scrabble Digital. Thus, the clauses of the agreement as mentioned in para 14 above entered into by UFO Moviez with the CTOs as well as its conduct aforementioned is alleged to be in violation of the provisions of Sections 3 and 4 of the Act.

45. With respect to the alleged illegal conduct of Opposite Parties, the Commission notes that the Informants had filed a Civil Suit before the Hon'ble Delhi High Court being CS (Comm) No. 233 of 2019, titled "*Ravi Walia and Another Vs M/s UFO Moviez India Ltd. and another*". Further, an IA No.11303 of 2019, under Order VII Rule 11 of the Code of Civil Procedure, 1908 was filed by UFO Moviez in CS(Comm) No. 233 of 2019, UFO Moviez stated as under:

*"...The subject matter thus does not fall within the domain of commercial court at all from any point of view and thus commercial courts have no jurisdiction. However, if the plaintiffs on seeking to allege competition and even assuming but not admitting it to be commercial dispute in that context also then also this suit of the plaintiff is barred by Section 61 of the Competition Act, 2002 read with Section 11 of the Commercial Court Act, 2015. Thus, in any event this suit plaint is liable to be rejected."*



46. On the above basis, the Informants withdrew the suit filed before the Hon'ble Delhi High Court.
47. Based on the facts and allegations discussed above, it is noted that issues which arise for *prima facie* consideration of the Commission include examination of alleged violation of provisions of Sections 3(3), 3(4) and 4 of the Act.
48. The Commission notes the allegations that the clauses in the Equipment Lease Agreement extracted in preceding paragraphs, which is entered into between UFO Moviez and CTOs, have resulted in denial of market access to all the cinematograph films which have not been post-production processed by Scrabble Digital, and alleged to be in contravention of the provisions of Section 4(2)(c) of the Act. The said clauses in the Equipment Lease Agreement also allegedly seek to protect the market of post-production processing through the dominant position of UFO Moviez in the market for supply of DCE to CTOs for displaying digital cinematograph films. Accordingly, the conduct of UFO Moviez and Scrabble Digital is also alleged to be in contravention of the provisions of Section 4(2)(e) of the Act.
49. For analysing the allegations brought out in the Information under Section 4 of the Act delineation of the relevant market, followed by assessment of dominance of Opposite Parties in the said relevant market and then examination of alleged abusive conduct is required.
50. The Commission notes that the relevant market comprises relevant product market and/or relevant geographic market. The relevant product market as defined under Section 2(t) of the Act means “*a market comprising of all those products or services which are regarded as interchangeable or substitutable by the consumer, by reason of characteristics of the products or services, their prices and intended use.*” The relevant geographic market, on the other hand, defines the contours with regard to geography within which the conditions of competition for supply of goods or provision of services are distinctly homogenous and can be distinguished from the conditions prevailing in the neighbouring areas.



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51. The Commission notes that Section 4(2)(c) states that there shall be an abuse of dominant position, if an enterprise or group indulges in a practice or practices resulting in denial of market access in any manner. Further, Section 4(2)(e) of the Act states that there shall be an abuse of dominant position if an enterprise or group uses its dominant position in one relevant market to enter into, or protect, other relevant market. Thus, the Commission notes that for the invocation of this provision, there has to be two relevant markets, where the enterprise in question uses its dominant position in one market to leverage its position in another.
52. The Commission notes that the Informant has not precisely defined the relevant market in the information. It has, however, been stated in the information that UFO Moviez is dominant in the “*relevant market of cinema theatres playing digital format of cinematograph films*” while Scrabble Digital, as a result of the conduct of UFO Moviez, is controlling 90 percent of “*the post-production processing market*”.
53. UFO Moviez and Scrabble Digital have raised objections with respect to the delineation of the relevant market by the Informants, and while making a distinction between sale model and lease model by which a DCE is supplied to CTOs in the response, though not pithily, have stated to be the “*screens which use DCI Equipment*”.
54. As regards the market of post-production processing services, wherein UFO Moviez is alleged to be leveraging its dominant position in the DCE market by protecting the post production processing market through Scrabble Digital, it has been pointed out that there is a distinction between the market for post-production processing and post-certification services, and the market defined by Informant is incorrect. The Informant in this regard, however, has stated that the issue regarding CBFC certification is not at all relevant, as the said certificate can be applied anytime after the digitisation of the film is complete, which is generally just before the release of the film, and there is no requirement of drawing a distinction between post-production processing and post certification services.



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55. The Commission notes that as per the information, a DCE generally comprises a digital cinema server, a projector, a dish antenna and other equipment, including rack, switcher box and required cables for connections and peripherals. Based on the quantum of investment in a DCE, there are two business models under which arrangements are entered into with the CTOs, namely, outright purchase or the sale model or taken on lease, *i.e.*, the lease model. In the case of sale model, investment in the DCE is made by the CTO. The average cost of DCE is approximately 30 lakhs per screen. Large CTOs such as Inox Leisure Ltd., PVR Limited and Cinopolis India Private Limited own their DCE. In a lease model, CTO takes DCE on lease by entering into agreements with a digital cinema service provider such as UFO Moviez and Qube Cinema Technologies. Usually a nominal monthly fee is paid by the CTO to a digital cinema service provider. In such cases, the digital cinema service provider remains the owner of DCE and provides the DCE on lease/rent basis. Under the said agreement, a package of services is provided, including the provision of DCE and after sale repair/maintenance service, in cinema advertisement, virtual print fee, *etc.*

56. The Commission notes that there are significant differences between the sale model and lease model, as discussed in the preceding paragraph, and the two models may not be considered as substitutable with each other. Further, it is noted that the allegations in the present information concern the equipment supplied by UFO Moviez on lease to the CTOs. In view of the foregoing, it appears that the first relevant product market for the purpose of competition assessment in the present case may be defined as the ‘*supply of Digital Cinema Equipment by a digital cinema service provider on lease/rent to CTOs*’. As regards the second relevant market, the Commission notes that services which are rendered by both Scrabble Digital and PF Digital Media are post-production processing services, which include DCP duplication, mastering and KDM management. Accordingly, the Commission is of the opinion that the second relevant market for the purpose of competition assessment of the present case could be defined as the “*market for provision of post-production processing services*”.



57. The Commission notes that insofar as the geographic territory is concerned, the screens where movies are played are located throughout India and digitisation of cinema has happened throughout India and is not confined to prime cities. Further, digitised movies are provided to cinemas through satellite upload, which can then be downloaded in any part of the world. Accordingly, the Commission is of the view that the relevant geographic market, *prima facie* at this stage, may be defined as ‘*whole of India*’.
58. In view of the above, the Commission is of the view that the relevant markets for the purpose of competition assessment of the present case are a) market for provision of services of supply of Digital Cinema Equipment by a digital cinema service provider on lease/rent to CTOs in India; and b) market for provision of post-production processing services in India.
59. Having delineated the relevant markets, the Commission notes that the next issue is to determine the dominance of an enterprise in the relevant market. The Act defines ‘*dominant position*’ under explanation (a) to Section 4 as, “*a position of strength enjoyed by an enterprise, in the relevant market, in India, which enables it to (a) operate independently of competitive forces prevailing in the relevant market; or (b) affect its competitors or consumers or the relevant market in its favour.*”
60. The Commission notes that both UFO Moviez and Scrabble Digital are enterprise(s) within the definition of enterprise under Section 2(h) of the Act, in the sphere of respective economic activities that they undertake. Further, Scrabble Digital is stated to be a wholly owned subsidiary of UFO Moviez, which makes them part of the same group, *i.e.*, the UFO Group.
61. With regard to the assessment of dominance of UFO Moviez, the Commission has considered the respective submissions of the parties. As per the Informants, UFO Moviez is a dominant player, with a market share of more than 50 per cent in the market for supply of DCE in India in the last few years. UFO Moviez and Scrabble Digital have controverted the



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same and have stated that UFO Moviez does not enjoy dominant position as it caters to a maximum of 27 per cent of the number of screens which exhibit cinematographic films in DCI compliant format. This has been based upon internal estimates and market intelligence carried out by UFO Moviez and Scrabble Digital. Further, Qube Cinema Technologies has been pegged as the next biggest competitor with market share in the range of 20-30 percent, with other competitors also being present in the market. On the contrary, Qube Cinema Technologies, based on its own internal estimates has stated that its market share is in the range of 10-20 percent on the basis of DCI equipment provided to CTO's on lease basis.

62. The Commission notes that as per the data provided by UFO Moviez in its response dated 22.03.2021, as in September, 2020, the total number of screens which use DCE on lease basis in India are approximately 2900. The market share of UFO Moviez in market for provision of services of supply of Digital Cinema Equipment, by a digital cinema service provider on lease/rent to CTOs in India based on such data is in the range of 30-40 percent. Based on this data provided by UFO Moviez, Qube Cinema Technologies, a competitor to UFO Moviez is estimated to have a market share in the range of 40-50 percent in the first market delineated above. The rest of the first relevant market is stated to be served by three to four other players, which have market shares in the range of 0-10 percent. As already stated above, Qube Cinema Technologies, in terms of its internal estimates has quoted a market share in the range of 10-20 percent on the basis of DCE provided to CTOs on lease basis. However, notwithstanding the mismatch between the data provided by the Informant, UFO Moviez and Qube Cinema Technologies, it *prima facie* appears that UFO Moviez and Qube Cinema Technologies are significant players in the first relevant market. Thus, in the facts and circumstances, it cannot be countenanced at this stage that UFO Moviez holds a position of dominance in the relevant market so delineated.

63. The Commission notes that insofar as the second relevant market is concerned, it has been alleged that Scrabble Digital is dominant in the said market, on account of the dominance exercised by UFO Moviez, whereby it has through exclusionary clauses as already discussed above in the Equipment Lease Agreement as also through upgradation of its equipment in a





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manner that KDM of only Scrabble Digital can be used to display the movie ensured absence of competition to such company. The Commission, in this regard, observes that dominance of Scrabble Digital is not relevant to be determined as Scrabble Digital only appears to be the beneficiary of alleged anti-competitive practices of its holding company, *i.e.* UFO Moviez. Further, as UFO Moviez, is *prima facie* not dominant in the first relevant market as has been observed earlier, it may not be germane to ascertain the dominance of Scrabble Digital in the second relevant market.

64. The next issue for consideration is whether alleged imposition of restrictive clauses in the Equipment Lease Agreement entered into between UFO Moviez and CTOs as discussed in para 14 above are *prima facie* in contravention of provisions of Section 3(4) of the Act. The Informants have alleged that restrictive clauses in Equipment Lease Agreement executed between UFO Moviez and CTOs, whereby CTOs are restricted to obtain content only from UFO Moviez through Scrabble Digital are in the nature of a tie-in arrangement as they bind the CTO by a supplementary obligation of obtaining only that film content in form of digital cinematograph film which is supplied by UFO Moviez through Scrabble Digital. According to the Informants, agreements executed between UFO Moviez with Scrabble Digital and UFO Moviez and CTOs are alleged to be in contravention of the provisions of Section 3(4)(a) of the Act. The Informants have also alleged that agreement between UFO Moviez and CTO restricts the CTO in the course of its trade from acquiring or otherwise dealing in any cinematograph film other than which has been post-production processed by Scrabble Digital and thus the agreement between UFO Moviez and CTO under which DCE is supplied is in the nature of exclusive supply agreement under the provisions of Section 3(4)(b) of the Act. It has also been stated that the impugned agreement also restricts the supply of cinematograph films which have not been post-production processed by Scrabble Digital and thus is an exclusive distribution agreement under the provisions of Section 3(4)(c) of the Act. The Informants have also alleged that the impugned agreement directs CTOs to refuse to deal with any producer of a cinematograph film who has not got his cinematograph film post-production processed by Scrabble Digital in case the said CTO has obtained DCE from UFO Moviez on lease. According to the Informants, this refusal to deal



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has been occasioned through a technical barrier inbuilt by UFO Moviez into the DCE. This technological addition to DCE is involuntary on behalf of CTOs because UFO Moviez has created a technological addition to DCE by deviating the said DCE from international standards and thus has contravened the provisions of Section 3(4)(d) of the Act. The Informants have submitted that through this agreement, UFO Moviez is causing appreciable adverse effect on competition in India as it has foreclosed existing competitors like PF Digital Media and has created barriers against new entrants in the market for post-production processing. The impugned agreement also seeks to draw out existing competitors like PF Digital Media from the market. The impugned agreement is also stated to be an impediment to improvement in the distribution of goods, *i.e.* cinematograph films, besides being a hindrance to the technological development by means of a different and a more cost-effective post-production processing of cinematograph film. The Informants have also stated that Qube Cinema Technologies has business model similar to that of UFO Moviez and UFO Moviez had strived to acquire it in the recent past and collectively, Qube Cinema Technologies and UFO Moviez hold a market share of more than 70 percent in the leased compliant DCE market.

65. UFO Moviez and Scrabble Digital, in their response, have stated that the Informants have not provided basic information to indicate the existence of anti-competitive vertical agreement under Section 3(4) of the Act. The Informants allegations blur the distinction between two sets of CTOs who offer Digital Cinema Service to wrongly assert that UFO Moviez enters into tie-in arrangements. It has been stated that CTOs purchase the entire package of services from UFO Moviez as a bouquet/set of services, all of which are coalesced as one service. CTOs catered by UFO Moviez's leasing agreements are less than 30 per cent and therefore 70 per cent of the markets remains open for PF Digital Media to provide content. The Informants allegations that UFO imposes exclusive supply agreement with CTOs, exclusive distribution agreement with CTOs and imposes refusal to deal are not correct and there is no evidence of harm to competition.



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66. With respect to applicability of provisions of Section 3(4) of the Act, the Commission is of the view that CTOs seek the services of DCE suppliers such as UFO Moviez and Qube Cinema Technologies for exhibiting cinematographic films. Thus, CTOs are *inter se* in a vertical relationship with the DCE suppliers.

67. The Commission notes that UFO Moviez has introduced clauses in the Equipment Lease Agreement as reproduced in para 14 above, such that PPP services have to be mandatorily availed from its subsidiary, *i.e.*, Scrabble Digital. For Producers/Exhibitors/CTOs, it *prima facie* becomes a tie-in-relationship *viz.* to avail PPP (tied product) for getting DCE (tying product). The Commission is of the opinion that, *prima facie*, the provisions of Section 3(4)(a) read with Section 3(1) of the Act are attracted. The Commission is also of the opinion that, *prima facie*, there entails a violation of Section 3(4)(b) read with Section 3(1) of the Act as well, as there exists an exclusive supply agreement in the facts and circumstances of the case between exhibitors and UFO Moviez. Exclusive supply agreement includes any agreement restricting in any manner the purchaser in the course of his trade from acquiring or otherwise dealing in any goods other than those of the seller or any other person. In the present case, as aforementioned, the purchaser of services is restricted by UFO Moviez from approaching a competitor of Scrabble Digital. The facts, however, *prima facie* do not disclose the existence of any exclusive distribution agreement, as the Equipment Lease Agreement entered into between UFO Moviez and CTOs neither restricts or withholds supply of goods nor is in the nature of allocation of any area or market for disposal or sale of goods and hence the Commission is of the opinion that, *prima facie*, provisions of Section 3(4)(c) are not attracted. Further, the Commission is of the view that Section 3(4)(d) read with Section 3(1) of the Act are *prima facie* attracted in the facts and circumstances of the case, as there exists a refusal to deal. In this regard, the Commission notes that a competitor's KDM does not run on DCE that has been taken on lease by a CTO from UFO Moviez which controls the large number of screens and locations in the market. Further, by virtue of restrictive clauses in the equipment lease agreement, there seems to be an effective refusal to deal on the part of exhibitors/producers with service providers of post-production services other than that of Scrabble Digital.



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68. The Commission notes that the contention of UFO Moviez and Scrabble Digital that PF Digital Media has had in the past and continues to have the ability to provide the content to such CTOs who have bought the equipment from UFO Moviez or any other supplier lacks credence at this stage in view of the nature of the market and the market practices touched in the foregoing paragraphs. Further, the contention of UFO Moviez and Scrabble Digital that PF Digital Media is presently free to supply DCE and Digital Cinema Service also cannot be acceded to at this stage as the terms and conditions of the Equipment Lease Agreement *prima facie* appear to expressly prohibit producers/CTOs/exhibitors to deal with any other service providers of post-production processing services. The anti-competitive conduct is also *prima facie* substantiated by emails dated 18.03.2019 written by Scrabble Digital to Viacom 18 and Zee Studios, which have been extracted in preceding paragraphs. UFO Moviez and Scrabble Digital have contended that CTOs purchase the entire package of services from UFO Moviez as a bouquet/set of services, all of which are coalesced as one service. It has also been contended that in case of CTOs that seek to secure DCE on lease, the only economically viable means to offer the DCE is by offering the entire bouquet/package of services. Further, opening up any one of the services from package would allow free riding on the significant expenditure undertaken by UFO Moviez in buying DCE and creating an attendant capability to repair, maintain/manage the DCE across the network of CTOs by entities such as PF Digital Media. The Commission notes that UFO Moviez, has tried to put forth, *firstly*, that there is no tying/bundling as has been alleged by the Informants and *secondly*, that services of DCE and post-production processing is offered as a package to recoup the huge investments made by it and make it economically viable. The Commission at the outset observes that these are matters that require to be investigated in-depth to understand the anti-competitive conduct alleged against and its impact on the market. Therefore, any justification being proffered for such conduct at this stage needs an in-depth examination sifted through the prism of investigation for an effective appreciation in an enquiry by the Commission.



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69. The Commission also observes that the said tie-in arrangement has the potential to cause appreciable adverse effect on competition, as existing competitors of Scrabble Digital like PF Digital Media are driven out of the market for post-production processing services in India. Further, entry of new players is hindered as screens and locations are in control of UFO Moviez. This *prima facie* also appears to thwart development of technology and innovation in post-production processing services market in India in the absence of effective competition. Even if newer technologies were to be developed in post-production processing services, there cannot be any promotion of innovation unless the same is compatible with DCE (controlled by UFO Moviez). Given that the Producers/Exhibitors necessarily require the services of post-production processing as well of DCE, the restrictive clauses imposed by a player with market power in the DCE lease market *prima facie* has the effect of making such exhibitors/producers captive customers of Scrabble Digital for post-production processing services even if competitors like PF Digital Media are ready to offer such services at cheaper rates. For availing services of DCE of UFO Moviez, Exhibitors/Producers/CTOs have no choice but to also buy post production processing services offered by UFO's subsidiary, *i.e.*, Scrabble Digital.
70. The Commission notes that UFO Moviez appears to have market power, by having a market share in the range of 30-40 percent in the market for the supply of Digital Cinema Equipment, on lease/rent to CTOs, through which it controls the post production processing services in India for the benefit of its subsidiary Scrabble Digital.
71. It appears that the conduct of UFO Moviez is likely to cause appreciable adverse effect on competition by creating barriers for players like PF Digital Media who is desirous of offering their post-production processing services. Further, the viewers, as well as the CTOs and producers of cinematographic films are precluded from services offered by other players and any innovation that can accrue in such services where technology is making strides and substantial investments in cinematic effects are being made to make cinema viewing a visual treat.



72. Based on the above, the Commission observes that, with respect to allegations of the contravention of the provisions of Section 3(4) of the Act, the Commission is *prima facie* satisfied that the imposition of said restraints amounts to contravention of Sections 3(4)(a), 3(4)(b) and 3(4)(d) read with Section 3(1) of the Act by UFO Moviez, which is *prima facie* found to enjoy market power in the market.

73. The Informant has alleged that Qube Cinema Technologies has exclusive content agreements wherein on DCEs supplied by them, only those cinematographic films can be exhibited for which cloning and mastering is also provided for by them. Qube Cinema Technologies, in its response dated 31.10.2020, to the information as well as additional information filed by the Informants has stated that Qube Cinema Technologies has been arrayed as a party to the information only because of the proposed merger with UFO Moviez and given that the proposed merger between UFO Moviez and Qube Cinema Technologies has been withdrawn or called off there is no reason to investigate the conduct of Qube Cinema Technologies. As regards the agreements entered into by Qube Cinema Technologies with the CTOs, it has been stated by it in its response that if Qube Cinema Technologies is unable to provide digital film content for exhibition to a CTO, the CTOs can after informing Qube Cinema Technologies, procure from other sources by paying a certain amount to Qube Cinema Technologies. The relevant extract from the response dated 31.10.2020 filed by Qube Cinema Technologies is as under:

*“40. Moreover, it is submitted that the agreements entered into by Qube with the CTOs provides for the eventuality that if Qube is unable to provide digital film content for exhibition to the CTO, the CTO shall after informing Qube, in prior, have the discretion to procure such content from other sources and pay an amount of Rs.20,000/- to Qube per content for each screen where such content is exhibited...”*

74. The Informants in their rejoinder to the response filed by Qube Cinema Technologies have stated Qube Cinema Technologies have admitted that it has entered into anti-competitive agreements with CTOs. It has been further stated that not only does Qube Cinema



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Technologies has such arrangements but CTOs can get post-production processing services done from other providers only in cases where Qube Cinema Technologies fails to provide the same. Furthermore, in such circumstances, the CTOs are additionally punished by being charged some amount by Qube Cinema Technologies per content that is exhibited without being post-production processed by Qube Cinema Technologies itself.

75. As already discussed above, Qube Cinema Technologies is a significant player in the market and *prima-facie* enjoys market power. The Commission further notes that *prima facie* the practice of supplying DCE along with film content and putting fetters on CTOs/distributors/producers on procurement of such content from another entity as aforementioned appears to be in the nature of restrictive tie in arrangement and also resulting in exclusive supply agreement and with elements of refusal to deal with other content providers which has or is likely to violate the provisions of Section 3(4) read with Section 3(1) of the Act. The Commission observes that *prima facie* this conduct has the potential to cause appreciable adverse effect on competition by thwarting the development of technology and innovation in post-production processing services market in India and also create entry barriers for new players and even stifle the business of the existing players offering such services. It is, thus, imperative for a holistic appreciation in the facts and circumstances of the case that the restraints, if any, imposed by Qube Cinema Technologies in its agreements with the CTOs/distributors/exhibitors may also be looked into through the lens of investigation for alleged contravention of provisions of Section 3(4) read with Section 3(1) of the Act.

76. In view of the foregoing, the Commission is of the opinion that there exists a *prima facie* case which requires an investigation by the DG, to determine whether the same has resulted in contravention of the provisions of Section 3(4) read with Section 3(1) of the Act thereof, if any.



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77. With respect to allegations of violation of Section 3(3)(c) of the Act, the Commission is of the *prima facie* view that UFO Moviez and Scrabble Digital are not engaged in identical/similar trade of goods or provision of services and cannot be said to be competing with each other in the same production chain, and further form part of same group (Scrabble Digital is subsidiary of UFO Moviez). The Commission observes that, as there is no horizontal relationship between UFO Moviez (which is *inter alia* engaged in provision of Digital Cinema Equipment) and Scrabble Digital (which is engaged in post-production processing services), the provisions of Section 3(3) of the Act may not be attracted.
78. Accordingly, the Commission directs the Director General ('DG') to cause an investigation to be made into the matter under the provisions of Section 26(1) of the Act. The Commission also directs the DG to complete the investigation and submit the investigation report within a period of 60 days from the receipt of this order.
79. It is also made clear that nothing stated in this order shall tantamount to a final expression of opinion on the merits of the case, and the DG shall conduct the investigation without being swayed in any manner whatsoever by the observations made herein.
80. With respect to the applications seeking confidentiality dated 15.10.2020, 31.10.2020, 22.03.2021 and 05.04.2021 filed by UFO Moviez and Scrabble Digital and Qube Cinema Technologies, respectively, seeking confidential treatment over certain information filed in their response(s) to the Information and written submissions, the Commission deems it appropriate that the DG may deal with such requests having regard to the requirements of such investigation. Further, it is made clear that no confidentiality claim shall be available insofar as the information/data that might has been used/referred to in this order for the purposes of the Act in terms of the provisions contained in Section 57 thereof.





81. The Secretary is directed to send a copy of this order alongwith the material available on record to the DG forthwith.

**Sd/-**  
**(Ashok Kumar Gupta)**  
**Chairperson**

**Sd/-**  
**(Sangeeta Verma)**  
**Member**

**Sd/-**  
**(Bhagwant Singh Bishnoi)**  
**Member**

**New Delhi**

**Date: 17.09.2021**