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Fair Competition
For Greater Good

COMPETITION COMMISSION OF INDIA

Case No. 57 of 2016

In re:

**Eskay Video Pvt. Ltd.
Kamalalya Centre, Room No. 404,
156-A, Lenin Sarani, Kolkata**

Informant

And

- 1 Real Image Media Technologies Pvt. Ltd.
Aver Plaza, B/13, 4th Floor, Opp. of Citi Mall,
Link Road, Andheri West, Mumbai** **Opposite Party No. 1**
- 2 Shree Venkatesh Films Pvt. Ltd.
6, Waterloo Street, 5th Floor, Kolkata** **Opposite Party No. 2**
- 3 UFO Moviez India Ltd.
Valuable Techno Park, Plot No. 53/1,
Road No. 7, Opp. Akruti Trade Centre,
MIDC, Marol, Andheri East, Mumbai** **Opposite Party No. 3**
- 4 Arti Cinemas Pvt. Ltd.
2C-35, Camac Street, Kolkata** **Opposite Party No. 4**

CORAM

**Mr. Devender Kumar Sikri
Chairperson**

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

**Mr. Sudhir Mital
Member**

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Mr. Augustine Peter
Member

Mr. U. C. Nahta
Member

Justice G. P. Mittal
Member

Appearances:

For Informant: *Shri Bunmeet Singh, Advocate.*

For OP 1: *Shri Bharat Budholia, Ms. Aishwarya Gopalakrishnan, Shri Kaustav Kundu, and Ms. Ruchi Verma, Advocates alongwith Shri Harsh Rohatgi, President.*

For OP 2: *Shri Avinash Sharma, Advocate.*

For OP 3: *Shri Gopal Jain, Shri Rahul Rai, Shri Samir Agrawal, Ms. Rhea Srivastava, and Ms. Kriti Awasthi, Advocates alongwith Shri Rajesh Mishra, CEO – Indian Operations and Shri Amit Thukral and Shri Jawahar Trivedi, in house counsels.*

For OP 4: *Shri Jaiveer Shergill and Shri Nikhil Pillai, Advocates alongwith Shri Raj Kamal Chourasia, Manager.*

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

- 1 The information in the instant matter was filed by Eskay Video Pvt. Ltd. ('**Informant**') under Section 19(1)(a) of the Competition Act, 2002 (the '**Act**') against Real Image Media Technologies Pvt. Ltd. ('**OP 1**'), Shree Venkatesh Films Pvt. Ltd. ('**OP 2**'), UFO Moviez India Ltd. ('**OP 3**'), and Arti Cinemas Pvt. Ltd. ('**OP 4**') [collectively, hereinafter, '**OPs**'] alleging contravention of provisions of Sections 3 and 4 of the Act.



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- 2 As per the information, OP 1 and OP 3 are manufacturing Digital Projection Systems (DPS), which are used for projection of films in cinema halls, under the brand names 'Qube' and 'UFO' respectively. OP 2 is the sole distributor of 'Qube' brand of DPS and OP 4 is the sole distributor of 'UFO' brand of DPS in the state of West Bengal (WB). The Informant is the distributor of 'UMW' brand of DPS in WB, which is being manufactured by M/s United Media Works Pvt. Ltd.

- 3 As per the information, 450 cinema halls in WB are using DPS and they are fully dependent on the DPS manufacturers and distributors for installation and connection in order to exhibit films in their theatres. The exhibitors have to get DPS along with the connection from the concerned distributor of DPS manufacturer. The Informant has alleged that although it is theoretically possible for an exhibitor/ cinema hall owner to have more than one DPS for projection of different films at different times of the day, but the OPs through their anti-competitive practices are preventing this. It is stated that before the entry of the Informant, there were only two distributors of DPS in WB viz. OP 2 and OP 4 who controlled the entire market. It is averred that the cinema halls in WB are not able to avail the services of any other DPS manufacturer/ distributor from outside the state because of the distributorship agreement that exists between OP 1 and OP 3 with their respective distributors in different states.

- 4 It is further averred that OP 2 and OP 4, by virtue of their internal arrangement, do not permit a cinema hall to have more than one DPS i.e. the cinema halls have to choose between 'Qube' and 'UFO' brands of DPS. The Informant has submitted that each cinema hall owner/ exhibitor has to enter into an agreement with OP 2 and OP 4 for a fixed period of time with virtually no exit option. It is also stated that the rates and terms contained in the agreements of OP 2 and OP 4 are same or substantially the same. Some of such terms include exclusive right being given by the exhibitor to the concerned service provider for exhibition of films at cinema hall; OP 2 or OP 4 being given exclusive rights for on screen advertisements including film



shots, slice, trailers, *etc.*; having a fixed term of five years within which an exhibitor is not entitled to terminate the agreement save and except when OP 2 or OP 4 default in payment of advertisement revenue to the exhibitor; in the event, a cinema hall owner increases the number of theatre screens, the same agreement would be effective for additional screens; in case of any dispute, the matter would be referred to a sole arbitrator to be nominated by OP 2 or OP 4; security deposit of Rs. 1 lac without interest would be kept by the exhibitor with OP 2 or OP 4; and, a monthly fee payable by the exhibitor as hiring charges for DPS.

- 5 It is also submitted that OP 2 being a producer and distributor of films has the additional advantage of deciding whether or not to screen its films in a particular cinema hall. It is stated that OP 2 is not only the largest producer and distributor of Bengali films but also the largest distributor of all other types of films including English, Hindi, Bengali and other regional language films in WB. The Informant has alleged that OP 2, by abusing its dominant position, stopped the distribution of its twelve films to 74 cinema halls in WB which had switched over to 'UMW' brand of DPS.
- 6 The Informant has averred that OP 2 and OP 4 have divided the DPS market in WB. It is stated that when the Informant entered into the market, 207 cinema halls in WB were using 'Qube' brand of DPS while 228 cinema halls were using 'UFO' brand of DPS and there was no switch over from 'Qube' to 'UFO' or *vice-versa*. This according to the Informant is possible only because of anti-competitive agreement between OP 2 and OP 4. In the event of absence of such anti-competitive agreement, some exhibitors would have switched over from 'Qube' to 'UFO' or *vice-versa*.
- 7 It is further alleged that in WB, OP 2 and OP 4 do not follow their official rate as published in the rate card especially for Bengali films. Their official rate is Rs. 240/- per show for the first week, Rs. 150/- per show for the second week, Rs. 120/- per show for the third week, and Rs. 90/- per show for the fourth week but, in WB they are charging a lump sum Rs. 19,000/- plus tax (by



‘Qube’) and Rs. 18,000/- plus tax (by “UFO”) which is exorbitantly high. Moreover, for the Bengali films, they are charging a sum of Rs. 75,000/- per feature film for the purpose of loading in their server whereas the Informant is charging only Rs. 25,000/-.

- 8 It is averred that OP 2 and OP 4 are charging Rs. 240/- per show in Assam in respect of a film ‘Koka 420’ whereas for the same film they are charging Rs. 16,000/- in lump sum from the distributor in WB. It is stated that OP 2 and OP 4 are charging their official rate in Maharashtra, Tamil Nadu, Andhra Pradesh, Maharashtra, U.P., Bihar *etc.* because in these states, they do not enjoy a dominant position. It is alleged that however, in WB, by virtue of their dominance, they are in a position to pressurise other producers and distributors not to exhibit films in cinema halls having ‘UMW’ brand of DPS.
- 9 It is stated that the producer/ distributor of the feature film ‘Black’ had agreed to give its film to the Informant for which it had supplied necessary publicity materials and advertised the names of cinema halls in the newspaper for release information. However, it is alleged that when OP 2 and OP 4 threatened the producer, the producer decided not to give the film to the Informant.
- 10 Based on the above, the Informant has *inter alia* prayed the Commission to enquire into the abuse of dominant position by OP 2 and OP 4 and the anti-competitive agreement entered into by them. It has also prayed that appropriate orders against the OPs be passed. The Informant has also requested for interim relief in the matter.
- 11 The Commission has perused the information and other materials available on record. The Informant and the OPs have also been heard on 20.09.2016.
- 12 The allegations of the Informant pertaining to infraction of the provisions of Sections 3 and 4 of the Act by the OPs and their examination have been stated in the subsequent paragraphs.



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13 The following allegations have been leveled against the OPs pertaining to contravention of the provisions of Section 3 of the Act:

- (i) The cinema halls in WB are not able to avail DPS from outside the State due to the distributorship agreement that subsist between OP 1 and OP 3 with their distributors.
- (ii) OP 2 and OP 4 have such internal arrangement with cinema hall owners in WB that prevents cinema hall owners from having more than one DPS. Cinema hall owners in WB have to choose between 'UFO' and 'Qube' only.
- (iii) OP 2 and OP 4 have executed such agreements with the cinema halls owners/ exhibitors that they operate for a fixed period of time and give virtually 'no exit option'. When the Informant entered the market, all the cinema halls in WB already had such arrangements with either OP 2 or OP 4.
- (iv) The rates and terms and conditions of the agreements executed between OP 1 and OP 3 with their distributors OP 2 and OP 4 respectively are the same or substantially the same.

14 With regard to the allegation of internal arrangements/ agreements of OP 2 and OP 4 with the exhibitors/ cinema hall owners in WB, it is observed that such allegations do not hold any ground as neither in the information nor in the terms and conditions of the agreements executed between OP 2 and OP 4 with the exhibitors, there is any indication of any sort of anti-competitive agreement in violation of the provisions of Section 3 of the Act. It may be noted that the choice to use a certain kind of DPS is a legitimate business decision of a cinema hall owner and whether to switch over to another type of DPS or not is completely at its discretion. Also, the termination clause of the agreement in question clearly provides for exit clause for both the parties. Therefore, the issue raised by the Informant on 'no exit clause' stands negated. Further, from the information it is clear that there is no entry barrier into the market as 74 cinema halls in WB have shifted to 'UMW' brand of DPS of the



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Informant. In view of the above, it appears that the Informant has made bald allegations against the OPs without any evidence. Further, on the issue of agreement between OP 1 and OP 3 with their respective distributors *i.e.* OP 2 and OP 4, no copy of distribution agreement or any cogent material have been provided by the Informant to substantiate its allegations. Accordingly, the Commission is of the view that no case of contravention of the provisions of Section 3 of the Act is made out against the OPs in the instant matter.

15 Next, the following allegations have been leveled against the OPs pertaining to contravention of the provisions of Section 4 of the Act:

- (i) OP 2, being the largest producer and distributor of all types of films, has abused its dominant position by not allowing 74 cinema halls in WB who switched over to UMW to exhibit its films.
- (ii) OP 2 and OP 4 have divided the cinema halls in WB amongst themselves. There are 207 cinema halls in WB which are using 'Qube' brand of DPS and 228 cinema halls which are using UFO brand of DPS. There has been no switch over from 'Qube' to 'UFO' or *vice-versa*.
- (iii) OP 2 and OP 4 are charging higher rates for exhibiting Bengali films. The producers of Bengali films who are unable to avail the uploading system at such high cost are also not able to avail the services of the Informant who charges cheaper rate than OP 2 and OP 4.
- (iv) By virtue of their dominance, OP 2 and OP 4 are in a position to pressurise other producers and distributors not to exhibit films in cinema halls having 'UMW' projection system in WB.
- (v) OP 2 and OP 4 have threatened other producers and distributors with boycott of their films in all 'Qube' and 'UFO' cinema halls in case they allow their films to be exhibited in cinema halls having 'UMW' projection system. One such instance was boycott of the exhibition of the Bengali movie 'Black' in November, 2015 by its producer in the cinema halls having 'UMW' projection system.



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- 16 Firstly, the Commission notes that the Informant has alleged collective abuse of dominance by OP 2 and OP 4. Since the Act does not have any provision on collective abuse of dominance by enterprises, this issue cannot be assessed.
- 17 Next, with regard to the alleged abuse of dominance by OP 2 and OP 4 individually, the Commission deems it appropriate to first define the relevant market and then to assess dominance of OP 2 and OP 4 individually in the delineated market before proceeding to examine the alleged abuse of dominance. The allegations in the instant case relate to the restriction imposed by OP 2 and OP 4 on the Informant with regards to distribution of UMW brand of DPS, manufactured by M/s United Media Works Pvt. Ltd., to the exhibitors in WB. It may be noted that DPS is an equipment required for projection of films in cinema halls. Therefore, the relevant product market in the present case may be considered as the '*market for the distribution/ supply of Digital Projection Systems in cinema halls*'. On the relevant geographic market, it may be noted that DPS is widely used in different states. Further, 'Qube' and 'UFO' brands of DPS are also distributed in other states apart from WB. Also, the requirements in cinema halls for digital projection do not differ with the change of location. Therefore, the relevant geographic market in this case may be considered as '*India*'. Based on the relevant product market and the relevant geographic market defined above, the relevant market in the instant case may be considered as the '*market for the distribution/ supply of Digital Projection Systems in cinema halls in India*'.
- 18 It may be noted that the Informant has not disclosed the names of DPS manufacturers spread across India. Yet from the information available in public domain it can be gathered that there are many established manufacturers of DPS such as Sony, Barco, Imax, Dolby Digital, *etc.* with their own distributors all over the country who are supplying their equipments to several cinema halls in India. Presence of such players and their distributors indicate that the cinema halls have the option to choose from the other DPS manufacturers in the relevant market. Therefore, the Commission is of the view that neither OP 2 nor OP 4 possess the market power to act



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independently of competitive forces in the relevant market or to affect their competitors or consumers or the relevant market in their favour. Thus, neither OP 2 nor OP 4 is found to be dominant in the relevant market. In the absence of dominance of OP 2 or OP 4 in the relevant market, the question of abuse of dominance by them does not arise.

19 In the light of the above analysis, the Commission finds that no case of contravention of the provisions of either Section 3 or Section 4 of the Act is made out against any of the OPs in the instant matter. Accordingly, the matter is closed under the provisions of Section 26(2) of the Act.

20 The Secretary is directed to inform all concerned accordingly.

Sd/-
(Devender Kumar Sikri)
Chairperson

Sd/-
(S. L. Bunker)
Member

Sd/-
(Sudhir Mital)
Member

Sd/-
(Augustine Peter)
Member

Sd/-
(U. C. Nahta)
Member

Sd/-
(Justice G. P. Mittal)
Member

New Delhi
Dated: 06.12.2016