

**BEFORE****THE COMPETITION COMMISSION OF INDIA****Case No. 37/2011****Date of Decision: 3<sup>rd</sup> January, 2013****Information filed by:**

Film &amp; Television Producers Guild of India

...through Sh. Vibhu Bhakru and Sh. Harshvardhan Jha

**Against:**

1. Multiplex Association of India (MAI), Mumbai  
...through Sh. Ramji Srivasan and Sh. G.R. Bhatia, Advocates
2. PVR Limited...through Sh. Saikrishana Raja Gopal, Advocate
3. Inox Leisure Limited }  
4. Fame India Limited } through Sh. Ravishekhar Nair and Ms. Nidhi Singh, Advocates
5. Reliance Media Works Limited
6. Cinemax India Limited ...through Sh. Rohit K. Aggarwal, Advocate
7. Fun Multiplex Pvt. Ltd. ...through Ms. Diya Kapoor
8. Chaphalkar Brother, Pune
9. HDIL Entertainment Pvt. Ltd.
10. DT Cinemas ...through Sh. Karan Chandhoke, Advocate
11. Movietime Cineplex Pvt. Ltd.
12. Satyam Cineplexes Limited...through Sh. H.S. Bobby Chandhoke, Advocate
13. SRS Entertainment & Retail Limited...through Sh. Tarun Singla, Advocate
14. AB Movies Pvt. Limited...through Sh. Rajiv Garg, Advocate
15. Velocity Limited

.....Opposite Parties

**ORDER**

The information in the present case was filed on 22.07.2011 by Film & Television Producers Guild of India, India (hereinafter, referred to as "FTPGI"), against Multiplex Association of India (hereinafter, referred to as "MAI"/ "OP1") and its members, consisting of, PVR Limited(OP 2), Inox Leisure Limited(OP 3), Fame India Limited(OP

4), Reliance Media Works Limited(OP 5), Cinemax India Limited(OP 6), Fun Multiplex Pvt. Ltd., (OP 7), Chaphalkar Brother, Pune(OP 8), HDIL Entertainment Pvt. Ltd., (OP 9), DT Cinemas (OP10), Movietime Cineplex Pvt. Ltd. (OP 11), Satyam Cineplexes Limited(OP 12),SRS Entertainment & Retail Limited (OP 13), AB Movies Pvt. Limited(OP 14) and Velocity Limited(OP 15), alleging contravention of the provisions of Section 3 and 4 of the Competition Act, 2002 (hereinafter, referred to as the "Act").

1. The facts of the case, in brief, are as under:-

1. As per the information, the Informant is an autonomous, non-profit making film trade body formed for the betterment of the film and motion picture industry, comprising of members who are the stakeholders of the motion picture industry. It acts as a principal negotiator with the Government of India ("Government") on various critical issues related to the motion picture industry, with a view to resolve any internal and external trade disputes of the industry, besides liaising with foreign delegations to provide international exposure for its members and arranging conclaves for the benefit of its members, etc.
2. It has been stated in the information that OP1 is an association of multiplexes and OP 2 to 15 are its members *inter-alia*, engaged in the business of operating multiplex theatres in various Indian cities (some of such members even operate their chain of multiplexes outside India). As per the Informant, the OPs collectively control almost 60% of the entire multiplex film exhibition business in India.
3. As per the averments made in the information, the film business primarily involves three stages *viz.*, production, distribution and exhibition. Once a film is produced by a film producer, he either approaches a film distributor to distribute his film to the exhibitors or directly approaches the film exhibitors. Therefore, distribution and exhibition

are the end points in the value chain of the film business and are therefore of utmost importance. A producer cannot make a successful film unless he can successfully distribute his film to the film exhibitors. Typically a distributor acquires theatrical distribution rights from the producer and recovers its costs from the revenues arising from the exhibition of the film through the exhibitors in single screen and multiplex theatres.

4. It has been stated that there are various forms of arrangement between producers/ distributors and exhibitors for commercial exploitation of the films. Most common among them is a revenue sharing arrangement. In the year 2009, there was a disagreement between multiplex owners and film producers over the revenue sharing mechanisms. Producers wanted an equal share of the revenue from movies, while on the other hand, multiplex operators wanted to link the revenue sharing ratio to the performance of movies on box office. Ultimately a settlement was reached among FTPGI, OP 1 and its members (OP 2-15) resulting in a master revenue sharing agreement between the distributors/producers and multiplex operators.
5. As per the Informant, at that time, the multiplex owners under the aegis of FICCI-Multiplex Association of India (FMAI) simultaneously, filed an information (Case No.1/2009) before the Competition Commission of India ("Commission") against the United Producers/ Distributors Forum (UPDF) and others, wherein FMAI alleged the existence of an anti-competitive agreement amongst the producers/distributors. The Commission finally found the allegation to be established and vide order dated 25.05.2011 imposed a penalty of Rs.1.00 lakh on each of the Opposite Parties in Case No.1/2009.
6. It has been further averred that the term of aforesaid master agreement entered into between the members of the Informant and the OPs expired in and around 30.06.2011. The Informant has alleged that its members were willing to supply their respective films for exhibition in

the multiplexes owned / operated by the OPs on the same terms and conditions as recorded in the aforesaid master agreement. However, the OPs (2-15), after expiry of the master agreement on 30.06.2011, refused to exhibit films on the same terms and conditions and began imposing unreasonable terms and conditions for the exhibition of films.

7. It has been alleged by the Informant that OP-1 has issued a directive to its members, *i.e.*, OPs (1-15) whereby no multiplex owner/operator is allowed to approach a film producer/distributor individually for exhibition of a film. OPs (2-15) are bound to follow this directive or else face penal action. The Informant has also alleged that the OPs keep the decision about the release of a film in abeyance till the last day. Consequently as the producer by then would have made significant investments in the promotion and the advertisement of his film, he remains in no position to disagree with the unreasonable terms put forth by the OPs. In these circumstances, the OPs (1-15) force the members of the Informant to accept their terms under the threat of not exhibiting the film in their multiplexes.

8. It has been further alleged that the OPs had pressurized Vishesh Films, the distributor of the film 'Murder 2', to accept certain unreasonable terms and conditions related to rebate and additional revenue sharing mechanism for the release of the film. The terms, alleged to have been dictated by the OPs are briefly summarized as under:

"a) *The Revenue Sharing would be as under:*

1. *1<sup>st</sup> Exhibition Week: 50% of the Net Collections to be paid to the producer / distributor;*
2. *2<sup>nd</sup> Exhibition Week: 42.5% of the Net Collections to be paid to the producer / distributor;*
3. *3<sup>rd</sup> Exhibition Week: 37.5% of the Net Collections to be paid to the producer / distributor;*

4. 4<sup>th</sup> Exhibition Week onwards till the last Exhibition Week:  
30% of the Net Collections to be paid to the producer / distributor.

b) In the event the number of Prints across the Territory for exhibition of the Film, exceeds 692 in aggregate, and the aggregate Net Box Office Collection (NBOC) for such Film, computed as on 9th December, 2010, an aggregate of all the exhibition weeks, during the first theatrical release of the Film, in all the multiplexes of the six National Multiplex Chains i.e. Big, Cinemax, Fame, Fun, Inox and PVR, exceeds Rs.24,23,00,000/- (Rupees twenty four crores and twenty three lacs only) ("Benchmark Amount") then Vishesh Films would be entitled to receive an additional revenue share of 2.5% of the NBOC in the 1st and the 2nd exhibition week, i.e. the Distributor shall then receive 52.5% of the NBOC in the 1st exhibition week and 45% of the NBOC in the 2nd exhibition week.

c) Rebate: In the event Vishesh Films plans the release of a Film in such a manner that the number of Prints across the Territory for exhibition of the Film, exceeds 692 in aggregate, and the aggregate NBOC for such Film, across all the multiplexes comprised in the National Multiplex Chains i.e. Big, Cinemax, Fame, Fun, Inox and PVR, computed as on 9th December, 2010, is less than Rs. 13,85,00,000/- (Rupees Thirteen crores and Eighty Five Lacs only) ("Lower Benchmark Amount") computed at the end of all the exhibition weeks for the first theatrical release of the Film, then the Exhibitor shall be entitled to receive rebate in the Revenue Share, to be shared with M/s. Vishesh Films of 2.5% of the NBOC in the 1st and the 2nd exhibition week, i.e. M/s. Vishesh Films shall then receive 47.5% of the NBOC in the 1st exhibition week and 40% of the NBOC in the 2nd exhibition week.

9. As per the Informant, the film "Murder 2" had to be released on 08.07.2011 and the OPs were not ready to exhibit the said film in their respective multiplexes until Vishesh Films agreed to their

demands. The Informant has alleged that due to the aforesaid reason, Vishesh Film had no other option but to enter into the agreement with the OPs on the terms and conditions dictated by them under duress.

10. The Informant has also alleged that after the second week of exhibition of the said film, Mr. Mukesh Bhatt of Vishesh films addressed an email to all the OPs with copy to the distributors stating that since the film had performed well on box office, the OPs should exhibit minimum 6 shows of the film per day instead of 2 shows per day. However, the OPs failed to adhere to such request and on the contrary, in most of the multiplexes; the OPs deliberately removed the film from exhibition after the third week.
11. As per the Informant, similar to the situation of Vishesh Films, the OPs have pressurized other members of the Informant to accept unreasonable terms and conditions on rebate and additional revenue share, similar to those mentioned above.
12. The Informant has further alleged that a producer / distributor have no control on scheduling the exhibition of the films. The OPs exclusively control the exhibition schedule of the films *i.e.*, number of shows, timing of shows etc. The OPs deliberately cut down the number of shows and schedule the timing of the shows of the films of the producers/ distributors in such a manner that it becomes very unlikely for the Net Box Office Collections to exceed the Benchmarks stipulated in the agreements with the respective OPs and thereby the share of producers / distributors also stands accordingly reduced.
13. As per the Informant, in addition to aforesaid, the OPs further deduct entertainment tax from the Net Box Office Collections, before arriving at the share of the revenue for the producers / distributors, even in the states where such entertainment tax has been abolished. While the films of the producers / distributors are graded and terms and

conditions of exhibition are determined on the basis of the grades of the films, the OPs tend to demand uniform terms and conditions for exhibiting films at any multiplexes irrespective of the factors, such as the location of the multiplexes, condition of theatre, number of seats etc., which have a large bearing on the Net Box Office Collections.

14. As per the Informant, the OPs are supposed to make advance payments to the producer/distributor before the release of films which are in the nature of minimum guarantee or refundable advances as may be mutually agreed between the producer/distributor and the exhibitor. However, in practice, the OPs do not make any such payments until almost the scheduled date of release of the film at their respective multiplexes. The OPs therefore coerce the producer to release the film on the scheduled date in any circumstances.
15. As per the Informant, the advance booking of a film scheduled to be released on a particular Friday normally should commence from the immediately preceding Monday or latest by that Wednesday. However, in the current circumstances, the OPs do not finalize the terms and conditions of the exhibition of films until the immediately preceding Thursday. Such conduct not only hampers the opening of the advance bookings but also puts the consumers in a dilemma since they don't know until the last minute which films would be released in which theatres on a particular Friday. Thus, not only is a consumer deprived of his ability to book tickets for a particular movie in advance, he is also unable to plan his schedule and is, therefore, put in a state of confusion, since various films are advertised as scheduled for release but he is not aware until the last minute which film would be exhibited in which theatre. The same is evident from the fact that recently the films Singham and Harry Potter were released but all advertisements in respect of these films, until the Friday of release, did not contain details of the multiplexes in which the films would be exhibited.

16. The Informant has submitted that multiplexes contribute 60% of total revenue from theatrical proceeds of a film. Therefore, the OP-1 is dominant enterprise. Multiplex owners negotiate and dictate their terms through their association, whereas earlier the negotiation was on individual basis and members of the Informant were ready to negotiate terms on individual basis. As per the Informant, as per FICCI KPMG Media and Entertainment Industry Report 2010, even though multiplexes have lower capacity per screen as compared to a single screen theatre (nearly 300 for multiplexes compared to 500 per single screens) they currently contribute around 25 percent of the total domestic theatrical revenues for the overall Indian film industry and as much as 60 percent for Hindi films. This is due to the fact that ticket prices and occupancy levels are much higher in multiplexes. The ticket price in multiplexes is nearly four to five times higher than that in single screens while the occupancy in multiplexes is approximately 30-35 percent compared to 20-25 percent in single screen theatres.
17. The Informant has also submitted that they have made some suggestions to the OPs for a fair play and exhibition of films in multiplexes but the OPs have refused to accept any of the suggestions to suit their malafide purposes.
18. The Informant has alleged that the collective decision taken by OPs not to exhibit the films of the members of the Informant in order to determine the price of their services is an anti-competitive agreement under section 3 of the Act. Further, collective decision taken by the OPs not to exhibit the films produced or distributed by the members of the Informant, if such producers/distributors do not agree to their demand for increased revenue share, amounts to abuse of dominant position by the OPs within the meaning of section 4(2)(a) of the Act.
19. As per the Informant, the OPs are aware that a cinematograph film has a limited shelf life and is highly prone to piracy. The exploitation

proceeds generated from theatrical exploitation of a film constitute a substantial part of the revenues generated from the exploitation of a film. Infact, there is a hold back period prescribed for few weeks from the date of theatrical release of each film during which the film is not exploited on any other platform. This is done to maximize the potential of theatrical exploitation and the proceeds arising therefrom. Once a film has been released and exploited in theatres, it has a very limited scope to be released in theatres again. If the OPs do not exhibit the films produced / distributed by the members of the Informant in their respective multiplexes, the consequence of such impugned action of the OPs is an effective denial of market access to the Informant under Section 4(2) (c) by denying exhibition of the films produced / distributed by the members of the Informant in their multiplex theatres across the country, particularly since these multiplexes contribute to almost 60% of the revenues arising from theatrical exploitation. Further, the OPs are in a dominant position since there is no dearth of content providers for exhibition in their multiplexes. Several Hollywood and Bollywood films are released every Friday in India. Therefore, the OPs have various alternative films available for exhibition in their multiplexes and can afford to refuse exhibiting the film of a producer / distributor who refuses to succumb to their unreasonable demands.

20. The Informant had also prayed for an interim relief under section 33 of the Act to restrain the OPs from entering into the alleged anti-competitive agreement by collectively deciding not to exhibit the films produced/distributed by the members of the Informant. The Informant had further prayed for restraining the OPs from abusing its dominant position by refusing to exhibit the films of the members of the Informant.
21. The Commission considered the matter in its meeting held on 10.08.2011 and formed an opinion that there was a prima-facie case for referring the matter to the Director General (DG) for investigation. Accordingly, the Commission vide its order dated 10.08.2011 under section 26(1) of the

Act directed the DG to conduct an investigation into the matter and submit his report to the Commission.

### **Investigation Report of DG**

22. DG, after receiving the directions from the Commission, investigated the matter in accordance with the provisions of the Act and submitted the investigation report dated 16.01.2012 to the Commission. The findings in DG report, in brief, are as under:-

1. As per DG report, after completion of a film the next step is its distribution which involves the process of making the film available to the end consumer through the various distribution channels. The copyright in a film being a bundle of rights is divided into various exploitation rights which are then monetized by the producer through arrangements with distributors. Distribution channels refer to the different platforms and media via which the film can be exploited. They include media platforms like the theatrical distribution of a film through movie theatres, television (both terrestrial and satellite), home video and also the new age media platforms, like internet, digital, mobile etc.
2. DG has further reported that for distributing a film, either the distributor releases a film directly or through sub-distributors across India. The commercial understanding in every type of distribution arrangement varies from revenue sharing, minimum guarantee, fixed fee, etc. It is well known fact that theatrical distribution (being the last link in the chain is actually responsible for generating maximum amount of the revenue by exhibiting the film) is currently the most crucial aspect of revenues. Also, the film as a product is based on certain concepts which may or may not be interesting after a short-span of time. Therefore, it is of utmost importance for the producers that they are able to exhibit film in theatres and release it across the globe including India. In this respect the DG

has also referred to the FICCI-KPMG report which shows that more than 70% share is contributed from theatrical exhibition of the total revenue generated in film industry.

3. DG has also given a list of state wise number of single screens and on that basis reported that the number of single screen theaters in South India is much higher than other parts of the country. However, the Indian film exhibition segment is undergoing a rapid transformation due to the advent of multiplexes and digital cinema. At a time when single-screen theatres are dying due to lack of footfalls, people are queuing up at multiplexes which sell tickets at almost 3-5 times the prices prevailing in single-screen theatres at metropolis and tier 2 cities. This condition has led to the rapid growth of multiplex theatres in India. DG has also analyzed the growth of multiplex theatres in India for the purpose of determination of relevant market in this case.
4. As per DG report, over the last few years, multiplex theatres have become the preferred choice of viewers to watch movies. Multiplex theatres have a more effective business model than single-screen theatres as they are able to charge a higher ticket price, monitor box office collections in a transparent manner and leverage other sources of revenues such as food and beverages, games and advertising. Some state governments have given an impetus to multiplex theatres by offering them exemption from entertainment tax. As per the DG report, at present there are around 1400 screens in about 450 multiplex theatres in India. Some of the multiplex theatre operators are also present in the movie distribution, financing and production business.
5. As per the DG report, the key players in the business of multiplex theatres are about 25 small and big players. Some of the international chains like Cinopolis have also ventured into the multiplex theatre business in India.

6. As per DG report, the theatrical exhibition in India can be categorized into two types of theaters, single screen theatres having a standalone screen and multiplexes with normally 3 and more screens. DG has also highlighted the difference between the single screen cinemas and the multiplexes on the following counts:

<b>S.No.</b>	<b>Single screen theatres</b>	<b>Multiplexes</b>
1	Old stand alone buildings with shabby infrastructure.	New buildings normally in shopping malls with modern infrastructure.
2	Owned and run by small businessmen	Run by big businessmen and corporate business houses.
3	Seating capacity of 700 to 1000 seats.	Seating capacity is around 150 to 350 seats.
4	Ticket prices are low, average price is about Rs. 50/-	Ticket prices 3 to 5 times of single screen theaters. Average price is above Rs.125/-
5	Average occupancy 15 to 20% of total capacity.	Average occupancy about 30% of total capacity.
6	The share of ticket collection revenue is about 90% of the total revenue.	Multiple revenue sources. Share of Food and beverage and advertisement is about 30%.
7	Revenue sharing models are beneficial to the distributors. Normally it is taken on rent or percentage of revenue share of collection whichever is beneficial to the distributor.	From June 2009 the revenue sharing formulae was decided by way of agreement between producers/distributor and Multiplex operators for all the films. This agreement expired on 30-06-11. However the revenue sharing formulae continues more or less on similar terms.
8	No special tax exemptions	Enjoys various tax exemptions
9	Comprises of about 90% of total screens in India	Only 10% of the total screens in India

10	Spread over the country to smaller towns.	Only in Metros and big cities.
11	Growth rate is negative. Number of single screens theatres is on decreasing trend.	Growing at a faster rate than GDP. Many new multiplexes are adding day by day and new operators including multinational chains are entering in the market.
12	Share in the total ticket revenue collection of film industry is decreasing.	The share in total ticket collection is increasing and reportedly has crossed 50% of the total theatrical collection.

7. Based on above the DG has come to the conclusion that for the purpose of investigation, the exhibition of films in Multiplex theatres in India may be considered as the relevant market as per the provisions of section 2(r) of the Act.
8. After delineation of the relevant market, DG has analyzed the factors which play important role in the film exhibition business in India. As per DG report, the contribution of revenue from single screen theatres is decreasing day by day despite constituting approximately 85-90% of the total movie screens in India. The primary reason for this is the higher prices of tickets at multiplex theatres. With the same number of tickets sold multiplex theatres normally collect 3 times of more money than the single screen theatres. Further with the help of smart scheduling they are able to run more number of shows than the single screen theatres. These factors have made multiplex theatres as the biggest and the important source of revenue generation for a film. The declining collection in single screen theatres and the increasing collection at the multiplex theatres have tilted the balance in favour of the multiplex theatre operators resulting in the enhanced dependency of film producers/distributors on them.

9. The DG also analyzed the role of Multiplex Association of India (“MAI”).

As per the DG’s report, MAI was formed in 2002 under the auspices of the Federation of Indian Chamber of Commerce and Industry (FICCI). The avowed objective of MAI is to promote the interest of the multiplex theater operators in the film industry before Government and other bodies and it has 22 multiplex operators as its members. The meetings of the MAI are conducted usually in the office of one of the members of the MAI. Shri. Deepak Asher of the Inox group is the current President of MAI. As per the DG’s report, MAI has been active in raising the concerns of the multiplex theatre operators in the film industry. It had also filed complaints before Commission against the anti-competitive conducts of different stakeholders, showing its awareness about the competition law.

10. The issues of conflict between distributors / producers and multiplex theatre operators, as identified by the DG, are given below:

1. With the advent of multiplex theatres in India in the year 1997, instead of paying a fixed amount to the exhibitors, as was the position earlier, the producers/distributors started to adopt revenue sharing models where the revenue generated from the exhibition of the films would be shared between producers/ distributors on one hand and the exhibitors on the other.
2. After formation of MAI in 2002-03, the multiplex theatre operators started insisting for only revenue sharing model with the films distributors / producers as a consideration for releasing their films on their multiplex theatres. The producers / distributors and the multiplex theatre operators both insisted for more share in the first 2 week of the release of a film as the first two weeks are very crucial for the commercial exploitation of the film. Thus, the

revenue sharing model remained a point of contention between the multiplex theatre operators and the film producers/distributors.

3. As per the DG report, the issue of the revenue sharing model is the most important issue and has been main point of contention between the producers/distributors and the multiplex theatre operators. The terms and conditions for exhibition of a film in a multiplex theatre would normally be a percentage of net box office collection which effectively means that the revenue collected from the sale of ticket would be shared between the multiplex operators and distributor/producers in certain pre-fixed ratios.

11. As per the DG Report, there is a long history of dispute over revenue sharing between the distributors/producers and the multiplex theatre operators. Initially all the multiplex operators and the producers/distributors were entering into standard revenue sharing arrangements with each other. However, with the increase in the market power of the multiplex theatre operators, they united under the banner of MAI and collectively demanded more lucrative terms from the producers/distributors to gain the maximum share of the revenue generated from the commercial exploitation of the films on such theatre owners' screens. In 2006, there was a big conflict between multiplex operators and Yashraj Films at the time of release of the film 'Fanaa'. Yashraj Films demanded more share in first and second week from the multiplex theatre operators. All the multiplex theatre operators, under the banner of MAI jointly opposed this demand of increased revenue share by Yashraj Films.

12. According to the DG, after the aforesaid incident related to the release of film 'Fanaa', the MAI tried to enforce the terms and conditions jointly through its members by way of a written agreement. The MAI and its members entered into an agreement on 06-01-2007 for deciding and imposing the revenue sharing terms on all the producers/distributors. This agreement led to filing of Case No. RTPE 3/2007 before MRTP

Commission by some producers against MAI and some of the multiplex theatre operators. In the said case certain clauses of their agreement including those related to the revenue sharing arrangements were challenged. The MRTP Commission declared the said agreement as restrictive in nature, against the public interest and also passed an order granting temporary injunction against the defendants.

13. As per the DG's report, although the agreement of MAI was withdrawn after the decision of the MRTP Commission but coordination between the members of MAI continued and the terms relating to revenue sharing for releasing a particular film on various multiplex theatres were decided after joint consultation of the multiplex theatre operators. However, the multiplex theatre operators being aware about the outcome of indulging in such anti-competitive activities avoided any trail of written evidence or documents like those of the agreement jointly entered between the MAI and its members in January 2007. However, the terms at which each multiplex theatre operators would accept to release a film after joint consultation with other such operators remained more or less identical to the agreement of 2007 which had been earlier declared to be restrictive by the MRTP Commission.
14. DG has also reported that for most of the films, the terms relating to revenue offered by the multiplex theatre operators to the producers/distributors were 48% or less in the first week of release of films. Prior to deadlock of 2009 only a few films were allowed equal share in the first week by the multiplex theatre operators. Therefore, as per the DG, the course of investigation clearly indicates that the revenue sharing terms offered by the multiplex theatre operators was mainly guided by the agreement of 2007.
15. DG has also reported that the scenario of revenue sharing changed sometime in the year 2009 when the producers/distributors became united to counter the strategy of the multiplex theatre operators and extract a higher share of the revenue generated from the commercial

exploitation of a film from multiplex theatre operators across India. Some of the prominent film personalities and Hollywood film studios also joined the producers/distributors and formed an organization UPDF (United Producers and Distributors' Forum) through which they decided to deal collectively to create pressure on the multiplex theatre operators. The MAI filed information before the Commission against the producers/distributors for their alleged anti-competitive behavior. The conduct of producers/distributors was found to be in contravention of the provisions of Act by the Commission and penalties were imposed on the producers/distributors who were the OPs in that particular case before the Commission.

16. As per DG report, after many rounds of negotiations, UPDF and MAI reached to a settlement in June, 2009. A master agreement was prepared and all the multiplex operators signed similar agreements separately with the prominent producers/distributors. As per the settlement, the exhibitors were required to sign this agreement with the prominent producers/distributors who were part of the negotiation process. The terms of these agreements were also made applicable for the exhibition of films produced by producers/distributors who were not part of the negotiation process. The principal terms of this settlement were that the revenue share for producers/ distributors would be 50%, 42.5%, 37.5% and 30% for the 1st, 2nd, 3rd and 4th week, respectively, for both Bollywood and Hollywood films. Thus, after the settlement of June 2009 the dispute between producers/distributors and multiplex operators on revenue sharing was resolved. No incident of dispute on this account were reported during the operation of the aforesaid master agreement
17. The DG has further reported that the master agreement entered between different multiplex theater operators and distributors/producers was for a time period of 2 years. The producers/distributors tried to renew the master agreement with the multiplex operators in June, 2011, but this time the multiplex theatre operators did not oblige them and refused to renew the agreement on the old terms. Further, the order of the

Commission could have had an impact upon the producers/distributors who were unable to jointly negotiate with the multiplex operators. The multiplex theatre operators again tried to bargain for more revenue share based upon the pre 2009 scenario (identical to the terms of the agreement of 2007, discussed earlier). The multiplex theatre operators also wanted to renegotiate the rebate clause of the old master agreement and wanted a revised rebate rate of 2.5% in revenue share generated in the first week of the release of a film, if the film did not perform well or below the benchmark amount.

18. The DG has observed that there is a wide gap between the supply and demand of good quality theatre screens in India. The high real estate prices, huge investment on infrastructure, high variable cost and huge dependency of the public on the availability of films, unpredictability of a film's performance are some of the factors which make the film business vulnerable to losses and provide the multiplex theatre operators with favorable factors to form a cartel. The factors, namely, small number of players, market leadership by top multiplex operators, an active association in the form of the MAI, high dependency of the end consumer on the availability of films, lucrative growth opportunities and high ticket prices, benefits of collective bargaining are some of the factors which make coordination among the multiplex operators an attractive opportunity. In fact, the ticket prices in these multiplexes appear to be near to monopolistic prices. Although the prices of cinema tickets are monitored by different states being a subject of the state list of the Indian constitution, the vast geographical territory and gap in the demand and supply of good and quality movies allow the multiplex theatre operators to price the ticket prices above the competitive level. On one hand the prices in single theatres are well below the standard international prices, while the multiplex theatres on the other hand are able to maintain the ticket prices at the level of many developed economies.
19. As per the DG report, MAI has chosen to remain informal in its official functioning and communication process. The DG has observed that this

may be a conscious decision after the findings of MRTPCommission in RTPE No.3/2007. It has also been noted that there is no formal system for communications/meetings/circulation of agenda and preparation of the minutes of meetings of the MAI. In the opinion of the DG this may be a deliberate strategy to avoid the trace of records of its decisions/actions relating to coordinated actions. The DG has noted that since the number of players is limited, it is easier to keep the communication informal and avoid the formal recording of such communications. It has also been noted by the DG that normally, a handful of members, particularly the big multiplex theatre chain operators, decide the course of the meetings of the MAI and negotiations to be undertaken with the producers/distributors. As per the report of the DG, the statement of Shri. Deepak Asher, President of MAI recorded during the course of investigation has reflected the informal functioning style of MAI.

20. The DG has also reported that with the date of termination of the master agreement approaching, the multiplex theatre operators expressed a desire to renegotiate the terms of the agreement under the banner of MAI. The e-mails received by MAI from all the multiplex operators before the meeting held on 25.02.2011 confirm this fact. Further, the agenda of meeting dated 25.02.2011 also show that the main issues for discussion at the meeting on 25.02.2011 were the terms of the master agreement and the revenue sharing arrangement with the producers/distributors.
21. The DG has further reported that the correspondence between MAI and its members prior to the meeting dated 25-02-2011 clearly reveal that the members wanted to arrive at some decision in this meeting on the terms at which films would be released after the expiry of the master agreement. It may be seen that after 30-06-2011, following changes in existing terms were jointly demanded by all the multiplex theatre operators and all these changes were proposed in the meeting of 25-02-2011:

1. Demand of rebate of 2.5% in first week's collection if the film performed below the benchmark.
  2. For Hollywood films the revenue share was to be based on the day and date basis or the difference of the time period in the release of the film in India.
3. As per the DG report, contrary to the claim of the OPs that no discussion or decision was taken in the meeting dated 25-02-2011 of MAI on above issues, the multiplex theatre operators started demanding the same terms from producers/distributors as raised during the meeting of 25.02.2011. The DG has further reported that a meeting of the members of MAI was held on 29.06.2011 to co-ordinate the behavior of the members given the fact that the master agreement was going to expire on 30.06.2011.
4. The DG has further reported that no boycott or any threat of boycott was issued by the MAI or its members against any producer/ distributors. The Bollywood films continued to be released in the multiplexes after the expiry of master agreement. However, the multiplexes started demanding the insertion of the aforesaid proposed changes in the agreements, including terms relating to revised rebate rates in first week of the release of a film in multiplex theatres if such a film performs below the benchmark level of Rs.13.75 crores. The producers/distributors accepted this change after some resistance and amended the agreements accordingly. This condition of rebate was imposed by all the members of MAI on the films that were released from 01.07.2011 (i.e. after the expiry of the old master agreement). This rebate clause was subsequently re-negotiated at the time of release of film 'Bodyguard' and thereafter the benchmark for rebate in the first week became applicable on the films that collected less than Rs.6 crores.
5. As per DG report, on 01.07.2011, two big Hindi movies 'Delhi Belly' of UTV and 'Buddha Hoga Tera Baap' of Viacom 18 were released. The copies of agreements of both the films show that the clause of rebate in

first week has been included as per the demand of the multiplex theatre operators. On 08.07.2011, film 'Murder-2' was released and the distributors of this film were also forced to include similar changes in the revenue sharing agreement. As per DG report, the investigation revealed that the changed format of the agreements was supplied to the producers/distributors by the various multiplex theatre operators, indicating that such clauses were acceptable to all the OPs and that there has been a concerted action on their part.

6. On the basis of the statement of Shri Rajesh Thadani, the DG has reported that the multiplex theatre operators were working in tandem to impose their decision on the producers/distributors of films. It has been observed by the DG that multiplex operators were discussing with each other and unless the changes desired by them were accepted by the producers/distributors none of them finalized the agreement. It has been noted by the DG that the draft agreement incorporating the proposed changes was forwarded by Shri. Rajendra Singh Jyala of INOX with a direction to send it back on the letterhead of 'Vishesh Films' (the distributor of the movie 'Murder 2') for signing by the multiplex theatre operators. The other multiplex theatre operators signed their respective agreements with the producers/distributors only when Shri Rajesh Thadani of Vishesh Films had incorporated the changes as per the draft forwarded by to him by INOX. None of the multiplex theatre operators had signed the agreement till the finalization of the draft agreement by INOX for the release of film 'Murder 2' in the Mumbai circuit. Although Shri Chandresh of Fun Cinemas and Shri Rajendra Jyala of Inox have denied any discussion on film 'Murder 2', the fact of forwarding the draft of the agreement by Shri Jyala of Inox to Shri Rajesh Thadani of Vishesh Films has been found to be true from the copies of the e-mails provided by Shri. Rajesh Thadani as well as by Shri. Rajendra Singh Jyala.
7. The DG has opined that the coordinated conduct of the various multiplex theatre operators was also evident from the information gathered from another distributor Shri. Ramesh Sippy. The documents submitted by

MAI to the DG contained an e-mail received by Shri. Deepak Asher, President MAI from Shri. Ramesh Sippy, a distributor of films, dated 06-07-2011 regarding a meeting with producers/ distributors in groups to discuss the terms of releasing a particular film. Shri. Deepak Asher was asked by the DG to explain the background of this mail and to explain the action taken by him on the message sent by Shri. Ramesh Sippy. Shri. Ramesh Sippy was also asked to explain the details relating to the e-mail sent by him to Shri. Deepak Asher on 06.07.2011.

8. According to the DG report, the reply filed by Shri. Ramesh Sippy reveals the existence of the combined strength and the market power enjoyed by the multiplex theatre operators in the film industry.
9. As per DG report, the replies filed by some third parties i.e. UTV and Viacom 18 suggest that the process of negotiation was done jointly with the multiplex operators.
10. The investigation of DG revealed that the chain of events and information gathered during the course of investigation indicate that the multiplex theatre operators were acting like a cartel under the banner of MAI. All the important decisions are being taken jointly after consultation with the leading multiplex theatre operators and the office bearers of MAI. The action of MAI establishes that the producers/distributors were forced to accept the decision of the MAI and its members on terms of revenue sharing arrangements as determined by such members jointly.
11. During the course of investigation, it was also found by the DG that the effect of concerted activities of multiplex theatre operators was even more on the distributors of Hollywood movies after the expiry of master agreement. The multiplex theatre operators started demanding more share from Hollywood films producers/distributors, after the expiry of old master agreement with such producers/distributors. They pressurized the producers/distributors for allowing the OPs to partake a higher share of the revenue generated from such movies in all the weeks when such

movies would be exhibited on the screens operated by the OPs. After the expiry of master agreement, the first film due for release was 'Harry Potter' of Warner Brothers on 15.07.2011. Warner Brothers offered the film to all the multiplex theatre operators on the terms as provided in the master agreement. However, the terms communicated by the multiplex theatre operators in response to the offer of Warner Brothers were lower, i.e. 45% in first week, 37.5% in second week, 32.5% in third week and 27.5% in subsequent weeks. The multiplex theatre operators were united in their stand to extract higher terms from Warner Brothers for film 'Harry Potter'. After the initial standoff, the multiplex operators came together for a joint meeting in the office of Warner Brothers on 13.07.2011. As per the DG report, the multiplex theatre operators claimed that they went to the office of Warner Brothers on 13.07.2011 not for the purpose of any joint negotiations. However, the documents and the circumstantial evidences clearly indicate that the multiplex theatre operators went to attend a joint meeting to decide upon the terms of release of the film 'Harry Potter' in India.

12. To ascertain as to what had actually transpired at the aforesaid joint meeting between the multiplex theatre operators and Warner Brothers, the DG examined the visitors' register furnished by Warner Brothers which clearly shows that the representatives of all the national multiplex chains, viz. Shri. Thomas of Cinemax, Shri. Jeevan Joshi of Big Cinemas, Shri. Rajender Singh Jyala of Inox, Shri. Prakhar Joshi of PVR and Shri. Anshu of FUN Cinema, had gone to attend the joint meeting at the office of Warner Brothers on 13.07.2011. Further, Shri. Gaurav Sabharwal, Director (Sales), Warner Brothers has also filed an affidavit before the DG in which the details of events that transpired in the aforesaid meeting have been narrated. This fact has been further confirmed from the copies of e-mails provided by the President, MAI during the course of examination by the DG.
13. As per the DG's report, the dispute of multiplex theatre operators with the Hollywood films distributors continued till September-October, 2011 and

finally resulted in an understanding between them. As per the said understanding, for Hollywood films released within 2 weeks of their release in the United States of America (U.S.), the revenue share of Hollywood films distributors was agreed at 50%/42.5%/37.5%/30% 1st, 2nd, 3rd and 4th week, respectively. For films released within 2-4 weeks of their release in the U.S., the revenue share terms were determined at 45%/35%/30% and for films released after 4 weeks of their release in the U.S., the revenue share terms were pegged at 40%/35%/30% for the films exhibited at the screens operated by the OPs. On the basis of certain newspaper reports the DG has noted that due to the concerted action of the multiplex theatre operators, many Hollywood films such as 'Captain America', 'Final Destination' and 'Planet of Apes' could not be smoothly released in India. As per the DG report, Foxstar, a prominent Hollywood distributor could not agree to the terms offered by the multiplex theatre operators and accordingly decided, at that point of time, not to exhibit its films in India.

14. As per the DG report, the conduct of MAI and the multiplex theatre operators as elaborated above is clearly anti-competitive in nature resulting in control of the supply of film exhibition opportunities as well as resulting in the fixing of the rates at which films would be exhibited in the multiplex theatres. As a result of the concerted action on part of the OPs and their ability to jointly employ certain pressure tactics, the Hollywood producers/distributors were pressurized to sign a revenue sharing agreement where the multiplex operators would be able to partake higher revenue share generated from the commercial exploitation of such Hollywood films in the first week of their release, otherwise none of the members of MAI would release the particular film in their multiplex theatres. As per the DG, the allegation leveled by the Informant relating to the strategy of multiplex theatre operators to jointly negotiate with the film distributors/producers in order to finalize such terms which would be unfairly beneficial to the OPs have been found to be substantiated from the above facts.

15. DG has also examined the conduct of the OPs post 30.06.2011 and observed with the date of expiry of the old master agreement approaching a meeting of the members of the MAI was held in the last week of June to take a final decision on the issue. As per the DG report, the real purpose of the meeting dated 29.06.2011 was to discuss and decide the future course of action relating to the terms and conditions on which the OPs would be releasing films at their multiplex theatres after the expiry of the old master agreement. DG has also reported that the conduct and behavior of multiplex theatre operators suggest that some decisions on the terms and conditions of the revenue sharing arrangement were adopted at the aforesaid meeting. As per DG this is evident from the fact that, firstly, none of the multiplex operators renewed the earlier master agreement and secondly, all the multiplex operators jointly discussed the terms and conditions of the film release particularly with respect to Hollywood film distributors. The DG has noted that conduct and circumstantial evidences clearly indicate that there was some kind of agreement among the multiplex theatre operators to control the market of film exhibition in multiplexes theatres in India and the multiplex theatre operators were following a concerted action plan or arrangement arrived at the meeting of MAI on 29.06.2011.
16. As per the DG, the fact that all the multiplex theatre operators got united to demand similar terms and conditions from the Bollywood and Hollywood film producers/distributors after the expiry of old master agreement is a clear indication of their coordinated conduct.
17. As per the report of the DG, the modus operandi of MAI is such that without issuing any formal direction or circular, it is able to implement its decisions. The moment any member receives an offer from some distributor which is not in conformity with the decision of MAI, the particular multiplex theatre operator informs the office bearers of MAI and its other members about the terms of the new offer for their advice. The terms are only accepted by the members of MAI when it is according to their pre-determined decision.

18. As per DG report, the minutes of the meetings from 2009 onwards clearly show that the members have been using the platform of MAI for taking joint decision with respect to release of films in multiplexes.
19. DG has reported that the documents collected during the course of investigation have revealed another instance of collective decision of the multiplex theatre operators. The film 'Singham' produced by Reliance Media was offered to the multiplex operators with the higher terms of revenue sharing of 55% in first week and 50% in second week. When this offer was received, the multiplex theatre operators forwarded the terms to the President of Mai, Shri. Deepak Asher for advice and decision on this offer of a higher revenue share.
20. As far as the allegation relating to delay/refusal to make payment of advance amount by way of a collective decision is concerned, DG has also brought out that there was no decision of the OPs regarding payment of advances or holding back the revenue share of the producers/distributors. The documents do not suggest any identical behavior/pattern or practice of the multiplex operators to conclude that there was any joint decision relating to payment of advances, etc. However, advance payment to the distributors of Mumbai circuit for film 'Murder 2' was delayed, but the reason for delay of payment of advance was on account of delay in finalization of terms of the agreement for the release of the film.
21. According to the DG, in view of the evidences and facts the MAI and its members are collectively deciding the terms of the business of film exhibition in the multiplex theatres across India. The OPs have been found using pressure tactics on the film producers/distributors by delaying the finalization of terms almost until the last date before the release of film, when the producer/distributor has made substantial investments in the production and promotion of the film. The DG has also noted that evidences gathered during the course of investigation have established

that the OPs have refused to exhibit some of the Hollywood movies to pressurize the Hollywood film producers/distributors to agree to their proposed terms. According to the findings of the DG the OPs have behaved in a concerted manner to control the market of films exhibition in multiplex theatres in India and they have also been found entering in to collective decision to indirectly fix the purchase price of films by taking decisions relating to the terms of the revenue sharing arrangement. As per the conclusion drawn by the DG these activities are in violation of the provisions of section 3(3) (a) and (b) of the Act.

22. The report of the DG also provides the details of key members and office bearers of MAI found to be involved in the process of decision making.
  
23. The Commission considered the DG report in its meetings held on 02.02.2012 and decided to send the copy of the investigation report to the parties for filing their replies/ objections to the DG report along with the profit and loss account and the balance sheet of the enterprises which are operating the multiplex theatres for the last three financial years.
  
24. In response to the notice of the Commission, the parties have filed their replies which are dealt with, in brief, as under:-

### **Reply of MAI**

1. MAI (OP-1) vide its reply dated 02.04.2012 has submitted that a buyers cartel is not covered under the provisions of the Act, since the definition of cartel under section 2(c) of the Act, the word 'seller; has been inserted, the word 'buyer' has not been intentionally included.
  
2. The OP-1 has contended that it is nowhere involved in the day to day operations and business or the management of its members. As a

trade association it is carrying on the legitimate and positive functions on behalf of its members.

3. As per the reply of OP-1, the present information filed by the Informant/FTPFI is in retaliation to the information filed by it before the Commission in Case No. 1 of 2009 wherein the Commission vide order dated 25.05.2011 found the Informant (in the instant case) guilty of contravention of provisions of section 3(3)(a) and 3(3)(b) of the Act.
4. As per the contention of the OP-1, a multiplex theatre operator's entire revenue stream depends on the box office collections of a movie whereas for a producer/distributor less than 25% of his collections depend on the exhibition of the film at the multiplex theatres. Hence, the balance of negotiation power is clearly in favour of the producers/distributors.
5. OP-1 has further submitted that a feature film is a subject matter of copyright under the Copyright Act, 1957 which permits the owner of copyright to exploit such copyright in a manner as he deems fit. It is entirely up to the producer as to how to exhibit his film to the public. It has been submitted that no multiplex theatre operator can demand that the film be released in his theatre let alone dictate the commercial terms on which such film must be released. Thus, the exhibitors are solely dependent on the producers/distributors for their source of income.
6. OP-1 has also submitted that DG has failed to take into account the critical element of demand side substitutability provided under the definition of 'relevant product market' provided under Section 2(t) of the Act. As single screens and multiplexes are not exclusive of each other, it is more to do with consumer choice and nothing more. MAI has submitted that single screen theatres and multiplex theatres belong to the same market of theatrical exhibition of films in India. The consumer can switch over between 'single screen theatres' and

'multiplex theatres'. Further, there is no data to support the contentions of the DG that the share of single screen theatres is declining despite the fact that single screens constitute 85-90% of the total screens in India.

7. The OP-1 has contended that DG has only investigated the market in respect of Hindi films and English films in India and has failed to investigate the market of regional films in India.
8. As per the OP-1, the DG in its report has clearly overlooked the critical facts and circumstances surrounding the present matter. The June 2009 agreement (FICCI – Multiplex Association of India v. United Producers/Distributors Forum &Ors – Case No. 1 of 2009) forming the basis of the analysis undertaken by the DG in the present matter is already held to be anti-competitive by this Commission and hence cannot be relied upon.
9. As per the OP-1, the activity of settling the disputes between different stakeholders of film is in line with the roles and responsibilities of an association such as MAI representing the multiplex operators. However, this does not amount to negotiating the revenue sharing terms between the producers/distributors and the multiplex operators. MAI seeks to report non-compliance by a producer/distributor of the terms of exhibition, for purposes of resolution of such disputes and endeavors to resolve them in an amicable manner. If a member had entered into any agreement and thereafter there were allegations of non-compliance, the Empowered Committee only attempted to resolve such disputes and was not indulging into negotiation on behalf of its members.
10. The OP-1 has further contended that DG has failed to identify the participants and the time period of the alleged cartel. The MRTPC in ***DG (I&R) versus Modi Alkali and Chemicals Ltd. and others***, RTPE No. 118/1994 has held that incorrect identification of the

parties to an enquiry (including by way of arbitrary or random selection of the parties to the enquiry without specifying reasons) undermines the enquiry as a whole. In the instant case, DG acknowledges that the MAI has 22 multiplex operators as its members; however, the DG without any reason limited the investigation to only 14 members as mentioned in the information.

11. As per the OP-1, DG has admitted that the multiplex operators are heterogeneous and distinct in terms of facilities, geographical presence, ambiance etc, hence their interest cannot be aligned to each other. Thus, no cartel can be said to be formed amongst such heterogeneous participants.
12. It has been further submitted by OP-1 that it was not involved in any discussions regarding revenue sharing at the time of release of film 'Fanaa'. Contrary to the conclusion drawn by the DG, it has advised its members to negotiate independently with producer / distributor in order to maintain fair and free competition in the market.
13. OP-1 has further submitted that in case no. RTPE 3/2007 before the MRTP Commission, only three clauses of the agreement were found as restrictive and the order does not bring out in any manner the collective intent of the producers / distributors to demand a higher share of revenue.
14. As per OP-1, the Commission in its order in case no 01/2009 has held that the master agreement was the instrument through which the fruits of the cartel began. However, the DG has dismissed the findings of the Commission and stated that the 2009 settlement had streamlined the business of exhibition of films in multiplexes and gone on to discuss its benefits.
15. The OP-1 has further submitted that the DG has relied upon the emails received by MAI from all the multiplex operators before the

meeting held on 25.02.2011 along with the agenda of meeting dated 25.02.2011 to conclude that the main issues or discussion on 25.02.2011 were the terms of master agreements and revenue sharing with the distributors. It is reiterated that the DG has cherry picked instances occurring in normal operation of the working of MAI while ignoring the reasoning and rationale provided by the MAI. MAI has submitted that these items were included in the agenda for the Annual General Meeting (AGM) at the request of some members, but none of these issues were discussed at AGM and the same is *prime facie* evident from the minutes of the said AGM, which are on record.

16. As per the submission of OP-1, it is not aware of the terms of revenue sharing between multiplex operators and producers/distributors. However, changes, if any, after the 25.02.2011 meeting of MAI, were owing to individual decisions taken by the multiplex operators. Moreover, such changes would never have been possible without a consensual understanding between multiplex operators and producers/distributors.
17. The OP-1 has also contended that there is no evidence, either documentary or otherwise, to state that the MAI and multiplex operators acted in a concerted manner. MAI is not the only association in respect of multiplex operators, for example in the State of Gujarat, there is the Multiplex Association of Gujarat. According to the MAI the DG has completely ignored the facts and industry situation which prevails in the film industry in India.
18. The OP-1 has also pointed out that the DG himself has conceded that insofar as the film Muder-2 in concerned, there does not seem to be any concerted action by the MAI and multiplex operators. Thus, if there was a concerted action by the MAI and multiplex operators, there certainly was no threat or actual punishment on multiplex operators, who apparently deviated from the alleged concerted action. It is clear from this fact that there was never any concerted

action or joint decision by MAI and its member multiplex operators. Further, it is not aware of any change proposed in the master agreement relating to rebate in first week for multiplexes if a film fails to perform below the benchmark level of Rs. 13.75 crores. The clauses of the aforesaid agreement do not in any manner state or depict that the rebate clause was included as per the demand of multiplex operators or that they were acting in concert.

19. On the issue of bonus and rebate of 2.5% of net box office collection, OP-1 has contended that the said clauses are fair and equitable. Generally, the films make 60 to 70% of their total box office collections in the first week of their release. Therefore, the revenue share model carries an in-built reward for films which perform well at the box office and hence is a natural corollary that the exhibitor should also be indemnified in a similar manner when the film does not perform well at the box office. OP-1 has also submitted that the rebate clause in the agreements for the films 'Delhi Belly' and 'Buddha Hoga Tera Baap' was included as per the demand of the producers/distributors and not on the demand of the multiplex operators.
20. OP-1 has also contended that the reliance placed by the DG in its report on affidavits and emails of distributors to arrive at the misplaced, flawed and illogical conclusion that the MAI action demonstrates a collective action to negotiate revenue terms is wholly wrong and misplaced. It is further submitted that the claims made by Mr. Ramesh Sippy in his email dated 06.06.2011 is merely hearsay as it does not indicate any concert practice being experienced by Mr. Ramesh Sippy from hands of multiplex operators.
21. As per the OP-1, DG has failed to establish that the MAI and its members acted in a concerted manner. Further, the DG has failed to provide any evidence of any concerted or joint decision by the MAI. It is further submitted that the instances and evidences relied upon by

the DG are concocted. The OP-1 has denied that after June 29, 2011, it held any meetings.

22. On the issue of restriction on the Hollywood films, the OP-1 has submitted that Warner Brothers themselves had invited only few multiplex operators for the exhibition of film Harry Potter. Further, it has submitted that the entire correspondence between Glitz Cinema and Warner is an independent correspondence wherein Glitz is negotiating individually with Warner. The email correspondence does not involve any MAI representative.
23. OP-1 has also submitted that all the films are not released in all the cinema theatres. A few such instances are as follows: 'Crazy Stupid Love' (16.09.2011), 'Contagion' (09.09.2011) 'Dolphin Tale' (4.11.2011) played only by PVR, initially and subsequently by Cinemax. Further 'Delhi Belly' (01.07.2011), 'Sahib Biwiar Gangster' (30.09.2011), 'Chillar Party' (08.07.2011) were not played on Satyam. This clearly demonstrates that there was never any directive from the MAI.
24. As per OP-1, DG has failed to consider in any detail the various factors listed under section 19(3) of the Act. Accordingly, the DG's findings are insufficiently granular and cannot be relied on. MAI has also submitted that none of the negative factors listed under sub-clauses (a) to (f) above are unequivocally established and certainly not to a standard that could be termed appreciable. The OP-1 has relied upon the judgment of the Commission passed in Case no 05/2009.
25. MAI has further submitted that multiplex operators have generated vast consumer benefits with its active participation, which represents important and pro-competitive milestones that have been achieved through a legitimate, transparent and open forum and it is undisputed that consumers have benefited from these milestones.

**Reply of PVR**

26. As per the reply dated 04.04.2012 of OP-2, DG has not examined the conduct of the members of MAI independently which is against the settled principles of law. Further, DG has failed to show how the alleged anti-competitive agreement entered into between various multiplex owners and MAI resulted in (a) directly or indirectly determining/fixing price, or (b) limiting or controlling the supply of services/output.
27. OP-2 has further contended that DG's conclusion of existence of cartel among the multiplex operators is contrary to the established facts and also to the observations made in the previous order dated 25<sup>th</sup> May, 2011 passed by the Commission in the case No. 01 of 2009 entitled as "FICCI-Multiplex Association of India vs. United Producers/Distributors Forum."
28. As per the reply of OP-2, the conclusions drawn by DG that non-maintenance of records by MAI clearly suggest a deliberate strategy to avoid the trace of discussions and decisions are not definitive and are fraught with inconsistencies as there is not even a single e-mail from the answering OP which could bring home its culpability under Section 3 of the Act.
29. It has been contended by OP-2 that the DG's inference regarding discussion on revenue share and the terms of the agreements is without any evidence and logic and based on the assumption that the issue was mentioned in the "items proposed for discussions" by some of the members. The DG has wrongly concluded that proposing an agenda item by one member ipso facto means that the other members including the OP would have discussed it in the meeting. As per the submissions of OP-2, no representative from his side was present in the side meeting dated 25.02.2011.

30. It has been stated by the PVR that the conclusion drawn by the Director General that since the Master Agreement was going to expire on 30.06.2011 hence the members of MAI may have discussed the same in the meeting dated 29.06.2011 is without any substantive basis as the answering OP was keen to discuss the Service Tax issue in the meeting held on 29.06.2011, as is evident from the email dated 24.06.2011 from Mr. NitinSood, CFO of the answering OP, addressed to Mr. Deepak Asher and further the fact that the emails dated 25.06.2011 and 27.06.2011 written by Mr. Deepak Asher to the members of the association dealt with the issues arising out of service tax and applicable VAT laws only.
31. It has been stated by OP-2 that the conclusion of the concerted action drawn by the Director General is also vitiated by the fact that the OP-2 has played movies like Cowboys Vs Alien, Captain America, Winnie the Pooh, Final destination 5 which were not screened by other multiplex operators. Further in the year 2011,OP-2 has screened almost 300 movies across all its screens which makes it virtually impossible to enter into any alleged long drawn concerted action plan for finalizing the terms and conditions.
32. It has been further stated by OP-2 that there is no ground in DG's conclusion against it that all the multiplex operators had gone to the office of the Warner Brothers on 13-07-2011 only to discuss the terms of the revenue sharing of the movie "Harry Potter and the Deadly Hallows-II" as the answering OP had prior to the said meeting, already entered into agreement dated 11.07.2011 with "August Entertainment" for the screening of the movie "Harry Potter and the Deadly Hallows-II" at Mumbai circuit and there was no need for it to visit the office of Warner Bros for joint negotiations, as alleged by the Informant and DG. It has been submitted that it was present at the offices of Warner Bros on 13.07.2011 only for lunch for which the officials of Warner Brothers had themselves invited.

33. The OP-2 has also submitted that the conclusion drawn by the Director General on the basis of the allegation leveled by “VisheshFilms” does not hold ground as the extension of similar discount to it which was being offered by producers/distributors to the other multiplex operators, cannot *ipso facto* without any other overt act on the part of OP-2, prove that it has indulged in anti-competitive act. It has also been stated that price parallelism does not imply that parties offering such similar prices are engaging in cartelization and it is a settled law that in order to determine the existence of a cartel, price parallelism must be supported by evidence of an agreement or collusion or action in concert.
34. It has been submitted by OP-2 that DG in its report has proceeded on the basis that any deviation from the Master Settlement Agreement executed in 2009 between members of the Informant and OP-1 can only be a result of a cartel. In this context, it has been stated that after the expiry of Master Settlement Agreement on 30.06.2011, members of the Informant and OP-1 were free to re-negotiate the terms of the revenue sharing for films which were to release on and after 1.07.2011 and there is nothing contained in the Competition Act, 2002 which precludes entities from negotiating or renegotiating commercial terms. It has been further submitted that in fact, so far as OP-2 is concerned, the terms of revenue sharing for films which were released on and after 1.07.2011 were more or less similar to the terms under the Master Settlement.

#### **Reply of INOX and Fame India Limited**

35. As per the common submissions dated 04.04.2012 of OP-3 &4, given the factors like offering more choice to consumers, safe and better environment in multiplexes, different modes of ticket booking, better

performance, prior approval of the state government for the sale of tickets etc, the multiplex model followed by operators such as FAME and INOX has specific revenue and cost structure associated with it.

36. As contended by the other Opposite Parties in their replies, OP-3 & 4 have also submitted that they had negotiated individually with the producers and distributors on the revenue share terms as the terms are offered by the producers or the distributors on a take it or leave it basis.
37. The answering OPs have further contended that after the expiry of master agreement, the terms of the new agreements were not changed and excepting the sole clause which was related to rebate of 2.5%, all the other terms were remain almost the same as that of the Master Agreement and this clause was also amended by the producers/distributors themselves.
38. On the basis of a Genesis Report prepared by Mr. Stephan Melharbe, Chairman, Genesis Analytics and Mrs. Geeta Singh, Director, Genisis Analytics, the OPs have highlighted the harm from the 2009 agreements which has been discussed at length in Commission's order in Case No. 1/2009. As per the submissions of the OPs, the Commission has recorded a positive determination that multiplex theatre operators, such as FAME/INOX, had been harmed by the 2009 agreements
39. On the basis of said report, the OPs have contended that with the new rebate terms producers/distributors of movies with net collections of less than Rs. 6 crores lost 2.5% of the first week's net collection, but gained 2.5% of the net collection in the third week. The total impact of loss from the change in rebate terms is then 2.5% of the difference between the first and third week net collections for movies that in aggregate earned less than Rs. 6 crore. As per the OPs, it is

the multiplex operators who suffer losses because of the rebate clause.

40. As per the contentions of OP-3 & 4, the DG has, without being vested with any such powers under the Act, expanded the scope of investigations. The Commission vide its order dated 10.08.2011 had directed the DG to investigate into the matter only with respect to the Hindi language film Murder-2. It is critical to note that during the course of the investigation, the DG had issued notices/summons which also pertained to Murder-2. However, a bare perusal of the Report clearly demonstrates that the DG has, without having any power or authority under the provisions of the Act to do so, deviated from investigating issues surrounding the films Murder-2 and has arrived at findings of contravention by, inter alia, INOX/FAME.
41. The OPs have reiterated the contentions of OP-1 with regard to the findings of the DG on relevant market, credibility of the Informant, behavior of MAI and not considering factors of section 19(3) etc.
42. As per the OPs, the multiplexes operated by them incur high fixed costs irrespective of the number of shows and the movies they screen. The fixed costs of INOX/FAME constitute 40% of the total cost due to salaries, high rental, fixed overheads, interest and depreciation. This is in line with the finding of high fixed costs of multiplexes by the DG in the Supplementary Report submitted to the Commission in Case No. 1/2009. Despite the express recognition of the business reality set out above, the DG goes on to state that the multiplexes have an effective business model by which they can charge higher prices on film tickets. The DG's repeated assertion for multiplexes charging higher prices without any references to the key operational differences between the multiplex and single screen models appears to be an attempt to cast multiplex operators such as INOX/FAME in poor light as being market participants who offer the same level of services as single screen theatres, only at higher

prices. It has been contended that such an assertion by DG is neither true nor factually correct.

43. The OP-3 & 4 have further contended that the DG's explicit recognition of the fact the India is an 'under screened' country and the fact that new players are entering the market (for e.g., Mukta Arts, Cinepolis etc.), clearly demonstrate that the competitive fabric of the theatrical exhibition industry remains intact and that all players, multiplex and single screen are alike, and compete vigorously with each other.
44. The OPs have also submitted that the DG, by failing to examine facts in relation to payment of advances and showcasing, has rendered the entire investigation process incomplete and one sided.
45. As per the OPs, the DG in its investigation has failed to establish any contravention by them of any provision of the Act. The DG has merely leveled allegations without in any manner attempting to substantiate any of the findings with evidence and documents. As a matter of fact, the DG has completely overlooked crucial evidence and documents submitted by INOX/FAME during the course of the investigation which would aid in demonstrating that the case under investigation is nothing but a counterblast to the Commission's order in Case No. 1 of 2009.
46. The Opposite parties have relied upon certain judgments such as *The Alkali and Chemicals Corporation of India Ltd. and Bayer India Ltd., (1984) 3 Comp LJ 268 (MRTPC)*, *NeerajMalhotra v. Deutsche post Bank Home Finance Ltd. &Ors*, *Consumer Online Foundation v. Tata Sky Ltd. & Others*, *Case No. 2 of 2009*, *In Re: Glass Manufactures of India*, *AhstromOsakeyhtio and others v Commission of the European Communities*, *Joined cases C-89/85, C-104/85, C-114/85, C-116/85, C-117/85 and C-125/85 to C-129/85*. As per the OPs, the above judgments clearly establish that a firm, precise and consistent body of

evidence must be shown to support the allegation of a cartel. Such evidence is missing in the current case.

47. As per the OPs, there was no concerted action by MAI and its members to impose the decisions relating to revenue sharing on the film distributors/producers. The inference drawn by the DG that on July 8, 2011 film Muder-2 was released and the distributor was forced to include the rebate clause in the agreement is not supported by any evidence. As per INOX/FAME, they had already signed agreements with Ginni Arts Distributor for Murder-2 in the North Region more than 3 weeks prior to the release of the film and no problem arose between the distributor and INOX/FAME. Despite this fact being brought to the attention of the DG during the course of the investigation, the DG has, for reasons best known to him, chosen to secure an affidavit from Mr. Rajesh Thadani who was one of the distributors but has not bothered to seek information/clarifications from M/s. Ginni Arts with whom the revenue share agreement had already been executed more than 3 weeks prior to the release date.
48. On the allegation of problems faced by Hollywood films distributors on account of the alleged concerted action of Opposite Parties, the answering OPs have submitted that the change in terms relative to Hollywood films are undertaken by them on the backdrop of key commercial and business considerations. In India Hollywood Movies many a times are released more than two or three weeks after the release of the said films in other countries. The two-three week delay in release of Hollywood films renders their exhibition by them commercially unviable as they become available either online or through other medium. They had to bear significant financial burden in screening Hollywood films which are released 2-3 weeks after their international release since the wide availability of pirated prints leads to a drastic reduction in footfall at multiplexes operated by OPs. The DG has completely overlooked this crucial factor in arriving at the flawed and baseless conclusion set out in the report.

49. As per the OPs, there has been no email/any correspondence related to the fixing up of the meeting by MAI member with Warner Bros. The emails provided by the Warner Bros in their reply dated January 6, 2012 do not mention any such request by the MAI members. It has been stated that it is a common practice in the film exhibition industry for producers/distributors to convene meetings with multiplex operators to determine the modalities of an up-coming release. In this case as well, the meetings held at the Warner Bros. office was in relation to the release of the film 'Harry Potter'. However, this meeting was not convened at the request of MAI. The meeting was requisitioned by Mr. Rahul Haksar by phone who is the distributor for *Harry potter* for Mumbai Circuit to discuss release plan etc. INOX's/FAME's representative was present at the Warner Bros. office to discuss the release details of the abovementioned film. The DG has completely overlooked the fact that the agreements which Warner Bros. claim to have sent across individually and separately to multiplex operators are in essence identical agreements containing identical revenue sharing terms.
50. As per the OPs, DG has not considered the replies filed by Fox Star Studios stating that no joint discussions had taken place with the MAI relating to the terms of release of films.
51. As per the OPs, no directive was issued by MAI notto deal with distributors individually after the expiry of master agreement on 30.06.2011. The very fact that the Informant was unable to provide any cogent evidence/document to the DG in this regard clearly indicates that no such direction was ever issued by the MAI. INOX/FAME have submitted that while they are members of the MAI, their participation in MAI meetings and discussions are consistent with all applicable laws/rules/regulations for the time being in force.

### **Reply of Reliance Media Works**

52. The OP-5 vide its reply dated 09.03.2012 has denied all the allegations levelled against it and has submitted that meeting dated 25.02.2011 was related to discussion on service tax and it has furnished documents in support of this contention. OP-5 has submitted that booking of its cinemas is done by M/s Mukta Arts who are authorised to execute all agreements on behalf of Reliance Media Works.
53. The OP-5 has further submitted that it has not approached any distributor/producer for a joint meeting to discuss revenue sharing terms. It has been submitted that it is not present in the territories where Warner Bros was distributing the film. As per OP-5, the films such as *Contagion*, *Crazy Stupid Love* and *Dolphin Tale* were not released in Big Cinemas because the terms of exhibition were not suited to it but these films were screened at PVR and Cinemax, which shows that there was no cartel. The OP-5 has further contended that Fox Star has clearly mentioned that there was no joint discussion with MAI and the DG has conveniently ignored the point that was in favour of Big Cinemas and has taken into consideration only the statement of Warner Bros, alleging joint action taken by multiplex operators.

**Reply of Cinemax India Limited.**

54. OP-6 has also reiterated the arguments of other Opposite Parties and has submitted that MAI did not give any direction to it in respect of film distribution and all terms, conditions and negotiations with the distributors was made by it on individual basis. As per the reply of OP-6, Warner Bros had already submitted before the DG that Cinemax and PVR had negotiated and entered into agreements individually for distribution for certain films and the rest of the members of MAI had not given any response for those movies.

55. OP-6 has also submitted that there is a lack of coordination between the various multiplex operators in relation to pricing and timing of the movies and also the promotional offers which goes against the theory of formation of a cartel. As per the OP-6, it has different business model for pricing the tickets, e.g., if one books the ticket through a credit card of IndusindBank, ICICI bank he gets 1 ticket free for buying 1 ticket. This fact according to OP-6 also goes against the theory of cartel.
56. On the agreement of Murder 2, the OP-6 has stated that the terms and conditions of the said agreement were laid down by the VisheshFilms, therefore, there can be no question of cartelization. As per the OP-6, there is a stiff competition in the market as has been referred by it in the red herring prospectus filed in SEBI.
57. As per the OP-6 the master agreement has been continuously followed by it even after its expiry and the only change is related to 2.5% rebate clause. The OP has contended it has suffered a loss of 1.54 crores in the financial year 2010-11 which shows that it was not involved in any cartelization.

#### **Reply of Fun Multiplex Pvt. Ltd.**

58. OP-7 has also denied all the allegations against it in the information and the DG report. The OP has submitted that the DG has failed to show how the activities of Fun Cinemas have violated the provisions of the section 3 of the Act. The OP has also reiterated the arguments of other multiplexes and has stated that MAI has never dictated/directed to discuss the revenue share terms collectively. It has independently negotiated its own terms and conditions with various distributors. With regard to the exhibition of film Murder 2, it has stated that the said film was exhibited in all the cinemas of the

company. The OP has also reiterated that the conduct of the producers/distributors has already been declared anti-competitive by this Commission.

59. As per OP-7, the terms of revenue sharing were not discussed in the meeting dated 25.02.2011. In fact the so called identical terms on which the producers/distributors entered into agreement with the multiplex operators weresame for the single screen operators also. As per OP-7 Mr. Thadani and MukeshBhattinconnivance with each other suppressed the material facts with respect to the negotiation of release of the Murder 2. OP-7 has contended that Vishesh Films wanted to enter into a fresh agreement with the OP-7 for the said Film which included the provision of rebate as per the Master Agreement, however, the OP-7 desired to have an equal rebate which Vishesh Films was disagreeable with. In order to resolve this conflict, the agreement with Vishesh Films could be signed only a few days before the said film's release.
60. The OP-7 has also submitted that after the expiry of master agreement, the agreements were signed on the same terms with minor changes related to rebate clause. As per OP-7 calling a joint meeting is a common practice in this trade which does not amount to formation of a cartel. OP-7 has contended that they went to the office of Warner Bros for meeting on their request and this was deliberately done by Warner Bros to rope it in this case. However, irrespective of the fact that the demand of Warner Bros for the film '*Harry Potter*' was high, the OP-7 after the satisfactory performance of the film provided Warner Bros with an equal share in the first week.
61. OP-7 has also denied its involvement in any cartelization as alleged by the Informant.

#### **Reply of Chaphalkar Brothers**

62. OP-8 has also denied the allegation of cartelization and submitted that Murder 2 was very ordinary and adult film for which Mr Mahesh Bhatt wanted more show casing. But due to the other films such as Harry Potter, Zindagi Na MilegiDobara and Singham which captured more audience, the operators did not give more show casing to the less demanded film Murder 2. However, there was no concerted action on the part of multiplex operators and the multiplex operators are dependent on the producers/ distributors.

**Reply of HDIL Entertainment Ltd.**

63. OP 9 has not filed any reply.

**Reply of DT Cinemas**

64. OP-10 vide its reply dated 09.04.2012 has also reiterated the arguments of other multiplex operators. It has submitted that it had only attended the AGM of MAI on 25.02.2011. As per the contentions of the OP-10, it had not been attending any meeting of MAI and its presence in the said meeting was only due to the fact that it was the AGM of the MAI of which DT is a member.
65. OP-10 has further submitted that it had signed the contract of exhibition of Murder 2 almost two month prior to its release and before the expiry of master agreement. It could not sign the movie in respect of Chandigarh territory because neither the producer nor the distributor approached it. However, it signed an agreement with M/s Narsimha Enterprises in respect of the Chandigarh territories on 07.07.2011. As per the contention of OP 2, it also played the trailers of the movie which was yet to be signed such as 'Delhi Belly' and 'Buddha HogaTeraBaap' which indicates the bonafides of DT cinemas.

66. OP-10 has further contended that it had continued to exhibit Hollywood movies and had no role to play in the alleged standoff between Hollywood Producers and OPs. Further DT negotiated contracts for these movies individually.
67. As per the reply of OP-10 it was not a part of the meeting dated 29.06.2011 and also it did not effect changes related to revenue sharing (specifically rebate clause) on all films released after 30.06.2011. OP-10 has further submitted that on March 01, 2012, it had entered into an agreement with Fox Star Studios India Pvt. Ltd. for the movie London Paris New York. Under the terms of the agreement the revenue share was set as 47.5% (week one), 40% (week two) and 37.5% (week three) with no reference to any rebate or bonus clause. Similarly, on 27.02.2012, DT entered into a contract with UTV for the exhibition of 'Paan Singh Tomar' where the rebate clause was only applicable in the second and the third week of exhibition (as under the agreement of June 2009).
68. As per the submissions of OP-10, it is not present in the Mumbai Circuit and had no dealing with Mr.Thadani or Vishesh Films for exhibition of Murder 2. Further, it had never entered into any negotiations with Warner Bros for the release of Harry Potter. In fact, DT had entered into an agreement with M/s Ginni Arts for exhibition of the film. It is stated that DT was not present in the said meeting as is apparent from the attendance register relied upon by the DG.

**Reply of Movie Time Cineplex Pvt. Ltd.**

69. OP 11 has also not filed any reply.

**Reply of Satyam Cineplex Limited**

70. OP-12 has largely reiterated the pleas of other Opposite Parties and has denied any concerted action on its part. As per OP-12, the provision of rebate clause has never been triggered during the

investigation period and hence no cause of action rests on single clause which has never been called in operation. As per OP-12, it executed agreements regarding movie 'Murder 2' with producers on 30.05.2011, 04.07.2011 and 05.07.2011 with Ginni Arts, Red Sun Enterprises and AA Films respectively, prior to the alleged draft sent by INOX to MrThadani on 06.07.2011. Also, Satyam is not a national chain and operates only 30 out of the 450 multiplexes.

71. As per OP-12, the report overlooks the fact that not all multiplex chains are national chains and the prices charged by all the chains varies even in the same city. For instance, Satyam charges Rs. 150 and Rs. 250 per ticket for morning and evening show respectively in Nehru Place, New Delhi whereas DT charges Rs.225 at any time of the day and PVR charges Rs. 300 per ticket for evening show. Further, the prices charged in Delhi are not comparable to prices charged in other cities which have not been taken into consideration while identifying and establishing the relevant market.
72. Satyam has also stated that it became a member of the MAI only in 2009 and was not a party to the proceedings in Case No. RTPE 03/2007.
73. As per the contentions of the OP-12, it did not attend any meeting at the office of Warner Bros on 13.07.2011, which is evident from the visitor register of Warner Bros.
74. Satyam has further submitted that the DG had no basis/proof for arriving at finding that the meeting of 29.06.2011 was to discuss any issues other than issue of service tax as per the minutes of the meeting.

**Reply of SRS Entertainment & Retail Limited**

75. OP-13 vide its reply dated 01.04.2012 has submitted that there is no material on record which suggests the existence of cartel of the multiplex operators. As per the reply of OP-13, it had signed agreements for exhibition of Murder 2 for its multiplexes in Delhi and UP on 28.05.2011 and for its multiplexes in Punjab territory on 05.07.2011 i.e. prior to sending of the revised agreement by INOX to Mr. Thadani.
76. SRS limited has further submitted that Warner Bros has nowhere discussed its role in their affidavit. Otherwise also it was also not present in the alleged meeting dated 13.07.2011.

**Reply of AB Movies Pvt. Ltd.**

77. OP-14 vide its reply dated 02.04.2012 has submitted that the present information is completely false, frivolous and misconceived. As per OP-14, multiplexes cannot form a cartel as they are very few in number. OP-14 has denied the allegation of cartelization against it and submitted that Murder 2 film was purchased by it for screening from M/s Ginni Arts for North India who has no grievance in this regard.

**Reply of Velocity Limited**

78. OP-15 vide its reply dated 20.02.2012 has submitted that they have only one property in operation at Indore since the year 2003 and it had not been in any dispute with any distributors/producers.
79. It has been further submitted by OP-15 that although it is a member of MAI but has been absolutely free in negotiating the terms with the producers and distributors. OP-15 has denied that it has ever attended any meeting of MAI.

80. The Commission heard the arguments of the parties on 25.04.2012, 26.04.2012 and 03.05.2012. Advocate ShriVibhuBhakru and ShriHarshvardhanJha appeared on behalf of the Informant, Advocate ShriRamjiSrinivasan and Shri G.R Bhatia appeared on behalf of OP-1, Advocate ShriSaikrishna Raja Gopal, ShriAshwani K Matta, ShriRohit K. Aggarwal, Ms.DiyaKapur, ShriKarnChandhoke, Shri H. S. Chandhoke, ShriTarunSingla&Shri Rajiv Garg appeared on behalf of OP-2, OP-3&4, OP-6, OP-7, OP-10, OP-12, OP-13 and OP-14 respectively.
81. The counsel for Opposite Parties reiterated the contentions raised in their respective replies and submitted that they were acting independently and had entered into agreements with distributors on the mutually negotiated terms and conditions. The Opposite Parties also argued that OP-1 had no role to play in their signing the agreements with the distributors. It was further contended that the present case is nothing but a wreck up of Case No. 01/2009 filed by the Multiplexes against the film producers and distributors.
82. The counsel for Informant in his arguments supported the DG's investigation report and contended that the strict rule of Evidence Act are not applicable in the cases of investigation of anti-competitive conduct.

### **Decision of the Commission**

83. The Commission has carefully considered the information, report of the DG and the submissions of various parties in this case. After due consideration, the Commission notes that the following issues arise for determination in the case under consideration-
1. Whether the OPs have contravened the provisions of section 3 of the Act?
  2. Whether the OPs have contravened the provisions of section 4 of the Act?

### **Determination of Issue**

- 1. Whether the OPs have contravened the provisions of section 3 of the Act?**
  
2. The Commission notes that the Informant has alleged that the Opposite Parties (1-15), after expiry of the Master Agreement on 30.06.2011, started drifting out of the earlier agreement and imposing fresh unreasonable terms and conditions for exhibition of films. It is also alleged that OP-1 has issued a directive to its members whereby no multiplex owner/operator will individually approach a film producer/distributor for exhibition of film. It has been averred that OPs (2-15) are bound to follow this directive or else face penal action. The informant has alleged that the OPs keep the decision about the release of a film in abeyance till the last day in order to force the members of the Informant to accept their terms under the threat of not releasing the film in their multiplexes. It is further alleged that opposite parties pressurized Vishesh Films, the distributor of the film 'Murder 2' to accept unreasonable terms and conditions related to rebate and additional revenue share for the release of the film. Multiplex owners negotiate and dictate their terms through their association, whereas earlier the negotiation was on individual basis and members of the Informant were ready to negotiate terms on individual basis. It is alleged that collective decision taken by OPs not to exhibit the films of the members of the informant in order to determine the price of their services is an anti-competitive agreement under section 3 of the Act.
  
3. The Commission further notes that while examining the role and the conduct of MAI, the DG has reported that the members of MAI discussed the terms and conditions with regard to the release of films in the multiplexes owned by members of MAI, in their meetings held on 25.02.2011 and 29.06.2011. The DG has also examined the statements of the President of MAI and the e-mails exchanged between him and the

other members. The DG has placed reliance on the following evidences to arrive at the conclusion that the conduct of the Opposite Parties is in contravention of the provisions of section 3(1), 3(3)(a) and 3(3) (b) of the Competition Act 2002:

1. The MAI convened a meeting on 25-02-2011. The proposals for discussion submitted by the members included the terms of revenue sharing. The agenda of this meeting prepared by MAI also contained items like renegotiation of the terms of master agreement.
2. Convening an urgent meeting on 29-06-2011 by MAI. The e-mails clearly suggest that the purpose of meeting was to take decision on the films releasing from 01-07-2011.
3. Imposing similar changes by all the multiplex operators in the terms of revenue sharing on all the films released after 30-06-2011. In all the agreements of Hindi films the rebate clause was modified as per the demand of OPs. Similar change to all the distributors/producers, proposed by all the operators clearly indicates the coordination among the operators.
4. The affidavit submitted by Mr. Rajesh Thadani (distributor of Murder-2 for Mumbai city) narrating the details of concerted action of multiplex operators. It shows that the multiplex operators were acting in a concerted manner to deal with the film distributors.
5. All the agreements were signed by the multiplex operators only when the draft of agreement in respect of film Murder 2, which was forwarded by Inox on 06-07-2011 to Shri Rajesh Thadani, was finalized and sent by Inox.
6. All the multiplex operators pressurized the Hollywood films' distributors for lower revenue share after the expiry of master agreement. This led to dispute resulting in non-release of Hollywood movies in multiplexes.

7. The joint discussion by the members of MAI in the office of Warner Brothers on 13-07-2011 before release of film Harry potter. Evidences clearly establish the concerted activities of Multiplex operators.
8. The newspaper report, photograph of this meeting, the entries in the Visitors' Register of Warner Brothers and e-mails exchanged among the multiplex operators establishes the fact of joint meeting on 13-07-2011.
9. The affidavit filed by the Warner Brothers in response to this office letter confirms that the members of MAI were working jointly.
10. Replies received from AMPTPP, UTV and Viacom 18 clearly indicate the concerted activities and practices of the opposite parties.
11. Non-release of some of the Hollywood movies in multiplex theatres after 30.06.2011 till the settlement with the Hollywood distributors.
12. The settlement of dispute with the Hollywood distributors on the line of proposals made by the members and agenda of the meeting dated 25.02.2011.
13. The emails showing the concerted activities of multiplex operators at the time of release of films Murder 2, Harry Potter, Singham and Final Destination.
14. On the other hand the Opposite Parties have denied the allegations and have emphatically stated that they are dealing with the producers/distributors on individual basis for negotiating the terms of exhibition of films in their respective multiplexes. The role of MAI has been stated to be seeking to promote the interest of the Multiplex industry before Government and other bodies. OPs have submitted in unison that MAI neither directly nor indirectly interferes with the decisions of multiplex owners in setting out terms and conditions of revenue share from the exhibition of the films in their multiplexes. The multiplex owners enter into negotiations with various distributors on a one-on-one basis without any

involvement from the MAI. All the multiplex operators have submitted that contrary to the allegations it is the film producers/distributors who have jointly negotiated the terms settled in 2009, which are followed by OPs.

15. At the outset the Commission makes it clear that the question as to what model/percentage of revenue sharing between the different constituents in cinema exploitation is appropriate one is not the concern for competition. However, at the same time, there should be free exercise of choice among various players/ constituents in the market. In this backdrop the allegations made by the Informant which have been found substantiated by the DG are being analysed in the light of evidences gathered by the DG and the submission made by the parties before the Commission in order to determine this issue.

**Directive of the MAI to its members not to deal individually**

16. The Commission notes that there is no evidence on record which could show that any directive was issued by the MAI to its members asking them not to deal with the producers/distributors on individual basis. It is also seen that the evidence is also lacking to show that any mechanism was put in place to enforce that alleged direction. In view of this eventuality the DG has chosen to rely upon the circumstantial evidence emanating from the conduct of the Opposite Parties. On the basis of the meetings of the MAI held on 25.09.2012 and 29.09.2012 respectively and subsequent conduct of the OPs with regard to the release of filmsthe DG has come to the conclusion that all the Opposite Parties have formed a cartel and are acting in a collusive manner.They are indirectly determining the purchase price of the films and are also controlling the market of exhibition of films.

**Meetings of MAI**

17. On perusal of the Agenda of the Annual General Meeting (AGM) held on 25.02.2011 it is borne out that under the Head 'Negotiating renewal of master agreement with Distributors/Producers' the issues listed for discussion, inter alia, included issues related to Release Dates, No. of Shows, Delay on part of the Distributors/Producers in finalizing the terms,

Renegotiating the terms for release of English Movies and Bonus-Rebate etc. The issues listed for discussion are indeed indicative of the fact that some sort of collective decision on the terms and conditions of release of films for exhibition in Multiplexes was contemplated. However, the Commission also notes that the minutes of AGM of that date do not reflect any deliberation on those issues. The DG has not examined this aspect and did not confront the President of MAI while recording his statement. The DG has also not probed into the fact whether immediately after the above dated AGM all the members of MAI sought to impose similar terms regarding revenue sharing on the Distributors/Producers for the forthcoming films ready for release. Therefore, the meeting dated 25.02.2011 does not provide any clue regarding concerted actions of the members of MAI using the platform of their association.

18. The Commission also observes that DG has relied upon the e-mails exchanged between the members of MAI in respect of AGM dated 25.02.2011 to draw an inference of joint decision on the terms of release of including pricing of tickets. The contents of said e-mails are reproduced herein below:-

1. Contents of the e-mail sent by MAI to the members on 15.02.2011:

*For the proposed meeting of MAI, I shall prepare an agenda of the points to be discussed at the meeting. In this regard may I request you to kindly communicate any issues which need to be discussed in the meeting so that I can prepare an agenda and circulate it amongst us?*

2. Contents of the e-mail sent by ShriDevenChachra of Satyam to ShriTejasKapre & Others on 15.02.2011.

*Distributor rationalisation of advances and movies need to be signed at least one week prior to release date/as per our master agreement. Release of films on DTH Platform, timelines to be*

*discussed again. Discuss service tax on distributor share, I would like to inform the EC about some developments in this case discuss service tax on rentals.*

3. Contents of the e-mail sent by ShriTinku Singh of SRS to Deepak Asher & others on 18.02.2011.

*“Surely we would like to touch upon the showcasing. Punjab property distributor share and its way forward. Ticket price during block busters.*

4. Contents of the e-mail sent by Sh. Sanjay Koul of M2K to TejasKapre & Others on 21.02.2011:

*We have the following suggestions to be made:*

- 1. Declaration of Movie achieving benchmark*
- 2. Release dates.*
- 3. No. of Show*
- 4. Piracy of the Movie*

5. Contents of the e-mail sent by AsishSukla/ ShDevangSampat of Cinepolise to Sh.TejasKapre (MAI) on 21.02.2011:

*We would like to propose following points to be discussed with distributor not only to finalise the terms but to increase the market pie for movies.*

*We can appoint the professional body like KPMG or other neutral body to analyze the same.*

*Terms relating to incentive on revenue sharing.*

6. On the basis of aforesaid emails, DG has concluded that the members of MAI wanted to arrive at some decision in the meeting dated 25-02-2011 on the terms at which the members of MAI would be releasing films at

their multiplexes after the expiry of the master agreement. One of the members even proposed to discuss a mechanism of pricing tickets during the blockbuster movies. As per DG's observation, the conduct of all the members after the expiry of the master agreement clearly indicates that some decisions on the issues were taken. It was noted by the DG that after 30-06-2011, all the multiplex operators demanded the same changes in the existing terms between themselves and the producers/distributors and all these changes were proposed in the meeting of MAI dated 25-02-2011. These changes have related to :

1. Demand of rebate of 2.5% in the first week's collection if the film performed below the benchmark.
2. For Hollywood films the revenue share was to be based on the day and date basis or the lapse of time before such film's release in India.
3. After minutely going through the aforesaid e-mails, the Commission observes that on 15.02.2011, Shri. TejasKapre asked all the members of MAI to provide points for the proposed meeting of MAI on 25-02-2011. In response, Satyam, SRS, M2K and Cinepolice gave their suggestions for the said meeting. SRS replied it wanted to discuss Punjab Property Distributor's share and ticket price. But none of the member's had even proposed to discuss the terms of revenue sharing between themselves and the producers/distributors. Even if it is accepted that one member wanted a discussion on some issue which had some bearing on the terms of release, in the absence of any evidence it does not mean that all members decided collectively to give effect to the issue proposed by one of the member. The Commission also notes that members were not asked by MAI to give any suggestion on the issue of revenue sharing. Had it been the case then all the members would have made at least some suggestions on such an important issue. Moreover, on the basis of contents of such emails it cannot be concluded that all the members wanted to discuss the issue of revenue sharing and the terms of releasing films after the expiry of the old master agreement or that the MAI wanted to arrive at some decision on such issue at its meeting dated 25-02-2011.

4. The DG has also drawn support from the statement of the President of MAI, Shri Deepak Asher who had submitted before the DG that no formal system existed for arranging the meetings of MAI. The relevant part of the statement of Shri. Deepak Asher is reproduced herein below :-

*Q.2: Please give details of all the meetings held by MAI in 2011.*

*Ans: There was an Annual General Meeting of the MAI held on 25.02.2011 and in addition there was an MAI meeting held on 29.06.2011. The minutes of the meeting held on 29.06.2011 are yet to be finalized. Therefore, the same have not been furnished along with the written reply furnished by the MAI. This meeting was held at INOX office in Mumbai. However, the details relating to members attending the meeting and issues discussed shall be submitted after confirmation from the Secretary (Mr.Chaphalkar) by 20.12.2011.*

*Q.3: Why the minutes of the meeting held on 29.06.2011 have not been prepared?*

*Ans: Usually the minutes which consist of a transcription of the discussions during the meeting are finalized by the Secretary just before the next meeting. Since no meeting of MAI has taken place since then, the occasion has not arisen.*

*Q.4: Whether the minutes of all the meetings are circulated among the members?*

*Ans: Usually the minutes are tabled at the next meeting and are read out by the Secretary. The minutes are usually not circulated among the members.*

*Q.18: How the agenda of meeting dated 25.02.2011 was prepared? Please provide all the communications made by your members and MAI relating to this meeting.*

*Ans: This agenda was circulated by the Secretary and I was not consulted while preparing the agenda. I will revert back along with the requisite documents sought by you before 20<sup>th</sup> December, 2011.*

*Q.15: You have already stated that the minutes are not prepared at the time of meeting or immediately after the meeting and there is no formal system of recording the minutes of meetings. Please explain who prepared the minutes of the meetings held on 25.02.2011.*

*Ans: The minutes of the AGM held on 25.02.2011 were prepared by the Secretary Mr.Chaphalkar.*

*Q.16: Why the copies of minutes provided to this office have no signature of the office bearer of the MAI or anybody else?*

*Ans: I will need to check from the Secretary, who is responsible for preparing the minutes.*

*Q.5: Why the meeting of 29.06.2011 was called?*

*Ans: The meeting of 29.06.2011 was called to discuss the issues of service tax and anti-piracy issues. The meeting was requested by one of the members on 24.06.2011 to discuss the matter of service tax and I replied to him on 25.06.2011 saying that we would discuss the matter at the next MAI meeting. Accordingly, the meeting of 29.06.2011 was held. No formal agenda was issued by MAI for this meeting.*

*Q.11: I may bring to your notice the e-mail addressed to you on 24.06.2011 from ShriAshishSaxena requesting you to call for an MAI meeting to discuss the points and next steps with all the chains regarding discussion with UPDF as there is confusion on the films releasing on 01.07.2011. It also mentioned that there were chains that are not aware of the earlier discussions. Please explain as to whether this mail is relating to the terms and conditions for release of films after the expiry of Master Agreement on 30.06.2011.*

*Ans: As explained in my earlier response the issue that has been referred to was the amendments that have been proposed in the agreement by producers/ distributors to handle the service tax issue on distributors pay outs. Mr.Saxena and myself had some meetings with producers/distributors on the issue and Mr.Saxena's suggestion was that we brief the members of MAI on this issue.*

*Q.12: The e-mail dated 24.06.2011 has subject as MAI-UPDF meeting. The reply given by you to the question No.11 mentions about the service tax as the subject of the discussion. The intent of the e-mail from Mr.AshishSaxena shows the urgency for clarifying the confusion on the films releasing from 01.07.2011, i.e. the day immediately after the expiry of Master Agreement. Please explain as to why this mail is not intended to discuss the terms for release of films from 01.07.2011.*

*Ans: The mail is not intended to discuss the terms for release of films from 01.07.2011 since the MAI does not get involved in the discussion of terms for released of films, as explained this mail was intended to discuss the implications of the proposed levy of service tax on distributors' payment for which producers/distributors had come up with some solution. On the other hand, Multiplex operators had also sought legal advice on the matter including the impact of the proposed solutions on VAT*

*laws. Since there were different options being advised by different lawyers, Mr.Saxena refers to the confusion and has suggested that we update the members to clarify the issue.*

*Q.13: Whether there was any discussion on the proposed changes in the terms and conditions of Master Agreement in the meetings of MAI?*

*Ans: There have been instances that some members have sought to discuss terms and conditions of their agreements with producers/distributors at MAI meetings. However, the MAI has not encouraged such discussion and has advised its members to not discuss such matters in MAI meetings.*

5. On the basis of aforesaid statement, the DG has reported that the President was not able to explain as to how the agenda of a meeting of the MAI is prepared or how the minutes of such meetings are recorded or finalized. It was accepted by him that minutes of the meeting held on 29.06.2011 have not been prepared. According to the DG the aforesaid conduct of MAI is strongly indicative of the fact that the members of MAI were acting in a concerted manner to discuss the terms on which they would be exhibiting the films of the producers/distributors at the multiplexes owned by such members, after the expiry of the old master revenue sharing agreement between the distributors/producers and multiplex operators.
6. The Commission observes that although the President of MAI was not able to answer specifically as to how the agenda of a meeting of the MAI is prepared or how the minutes of such meetings are recorded or finalized but the statement itself does not show that the said meeting dated 29-06-2012 was called to discuss the terms and conditions of revenue sharing and in furtherance of such discussion all the members of the MAI agreed to follow a certain course of action. The President of MAI has specifically deposed before the DG that no prior agenda of the said

meeting had been made. Mere, non preparation of an agenda of any meeting does not reflect that the meeting was called for the discussion of certain anti-competitive concerted actions with respect to the conduct of the members of MAI after the expiry of the terms of the old master agreement. The Commission also observes that the minutes of the meeting dated 25.02.2011 do not reflect the terms of any concerted action which would govern the relationship between the OPs and the producers/distributors after the expiry of the old master agreement.

7. The Commission observes that amongst set of circumstantial evidences necessary to prove conspiracy among competitors, evidence of communication between the Opposite Parties is very important. However, at the same point of time mere exchange of information alone is not sufficient. The exchange of information should be to facilitate the conspirators to act upon the common scheme of illegal conduct. The DG has not been able to gather cogent evidence which could suggest that the MAI was using its meetings as a platform to co-ordinate a conspiracy amongst the multiplex operators to impose their collective decision on the producers/distributors of Bollywood and Hollywood films. As brought out later in this order, there is enough evidence on record to show that the multiplex operators were acting independently and not to further a common scheme designed to achieve an anti-competitive objective. The Commission is aware that meetings of trade associations may be used as a platform for conducting concerted activities by the competitors, however, the mere fact that MAI held meetings where its members exchanged certain information by itself cannot be said to be anti-competitive in terms of the provisions of the Act. The DG has concluded that the real purpose of the meeting dated 29.06.2011 was to discuss and decide the future course of action relating to the terms and conditions on which the OPs would be releasing films at their multiplex theatres after the expiry of the old master agreement whereas the OPs have argued that such meetings were arranged to carry on the legitimate purposes of MAI to represent the interests of the stakeholders of the movie i.e. exhibition business. In absence of any evidence post-meeting

coordinated action on part of the OPs, the Commission is of the view, that the DG did not possess enough evidence to suggest that such meetings were being used as a platform to carry out a scheme of concerted action by the OPs to extract more attractive terms from the producers/distributors of various Bollywood and Hollywood movies.

8. The Commission notes that the DG has also reported that there are some instances of concerted action of MAI and its members to impose their collective decision relating to the terms of revenue sharing on the film producers/distributors. As per the DG's observation, after the expiry of the old master agreement on 30.06.2011, the multiplexes started demanding the insertion of a proposed change in the agreements for terms relating to rebate in first week for multiplexes if a film fails or performs below the benchmark level of Rs.13.75 crores. The producers/distributors accepted this change after some resistance and amended the agreements accordingly. This rebate clause was subsequently re-negotiated at the time of release of film 'Bodyguard' and thereafter the benchmark for rebate in the first week became applicable on the films that collected less than Rs.6 crores. The same clause was also incorporated for the agreements of the film 'Delhi Belly' of UTV and "Buddha Hoga Tera Baap" of Viacom 18. DG has also relied upon the statement/affidavit of Shri Rajesh Thadani, one of the distributors of the film 'Murder 2'. The relevant excerpts from his affidavit are reproduced herein below:-

1. *I state that I was advising Vishesh Movies Pvt. Ltd. for the distribution of the said Film for Mumbai territory / Mumbai Circuit and I was directly dealing with all the theatre owners and the multiplex chains / individual multiplexes for the distribution of the said Film*
2. *I state that the said Film was scheduled for release on 8<sup>th</sup> July, 2011. However, around the time of release of the said Film, the multiplexes were demanding the revised share in the revenues from the producers/distributors as against the earlier revenue share arrangement*

*which was being practiced by all the multiplexes with the producers / distributors.*

- 3. I state that Mr. ChandreshDaftary of E-City Group (Fun Multiplex Pvt. Ltd.) came to my office on 4<sup>th</sup> July, 2011 and informed me that unless Vishesh Movies Pvt. Ltd. signs the new revenue share arrangement with them, they cannot provide their screens for the release of the said Film.*
- 4. I state the Mr. ChandreshDaftary then called up Mr. Rajender Singh Jyala of Inox Leisure Limited in front of me and he asked Mr. Rajender Singh Jyala to send the copy of the agreement to be signed between the individual Multiplex and the individual producers / distributors, to me.*
- 5. I state that in furtherance of the aforesaid telephonic conversation Mr. ChandreshDaftary of Fun Multiplex Pvt. Ltd. had with Mr. Rajender Singh Jyala of the Inox Leisure Ltd., Mr. Rajender Singh Jyala sent me an email dated 6<sup>th</sup> July 2011 forwarding the soft copy of the agreement to be signed by the Vishesh Movies Pvt. Ltd. for the said Film. Hereto annexed and marked as "**Exhibit-A**" is a copy of the said email dated 6<sup>th</sup> July, 2011 along with the copy of the agreement with revised terms, sent by Mr. Rajender Singh Jyala, asking the same to be sent to them for expediting the advance payment to Vishesh Movies Pvt. Ltd.*
- 6. I state that I was thereafter contacted by all the other remaining multiplex chains wherein they asked me to send the same agreement which was sent to me by Mr. Rajender Singh Jyala, with changes in the name of the multiplex chain. I state that only after the similar agreements duly executed by Vishesh Movies Pvt. Ltd. being sent to them by me either in the form of physical copies or scanned copies; those remaining multiplexes also sent me the advances and confirmed the show timings. I state that in view of achieving the release of the said Film on 8<sup>th</sup> July, 2011 I had no choice but to get the revised agreements signed on behalf of Vishesh Movies Pvt. Ltd. and to send to all the multiplexes and multiplex chains.*
- 7. I state that in view of the aforesaid background and in view of the last minute coercion from all the multiplex chains / multiplexes, Vishesh Movies Pvt. Ltd. had to sign the revised agreements with all those*

*multiplex chains / multiplexes as listed as Respondents (except Respondent No. 1) in the captioned, out of no choice.*

8. On the basis of these submissions, the DG has concluded that the multiplex operators were working in concert to impose their decision on the producers/distributors of films. It has been reported by the DG that the OPs were discussing with each other and unless the desired changes were accepted by the producers/ distributors none of them finalized the new revenue sharing agreement. The draft of the agreement incorporating the proposed changes was forwarded by Shri. Rajendra Singh Jyala of INOX with a direction to send it back on the letterhead of Vishesh Films for signing by the multiplex operators. The other multiplex operators signed their respective revenue sharing agreements with the producers/distributors of the film 'Murder 2' only when Shri. Rajesh Thadani incorporated the proposed changes in the new agreement. None of the multiplex operators had signed the new agreements till the finalization of draft agreement by INOX for the release of film 'Murder 2' in Mumbai circuit.
  
9. The Commission also notes that DG has also placed reliance upon the emails dated 06.07.2011 sent by one Shri. Ramesh Sippy (distributor) to the President of MAI. The contents of the mails are as under:-

*How have you been? Sometimes miss the coffee meetings held at Trident. Well, this is just to inform you that we have been informed by UTV and Eros that the Multiplex programmers are making it a point to meet the Producer/Distributors in groups of 3 or more chains, be it Inox. PVR or Big Adlabs and jointly discussing terms. You will appreciate the delicate nature of the situation. We certainly feel that this is not in the right spirit of Competition Laws and should be avoided. We do not seek any confrontation on the issue and also would like to keep out options of a settlement in the near future on issues that we may not have agreed upon earlier. Hence this mail.*

*Hoping you will consider this in the light of our very cordial relations and respect for each other's views.*

10. In his statement recorded before the DG Shri Ramesh Sippy further explained the context in which this e-mail was sent by him in the following manner :-

1. *I state that I am engaged in a business of film distribution under my concern "Raksha Entertainment Pvt. Ltd., where I am one of the Directors.*
2. *In the year 2009, the individual producers / distributors and multiplex chains / owners, entered into separate arrangements with each other recording the mutually agreeable terms of sharing of net revenues generated from the exhibition of the films.*
3. *These agreements entered into between the producers / distributors and multiplex chains / owners expired in and around 30<sup>th</sup> June, 2011 and thereafter the multiplexes jointly and severally started pressurizing producers / distributors to succumb to their unreasonable demands for exhibition of films in their multiplexes by asking unreasonable revenue share percentages.*
4. *In this regard, the multiplexes collectively started entertaining the producers / distributors just one or two days prior to the scheduled release of their film so that the producers / distributors have no choice but to agree to their unreasonable demands.*
5. ***In view of this background, I came to know from sources that UTV and Eros have succumbed to the pressure of the multiplex owners and have entered into new agreements with them as per the revenue shares required by the multiplex owners.***
6. *I state that I was specifically informed by the members of the Multiplex Association of India including Mr. Deepak Ashar that the multiplexes will stop meeting in groups to avoid any action from Competition Commission of India against them and in view of the*

same, the producers / distributors were meeting the owners of the multiplexes in isolation.

7. *I say that in the aforesaid background, I wrote an email dated 6<sup>th</sup> July, 2011 to Mr. Deepak Ashar and copied Mr. Siddharth Roy Kapur of UTV, Mr. SahdevGhai of Yash Raj Films.*
  8. *I state that Mr. Deepak Ashar has neither replied to my aforesaid e-mail nor he has denied the contents of my aforesaid email dated 6<sup>th</sup> July, 2011.*
9. In addition to the evidences referred above the DG has also relied upon the submissions of Viacom18 and UTV made in their replies before the DG. The relevant parts of their submissions are reproduced herein below:-
- Reply by Viacom 18** – *“After expiry of the master agreement, we have had discussions with various multiplexes individually as well as collectively as is the practice, to finalize the release plans of our films. For ‘BudhhaHogaTeraBaap’ our representatives held multiple discussions and negotiations with various multiplexes to reach an understanding on the release plan and the deal was done on mutually acceptable terms.”*
- Reply of UTV** – *“The negotiations and meetings were held jointly and individually with the Multiplexes to largely discuss the terms of the screening of the film. This being a general practice and is followed in respect of Films.”*
10. On the basis of above facts and circumstances, DG has concluded that the information gathered during the course of investigation and the chain of events clearly indicate that the multiplex operators were acting like a cartel under the auspices of MAI. All the important decisions are taken jointly under consultation with the leading multiplex operators and the office bearers of MAI. The DG has also returned the finding that the action of MAI establishes that the distributors were forced to accept the

collective decision of the OPs on revenue sharing terms as determined by them jointly.

11. The Commission has carefully gone through all the evidence relied upon by the DG. It is seen that with regard to the release of the films 'Delhi Belly' of UTV and 'BudhaHogaTeraBaap' of Viacom 18 the UTV and Viacom 18 have categorically stated that the terms of the agreements with regard to the revenue sharing arrangement and the terms of release of these films were mutually agreed between them and the multiplex operators. There were discussions with the operators jointly and individually and that it is a general business practice. Viacom 18 and UTV have not indicated that they were forced to sign agreements by the Multiplex operators. This fact is in direct contradiction with the statement of Shri Sippy as referred above wherein Shri Ramesh Sippy has stated that UTV signed the agreement under pressure from the multiplex operators. The Commission further notes that had UTV signed such an agreement under pressure/duress from the multiplex operators then UTV, being an aggrieved party, would have at least made allegations against the multiplex operators or MAI. However, not only it has not alleged any such coercive behavior on part of the OPs, it went on to say that the agreement was signed on mutually agreed basis. Hence, on the basis of the available evidence, it cannot be concluded that UTV or Viacom 18 had signed the aforesaid agreements under the pressure of a concerted action on part of the OPs.
12. The Commission also observes that the master agreement had expired on 30.06.2011 and after the expiry of the master agreement; the parties were free to renegotiate the terms and conditions at which the producers/distributors could exhibit their films on the multiplexes operated by OPs (2-15). DG has himself admitted that no boycott or any threat to boycott had been issued by MAI or its members against any producer/distributor and films of the producers/distributors continued to be released in multiplexes even after the expiry of master agreement. On the basis of available facts and circumstances, the Commission observes

that if there had been any case of conflict between the producers/distributors and the multiplex operators on the terms of revenue sharing, then at least the producers/distributors would have faced the problem of exhibiting their films on the multiples theatres owned by the OPs (2-15), but, as it is evident from the available facts, that this is not the case in hand. The fact of competitors meeting and exchanging information may provide circumstantial evidence to prove the existence of a conspiracy only when such meetings are followed by parallel conduct of the conspirators (like competing enterprises increased prices at the same moment, offered the same discounts and/or terms and conditions to their consumers). There is not enough evidence at hand to demonstrate that the multiplex operators were acting in unison. After the expiry of the master agreement; the parties were free to individually renegotiate the terms and conditions at which the producers/distributors could exhibit their films on the multiplexes operated by OPs (2-15) and the DG has himself admitted that no boycott or any threat to boycott had been issued by MAI or its members against any producer/distributor and films of the producers/distributors continued to be released in multiplexes even after the expiry of master agreement. Consequently, the fact of the multiplex operator meeting amongst themselves, in absence of any subsequent parallel conduct amongst such members, does not constitute sufficient evidence to prove the existence of a conspiracy between the members of MAI. The U.S. Supreme Court, held in *American Tobacco Co. v. United States*, 328 U.S. 781, 810 (1946), that the finding of a conspiracy is justified “[w]here the circumstances are such .....that the conspirators had a unity of purpose or a common design and understanding, or a meeting of minds in an unlawful arrangement.” The DG has not been able to gather enough evidence to demonstrate that the OPs (1-5) had a unity of purpose or a common design, i.e., to force the producers/distributors to accept certain common onerous terms only after the fulfillment of which the OPs will release the films of such producers/distributors on the multiplex theatres operated by them.

13. With regard to the conduct of the OPs in relation to film 'Murder-2', the Commission notes that all the parties had not signed the agreement with regard to said film with Vishesh Film after the alleged date ,i.e.,06.07.2011. Satyam Cinema has specifically submitted that it had signed the agreement in relation to the said film prior to 06.07.2011 i.e. prior to the alleged sending of draft agreement by INOX to Mr. Rajesh Thadani. As per the submission of Satyam Cinema, it had executed agreements regarding movie 'Murder 2' with producers/distributors on 30.05.2011, 04.07.2011 and 05.07.2011 with Ginni Arts, Red Sun Enterprises and AA Films, respectively, prior to the date when alleged draft was sent by INOX to Mr. Thadani on 06.07.2011. It is pertinent to note that none of the aforesaid agreements were signed by Satyam cinema with Vishesh Film who has alleged anticompetitive conduct of the OPs in its statement before the DG. Further, DG has not examined the parties with whom the agreements of Satyam Cinema were executed. The Commission further notes that M/s AB Movies had also signed the agreement with regard to film Murder 2 with M/s Ginni Art and not with M/s Vishesh Film to whom the alleged draft was sent by INOX on 06.07.2011.
14. The Commission further observes that OP 13 *i.e.*, SRS had signed agreements for exhibition of 'Murder 2' for its multiplexes in Delhi and UP on 28.05.2011 and for its multiplexes in Punjab on 05.07.2011 *i.e.*, prior to the sending of the revised agreement by INOX to Mr. Thadani. Further, OP 10 *i.e.*, DT Cinemas had signed the agreement of exhibition of 'Murder 2' almost two month prior to its release and before the expiry of old master agreement. It had also signed an agreement with Narsimha Enterprises in respect of the aforesaid film for releasing it in its multiplexes at Chandigarh on 07.07.2011. OP5 *i.e.*, Reliance Media Works had also executed two separate set of agreements, through its authorized representative Mukta Arts, with the main distributor & sub-distributor in Mumbai territory. As per its reply the terms and conditions of both these agreements are different, consequently, the OPs could not

have been implementing a common pre-agreed set of terms and conditions on the producers/distributors as alleged by the Informant.

15. It has been submitted by INOX that it had already signed the agreement in relation to the film 'Murder 2', with M/s Ginni Arts, for the release of the film in the northern region of the country much earlier from the date when the alleged draft was sent to Vishesh Film on 06.07.2011.
16. On the basis of foregoing facts and circumstances, the Commission is of the view that there is no such evidence available on record which shows that all the multiplex operators had acted in a concerted manner and had forced Vishesh Films to accept their common terms and conditions with respect to the agreement between such OPs and Vishesh Films, with regard to 'Film Murder 2'. The very fact that many of the multiplex operators had signed separate agreements with Vishesh Films much prior to 06.07.2011 when the alleged draft was sent by INOX to Mr. Thadani of Vishesh Films, shows that the agreements were not signed by multiplex operators in a concerted manner. It is important to note that the DG relied upon only the statement of Mr. Rajesh Thadani of Vishesh Films and failed to examine the statements of witnesses from Ginni Arts with whom many of the OPs had signed their respective agreements in relation to film 'Murder 2'.
17. The Commission further notes that the DG has also reported that after the expiry of the old master agreement certain Hollywood film distributors had faced similar problems as that of the Bollywood producers/distributors because of the concerted action of OPs, as they had demanded a higher revenue sharing model. The DG has also reported that the multiplex operators met Warner Brothers on 13.07.2011 for jointly negotiating the terms of release of the film 'Harry Potter'. The DG in order to reach the above conclusion has relied upon the statement of Shri Gaurav Sabharwal of Warner Brothers. The statement of Shri Sabharwal is reproduced herein, below:

1. *“That I am duly authorized and competent to depose on the facts contained in the present Affidavit, being acquainted with the facts and circumstances of the present case.*
  
2. *That the Warner Bros. Pictures production, Harry Potter and the Deathly Hallows (Part-II) (HP) was to be released worldwide on 15 July 2011. On 7 July 2011, a contract proposing revenue sharing terms i.e. 50% (first week), 42.5% (second week), 37.5% (third week), 30% (fourth week and thereafter) for releasing the said film was sent by Warner Bros. Pictures (India) Pvt. Ltd. (Warner), acting individually, to each of the multiplex exhibitors namely, PVR Cinemas, Cinemax, INOX and Fun Republic Cinema vide email. The proposed contract was sent separately and individually to each exhibitor.*
  
3. *That Mr. Prakhar Joshi (PVR) responded to my email on 8 July 2011 offering terms lower than those proposed by Warner. The terms were 45% (first week), 37.5% (second week), 32.5 (third week) and 27.5% (fourth week and thereafter). However, as HP was one of the most successful film franchises of all time and was one of the most awaited films in 2011, being the final installment in the Harry Potter series, we were not agreeable to the proposed arrangement and I conveyed such disagreement to PVR. Despite repeated reminders, PVR refused to re-consider their proposed revenue sharing arrangement.*
  
4. *That we did not receive any response from the other multiplexes to our email dated 7 July 2011 proposing contract terms. We sent reminder emails to each of the multiplex exhibitors individually, to propose the discussion of terms of release for the film on screens in their respective circuits, but none of the multiplexes responded to the emails. The release was scheduled for 15 July and as of 12 July, we had still not received any responses. On 12 July 2011, the multiplex representatives as members of the Multiplex Association of India (MAI) requested that a meeting be set up between us and the MAI member exhibitors in our office. We had no choice but to accept the same. We were running out of time as the film*

*was scheduled for release in less than three days and this was the only option available to us, as the multiplexes alone generate about 60% of the revenue earned by us and are hence, of utmost importance to our business. Therefore, in the interest of time, Warner agreed to meet with the MAI members at Warner's offices.*

- 5. That Mr. Prakhar Joshi (PVR), Mr. RajenderJyala (INOX), Mr. Jeewan Joshi (Big Entertainment), Mr. Thomas D'souza (Cinemax) and Mr. Anshu Kapoor (Fun Republic Cinema) who are members of MAI assembled in the office of Warner on 13 July 2011 at 2 PM. Present for Warner was myself and Denzil Dias, who is Deputy Managing Director - Theatrical. The MAI members said at the outset that they were representatives of MAI and were proposing terms on behalf of MAI. The terms they offered were similar to the terms offered by PVR in response to Warner's July 7, 2011 email i.e. 45% (first week), 37.5% (second week), 32.5% (third week) and 25% (fourth week and thereafter). At two points in the meeting the MAI members present requested that we talk to Mr. Ashish Saksena (Big Cinema) and Mr. Deepak Asher (INOX). We called Mr. Saksena who made clear that he was not speaking on behalf of Big Cinema, but was speaking on behalf of MAI. Mr. Saksena said he would confer with Mr. Asher and the other MAI members concerning our proposed terms. Our discussions with MAI members did not result in any agreement as the revenue sharing terms offered by MAI were lower than what Warner was willing to accept for 'Blockbuster' level motion pictures and lower than what we had been able to negotiate with exhibitors in the past. The MAI members informed us that they would release HP only on their proposed terms or else not play HP in MAI member theaters at all. Thus, the matter could not be resolved at the meeting.*
- 6. That on 14 July 2011, we were informed by Mr. Saksena that the MAI had decided that since there was still no agreement on the revenue sharing terms, they were willing to offer Warner the ability to book HP on open terms, by which 90% payment of Warner's share of the revenue as per the 50% (first week) revenue share terms proposed by Warner i.e. 45%*

*(first week), 37.5% (second week), 32.5% (third week) and 25% (fourth week and thereafter) would be settled after each week of play, and the terms would be locked/resolved amicably within 4 weeks from the date of release.*

- 7. That we sent individually to each MAI member a Memorandum of Understanding (MoU) on 14 July 2011 applicable to each multiplex exhibitor separately, outlining the details of the interim arrangement as stated in paragraph 6 above. We asked each multiplex exhibitor to acknowledge and sign the same so that there would be no confusion at a future date. We subsequently sent out two reminders but did not receive any response to the MoU from any of the MAI members. None of the MAI members signed out MoU but the members allowed us to book HP at their theatres based on those terms and HP opened on MAI member screens on 15 July 2011.*
- 8. That even after the 4 week period ended, we did not receive any response to our MoU from any MAI member. However, we continued to reach out to each of the exhibitors, separately and individually, asking each exhibitor to come for a meeting to discuss the terms for HP as the period earlier agreed upon (4 weeks) for discussion had expired.*
- 1. That on 1 August 2011, we again contacted each MAI member, separately and individually, regarding the release of our film, Final Destination 5 on 12 August on our proposed terms. Movietime, Fun Republic Cinemas, INOX and BIG Cinemas responded to us with terms lower than those proposed by us. The terms proposed by the Movietime were 45%, 37.5%, 32.5% and 30%, by Fun were 45%, 35%, 32.5% and 30%, by INOX were 45%, 37.5%, 32.5% and 25% and BIG were 45%, 37.5%, 32.5% and 25%. The other MAI members did not respond at all. We were then forced to release Final Destination 5 in only non-MAI member cinemas all over India. Therefore, Final Destination 5 did not play on any MAI member screens.*

2. *That we again approached the MAI members individually to exhibit our upcoming motion pictures, such as Contagion, Crazy Stupid Love and Dolphin Tale. We did not receive responses from most of the multiplexes, but we were able to negotiate agreements individually with Cinemax and PVR. On 18 August 2011, we negotiated individually with Cinemax to release our films at their chain of multiplexes. On 7 September, we also negotiated with PVR Cinemas individually to release our films at their cinemas. Contagion (9 September), Crazy Stupid Love (16 September) and Dolphin Tale (4 November) which were our subsequent releases were screened by Cinemax, PVR and other non-MAI member cinemas all over India. The other cinemas which were members of the MAI did not release the above stated films as we had not yet been able to agree on the revenue sharing terms.*
  
3. *That throughout the above developments, we were acting independently. Further, we have continued to negotiate separately and individually with the members of MAI other than PVR and Cinemax. We were ultimately able to agree on releasing all our films from Happy Feet 2 (18 November) onwards on mutually acceptable terms with each of the multiplexes separately. Meanwhile, we also reached an amicable resolution with each of the MAI exhibitors on an individual basis on HP terms as proposed by us”.*
  
4. After carefully going through the statement of Mr. Sabharwal, the Commission notes that Mr. Sabharwal has specifically deposed that the film ‘Harry Potter’ was released in the multiplexes without any final decision on the revenue sharing arrangement with the multiplex operators. However, the multiplexes were demanding higher revenue share than the model provided in the old master agreement. The Commission further notes that as per statement of Mr. Sabharwal, with respect to the film ‘Final Destination’, Movie Time, Fun Republic, INOX and Big Cinemas responded with the demand of a lower revenue sharing model than that proposed by Warner Brothers. The other members of MAI did not respond to Warner Brothers and the film was also released

on non MAI member operated screens. Further, other films namely 'Contagion', 'Crazy Stupid Love' and 'Dolphin Tale' were also released on Cinemax and PVR and other non MAI member screens. The Commission also notes that Mr. Sabharwal has specifically submitted that all the multiplexes agreed to release all its films from 18.11.2011 onwards on mutually agreed terms with each of the multiplex separately. Further, as per the statement of Mr. Sabharwal, Warner Brothers, reached an amicable resolution of the dispute with each of OPs on an individual basis on terms acceptable to both Warner Brothers and such OP. In the context of these facts and circumstances, the Commission observes that the members of MAI had not boycotted any Hollywood Film, as it is evident that even the film 'Harry Potter' was released on its scheduled date. Further, the Commission notes that, based upon the wishes of Warner Brother, the film 'Final Destination' was released on both theater screens operated by members of OP1 as well as on theatres owned by operators which are not members of MAI. The terms offered by Movie Time, Fun Republic, INOX and Big Cinemas in relation to film 'Final Destination' were different from each other. While 'Contagion', 'Crazy Stupid Love' and 'Dolphin Tale' were also released in India in theatres multiplex operated by Cinemax and PVR (who are the members of MAI), and on theatre screens operated by enterprises which are not members of MAI. Infact, there appears to be evidence on record that suggests, that the OPs were behaving independently, for example, for the movie 'Final Destination', Big Cinema proposed 37.5% of the revenue generated in the second week of the aforesaid movie's release, Fun proposed 32.5% of such revenue in the second week of the movie's release. Further, Movie Time and Fun proposed 30% in fourth week whereas, INOX and Big proposed 25% of the revenue generated in the fourth week. No other OPs proposed any other terms and conditions. The abovementioned variations in the terms and conditions proposed by the four different OPs reflect that they were not acting in a concerted manner. Regarding films 'Contagion', 'Crazy Stupid Love' and 'Dolphin', the very fact that the said films were released in the screens of two MAI members *i.e.*, Cinemax and PVR and not on the screens of all the members of the MAI,

illustrates that MAI and its members were not acting in a concerted manner and that each member of the MAI were negotiating separately with the producer/distributor of the movie at commercial terms which were acceptable to such members. Further, in his statement, Mr. Sabharwal, has specifically submitted that from 18.11.2011 all their films were released on terms which were mutually agreed between Warner Brothers, and each of such multiplex operator on whose screen a particular Warner Brother produced movie was slated to be released/exhibited. It is pertinent to note that, as per the statement of Warner Brothers, the terms agreed by the multiplex operators for films produced by Warner Brothers, released after 18.11.2011, were terms which were proposed by and acceptable to Warner Brothers themselves and not by the OPs. The aforesaid conduct of the OPs shows that they were not acting in a concerted manner.

5. The Commission also observes that to understand the manner in which the MAI conducts itself, the DG has relied upon the statement of Mr. Mukesh Bhatt, which is reproduced herein below:

*Q.4: How you can say that the conduct of multiplex owners was concerted act? Whether you have any evidence to show that all the multiplex operators were in agreement?*

*Ans: The terms laid by one multiplex owner were exactly identical with every other multiplex owner and till the producer did not agree to one, no other multiplex owner came forward to sign the contract and pay any advances till the contract will sign. Since this entire process was led by MAI and Mr. Deepak Asher, the President of MAI and also the CEO of INOX Multiplex, all the other multiplexes signed the agreement only when INOX finalized. This you can confirm from Mr. Rajesh Thadani, my distributor. I will also submit the chronology of events along with the copies of e-mails, if any, to substantiate my statement, by 15<sup>th</sup> December, 2011.*

*Q.5: Whether any multiplex operator or the office bearer of MAI contacted you or any other producer for negotiation on the terms and condition of revenue sharing before or after the release of 'Murder 2'?*

*Ans: Yes, Mr. Deepak Asher on behalf of MAI had a meeting in Hotel Trident, Mumbai at BKC 4-5 days before the release of film 'Murder 2'. Mr. Asher was accompanied by Mr. Ashish Saxena of BIG cinemas, whereas I went there along with my colleague Mr. Sahadev Ghai of Yashraj Film, in which he said that the new terms of rebate should be applicable in the first week also at par with bonus. I said this is not fair to me and it is contrary to the Master Agreement which was prevalent till then and he said that UTV has already signed the new arrangement along with Viacom 18, which surprised me. Meeting ended there and no other issues were discussed. When I came back and contacted Mr. Siddharth Roy Kapoor and Mr. Neeraj Goswami to check whether they have signed, they said that they did so under duress as they had no other choice. Similarly, Mr. Blaze Fernandes of Warner Brothers told me that they are also facing similarly problems with multiplex operators, who all (six national multiplex owners) went to his office together to negotiate the terms jointly.*

6. The Commission notes that although as per the statement of Shri. Mukesh Bhatt, all the multiplexes had signed the agreement in relation to the release of the film 'Murder 2' only after the finalization of the draft agreement by INOX, however, the Commission is of the view that the fact that all the multiplexes had signed the agreement only after finalization of the same by INOX is not correct as has already been discussed in Para 33 to 36 above. Further, as per the statement of the Shri. Mukesh Bhatt, UTV and Viacom 18 had signed the agreement with respect to the release of the film 'Murder 2' in the multiplexes operated by the OPs under duress and the OPs acting in a concerted manner forced UTV and Viacom 18 to accept their terms and conditions. However, as has been discussed above, in their reply to the DG, Viacom 18 and UTV have specifically denied that the agreement was signed under duress.

7. The Commission further notes that to establish the violation of the Competition Act by OPs, the DG has also relied upon the statement of Shri. AshishSaksena of Big Cinema, which is reproduced below:

*Q.9: I am showing you a mail forwarded by you on 24.06.2011 to Mr. Deepak Asher, President, MAI on subject of 'MAI-UPDF meeting', you have written that 'we may need to call for an MAI meeting early next week so that we could go over the points discussed and the next steps with all the chains in regard to our discussion with UPDF. Reason for this request is that although I have explained all the points to a lot of chain, but a general discussion on next step is called for as there is confusion on the films releasing next Friday, i.e. 01.07.2011 and there are chains that are not aware of the discussion we had. Please advise your thoughts'. Your mail shows that you have been in touch with other multiplex operators and wanted to have a decision for the films releasing from 01.07.2011 on MAI-UPDF agreement. Please explain.*

*Ans: The context of discussion in this mail is specific to introduction of clause of service tax on distributors' share which was being discussed with other multiplexes. Most of the chains were taking legal opinion on this matter. A mail from PVR on this subject was also circulated which had a different interpretation. The meeting was called to take a decision on how service tax related query can be addressed in the agreements.*

*Q.10: If the issue was relating to service tax, then what was context for showing urgency for the films releasing on 01.07.2011 and also mentioning the discussions with UPDF? It suggests that you are not giving correct reply regarding the mail sent by you 24.06.2011. Please explain.*

*Ans: I would like to deny this allegation that correct picture has not been presented. The distributor had started incorporating clause on service tax in their agreements which needed to be addressed. There were varying thought processes that needed to be discussed. There were*

*options which were presented by UPDF on this issue. That is the context of mentioning UPDF. The significance of date of 01.07.2011 is just that it's a Friday, the day of movie release.*

*Q.11: Can you substantiate your reply with the documents or correspondence to show that this mail was intended for service tax matters?*

*Ans: I will revert back with the details by 20.12.2011.*

8. On the basis of said statement, DG has reported that the email forwarded by Shri Ashish Saxsena to Shri. Deepak Asher on 24.06.2011 was related to the meeting of UPDF and MAI and to take an urgent decision before 01.07.2011.
  
9. After carefully going through the content of the email of Shri Ashish Saxsena and his statement before DG, the Commission observes that merely on the basis of the contents of the aforesaid email, the Commission cannot conclude that any concerted action was proposed or acted upon by the OPs. After the perusal of the statements of Shri Saxsena it appears that Mr Saxsena wanted a general discussion on the films to be released after 01.07.2011 and, given the fact, that the master agreement was going to expire on 30.06.2011, the Commission is of the opinion, that the parties would have naturally wanted to discuss the procedure/steps to be undertaken for releasing upcoming films after 01.07.2011 (i.e. the date of expiry of the old master agreement) and this fact in itself does not show that the OPs were acting in a concerted manner. Several Circuit courts of the US (Bolt v. Halifax 891 F.2d at 810, 827 (11<sup>th</sup> Cir) and Cooper v. Forsyth County Hosp. Auth., 789 F.2d 278, 281 (4th Cir.)) following the decision of the U.S Supreme Court in U.S. Supreme Court held in Matsushita Electric Industrial Co. v. Zenith Radio Corp., 475 U.S. 574 (1986), have held that meetings or other communications among competitors that show no more than a "mere

opportunity to conspire,” are insufficient, by themselves, to support an inference of conspiracy, at least when the defendants offer plausible, legitimate business justifications for such communications. As has been noted by the Commission, that there are plausible grounds or other business justifications for Mr Saxsena wanting a general discussion on the films to be released after 01.07.2011 and, given the fact, that the master agreement was going to expire on 30.06.2011, the mere fact that the alleged conspirators had met and exchanged information, by itself is not sufficient to conclude the existence of a conspiracy amongst the OPs.

10. The DG has also relied upon certain emails exchanged between Warner Brothers and one of the multiplex operators *i.e.*, Glitz Cinemas which are reproduced herein below:

1. Content of the e-mail sent by ShriSanjeevKhandelwal of Warner to ShriSusanta Panda & Others of Gitz Cinema on 02.08.2011

“ We are distributing the Hollywood film ‘ Final Destination 5 ‘ starring Nicholas D’ Agosto, Jacqueline Maclinnes wood, Tony Todd, Emma Bell, David Koechner&Ors August 2011. We are willing to grant non-exclusive theatrical rights for exhibition of the Film at Glitz Cinemas, Ranchi on the following share in the Net Collections of such film viz.

1. 1<sup>st</sup> Exhibition week: 50% of the Net Collections,
2. 2<sup>nd</sup> Exhibition Week: 42.5% of the Net Collections
3. 3<sup>rd</sup> Exhibition Week: 37.5% of the Net Collections
4. 4<sup>th</sup> Exhibition Week: Onwards till the last Exhibition Week: 30% of the Net collections.

We request you to endorse your acceptance of the above terms and conditions.”

5. Content of the e-mail sent by ShriSusanta Panda to Sh. SanjeevKhandelwal& Others on 04.08.2011.

“ We confirm the movie **(Final Destination 5 3D Hindi)** on National Multiplex Terms. For any further clarification please call.”

6. Content of the e-mail sent by ShriSanjeevKhandelwalto ShriSusanta Panda and others on 05.08.2011.

“ Thank you for your response. We are very keen to exhibit the film at Glitz Ranchi. However, I would request you to please clarify what you meant by the National Multiplex terms in your email? As per my telephonic conversation with you, you have confirmed that Glitz is a member of MAI and would exhibit the film on the same terms as those being offered to MAI member. Did you also mean the MAI terms when you referred to the National Multiplex terms? We await your response. “

7. Content of the e-mail sent by Shri Rajesh Singh to Sanjeev Khandelwal & Others on 05.08.2011.

“ Sir, we will run the movie on the MAI terms only. Which is the same what you have mentioned in previous mail. i.e. National Multiplex Terms.

8. Content of the e-mail sent by Shri Sanjeev Khandewal to Rajesh Singh & Others on 06.08.2011.

“ Thanks for your confirmation. MAI has proposed the following share in the Net Collections of such Film viz.

1. 1<sup>st</sup> Exhibition Week: 45% of the Net Collections.
2. 2<sup>nd</sup> Exhibition Week: 37.5% of the Net Collections
3. 3<sup>rd</sup> Exhibition Week: 32.5% of the Net Collections and
4. 4<sup>th</sup> Exhibition Week: onwards till the last Exhibition Week: 27.5% of the Net collections.

We understand that you are also offering the aforesaid terms. May we suggest having a meeting in person with you or your

representative to arrive on some mutually agreeable figures on revenue sharing ratio for exhibition of our film in your theatre. “

5. On the basis of the aforesaid emails, the DG has reported that multiplex operators were acting under the directions of MAI and accepted the terms of releasing films by the producers/directors only when such terms were approved by MAI.
  
6. The Commission has already discussed the aforesaid issue in preceding paras. As per the statement of Shri. Sabharwal, the terms offered by four multiplex operators for releasing the film 'Final Destination' were 45%, 37.5%, 32.5%, 30% offered by Movie Time, Fun Republic offered 45%,35%,32.5%, 30%, INOX offered 45%, 37.5%, 32.5%, 25% and Big Cinemas offered 45%, 37.5%, 32.5%, 25% respectively. Whereas Mr. Khandelwal in his email dated 06.08.2011 has confirmed that MAI has proposed 45%, 37.5%, 32.5%, and 27.5% for releasing the same film by its respective members. The Commission observes that there is some contradiction between the terms mentioned in the email and in the statement of Mr. Sabharwal. Further, the Commission observes that film 'Final Destination' was also released on theatres operated by certain non MAI member theatre operators and some other films such as 'Crazy Stupid Love' and 'Dolphin Tale' were released on multiplex screens operated by two members of MAI and on theatres operated by non- MAI theatre operators. The Commission notes that had there been a case of concerted action of the multiplex operators than 'Crazy Stupid Love' and 'Dolphin Tale' would not have been released in the multiplex screens operated by only two members of MAI. This shows that the terms of releasing such movies were agreed mutually between the producers/distributors and the respective multiplex operators and those who did not agree to such terms did not release the films at their multiplex theatres. Hence, it cannot be concluded that the members of MAI were acting in concert. Further, in his statement, Mr. Sabharwal has specifically submitted that from 18.11.2011 all their films were released

on mutually agreed terms as proposed by Warner Brother themselves. The aforesaid conduct of the OPs demonstrates that they were not acting in a concerted manner. The U.S. Supreme Court, while dealing with the correct standard of proof for conspiracy allegations, stated in *Monsanto Co. v. Spray-Rite Service Corp*, 465 U.S. 752, 768 (1984), that “the correct standard is that there must be evidence that tends to exclude the possibility of independent action by the [parties]. That is, there must be direct or circumstantial evidence that reasonably tends to prove that [the parties] had a conscious commitment to a common scheme designed to achieve an unlawful objective”. As has been explained above, the Commission has not found enough evidence to demonstrate that the OPs were acting in concert. The OPs which did not find the terms offered by producers/distributors acceptable, declined to release such films on the multiplex screens operated by them. Consequently, there is not enough evidence to demonstrate that the OPs had a “conscious commitment to a common scheme designed to achieve an anti-competitive objective”.

7. DG has also relied upon the emails exchanged between the multiplex operators with regard to film ‘Singham’ to show the anticompetitive conduct of the OPs. The contents of these emails are reproduced herein below:

1. Contents of the e-mail sent by Shri Amit Awasthi of Reliance ADA to Shri Anant Verma & Others on 16.07.2011.

*As you are aware we are releasing minimum a movie every week till Eid 2011(including 3-4 blockbusters) beginning 22<sup>nd</sup> July with Singham when the Lion is going to Roar. I would like to communicate the playing terms and other conditions for our above mentioned movies as per the following terms; Singham (22<sup>nd</sup> August) 1<sup>st</sup> week-50%, 2<sup>nd</sup> week- 50%, 3<sup>rd</sup> Week-40%, 4<sup>th</sup> week onwards-30%. Cowboy & Aliens (29<sup>th</sup> July onwards in 4 languages) 1<sup>st</sup> week-50%, 2<sup>nd</sup> week-42.5%, 3<sup>rd</sup> week-37.5%, 4<sup>th</sup> week onwards-30%, Please let me have your commercial terms confirmation latest by Monday morning, so that we can*

*strategies our distribution plan accordingly. Advances needs to be negotiated mutually by you or your booker. Post your confirmation please share your proposed cinema list so that I can take final call on the same. If you or your booker are planning to meet for any clarification and agreement execution. I can meet you between 2-2.30 PM Monday.*

2. Content of the e-mail sent by Sh.Vikash Bhagchandka of M2K India to Sh. Deven Chachra & Others

“Enclosed is a communication received from Reliance for release of their forthcoming movie Singham & Aarakshan. Let us know how do you want us to proceed in the matter as the terms demanded by them are in violation to the agreed terms.”

3. Content of the e-mail sent by Sh.Deven Chachra of Satyam Cineplexes to Sh. Deepak Asher & Others

“ We have all received such communication, will touch base with you on Monday by 12 noon on this matter.

4. Content of the e-mail sent by Sh. Tinku Singh of SRS Parivar to Sh. Deepak Asher .

“ This has come from Reliance, please advice.”

5. Content of the e-mail sent by Sh. Deepak Asher to Devan Chachra& Others

“ I am leaving for abroad tonight. Will be back on Friday. Meantime, I have discussed the matter with Alok and Rajender of Inox, and have guided them on the way forward. I suggest you remain in touch with them. I am available on email, if required.

6. Content of the e-mail sent by Sh. Deven Chachra of Satyam Cineplexes to Sh. Deepak Asher & Others

“All the players are looking for some direction on how to handle the current crisis/situation. Would like to have a word with you, may be a cong call between myself/U and Alok. Kindly let me know if this will be possible.”

7. Content of the e-mail sent by Sh. Deven Chachra of Satyam Cineplexes to Sh. Deepak Asher & Others

“ Yes, I will call you and patch Alok into the call.

8. Content of the e-mail sent by Sh. Deepak Asher to Shri Devan Chachra.

“ I am in Morocco, which is 4-1/2 hours away from India time. Shall we talk at around 8.30 am Moroccan time, which would be like 1 PM India time, today?

9. Content of the e-mail sent by Sh. Bhumika Tiwari of E-City to Sh. Deepak Asher & Others.

“Reference the above mentioned subject, seek your advice/ way forward to resolve an issue we are facing with M/s. Reliance w.e.f. their release SIGNHAM. We have been asked to sign the movie at 55/50/40/30 and their forthcoming line up also at such high terms and their English content at 50/42.50. We have in a written communication expressed are inability to pay such terms. We however hear that M/s. Big Cinemas has agreed to play SINGHAM and other chains are also being offered lucrative terms to break the unity. There may be no truth to it as its all market news but we have received enough phone call on same

and thought it would be wise if at MAI level find a solution on this. Await your revert.”

10. On the basis of said evidence, DG has reported that MAI is involved in all the decisions of their members and offer of every individual producers/distributors are exchange among the members to take a united stand.
11. The Commission observes that on the basis of the aforesaid emails, it seems that the information was exchanged between the members of MAI regarding the terms of certain films, specially the film ‘Singham’. However, the above emails do not show that the members of the MAI agreed upon the actual terms on which film would be released. The aforesaid emails show that Reliance Media who was the distributors of ‘Singham’ was offering certain lucrative terms on which some multiplex operators like Big Cinema had agreed to release the film. The Commission further notes that mere exchange of information between the members of MAI does not mean that they forced Reliance Media to offer lucrative terms. Had it been a case of concerted action, then Big Cinema and other operators who are the members of MAI would have been penalized or cautioned by MAI or other members for accepting the terms of Reliance Media. The U.S. Supreme Court in *American Tobacco Co. v. United States*, 328 U.S. 781, 810 (1946) stated that the finding of a conspiracy is justified where, “[the] conspirators had a unity of purpose or a common design and understanding, or a meeting of minds in an unlawful arrangement”. The different members of the MAI did not have a common design and understanding, otherwise it would not have allowed certain of its members to go ahead and release certain films on terms which were not acceptable to the other members of the MAI. Since no other member objected to the release of the film ‘Singham’ by certain multiplex operators on the terms that were offered by Reliance Media, it demonstrates that the members were applying their own commercial minds to the terms that were being offered by the producers/distributors in order to decide if they would be releasing their films on the multiplex

theatres operated by such members. Additionally, the mere fact of the existence of the MAI and the exchange of information amongst its members is in itself not evidence of collusive behavior. Such exchange of information among competitors using the platform of the trade association can be treated as a "plus factor" to conclude the existence of concerted action, if alleged conspirators had an opportunity to collude coupled with other circumstantial and economic evidence that such conspirators did in fact use such platform to collude and fix price. In the absence of such other circumstantial or economic evidence in the present case to suggest that the OPs were behaving in a coordinated manner, the mere fact that certain information was exchanged amongst the members of MAI, will not constitute enough evidence for the Commission to conclude that the OPs were acting in a coordinated manner contrary to the objectives of the Act. Further, it has been observed that DG has not examined the individual agreement signed by the multiplex operators with the distributors of the film 'Singham' to ascertain the alleged concerted action. So, on the basis of above facts and circumstances, the Commission is of the view that the evidence available on record does not show any concerted action of multiplex theatre operators on the issue of revenue sharing in relation to film 'Singham'.

12. Based on the detailed discussion in the preceding paras the Commission comes to the conclusion that there is no relevant evidence on record to show that the OPs were acting in a concerted manner to decide the terms and conditions for the release of the films in multiplexes and had formed a cartel under the auspices of MAI. There is not sufficient evidence on record to establish that Opposite Parties formed a cartel and acted in a concerted manner either to decide the purchase price of the films for exhibition in multiplexes or limited or controlled the supply of films in the in violation of section 3(3) (a) & 3(3)(b) of the Act. The Commission, therefore, does not accept the findings of DG in this regard. Hence, issue no 1 is decided accordingly.

**Determination of Issue No. 2****ii) Whether the OPs have contravened the provisions of section 4 of the Act?**

13. The Informant has alleged that as Multiplexes contribute 60% of total revenue from theatrical proceeds of a film, the OP-1 is a dominant enterprise. According to the Informant collective decision taken by the OPs not to exhibit the films produced or distributed by the members of the Informant, if such producers/distributors do not agree to their demand for increased revenue share, amounts to abuse of dominant position by the OPs within the meaning of section 4(2)(a) of the Act. It has been further averred that OPs have a collective position of strength and by denying exhibition of films to producers effectively deny market access to the producers and thus are abusing their dominant position which is a contravention of section of 4(2)(c) of the Act.
14. After examining the allegations the DG has given the findings that the OP-1 viz. Multiplex Association of India is not engaged in the activity relating to exhibition of films in multiplexes or supply, distribution of films or control of the provisions of services relating to the exhibition of films and that MAI enjoys its position in the relevant market through the collective power of its members only. The DG has further concluded that from the information gathered during the course of investigation none of the Opposite Parties or their group [as defined in explanation (b) of section 5] has been found to be in a dominant position under section 4 of the Act in the relevant market of the film exhibition in multiplexes in India. Therefore, the DG has not found any violation of section 4 of the Act by the Opposite Parties.
15. The Commission notes that as the MAI is itself not engaged in any activity relating to exhibition of films in multiplexes or supply, distribution of films or control of the provisions of services relating to the exhibition of films it cannot be termed as an enterprise in terms of the provisions of

section 2(h) of the Act and therefore, its activities cannot be a subject matter of examination under section 4 of the Act. Further, as none of the Multiplex operators has been found by the DG to be in a dominant position in the relevant market, in the absence of any evidence to the contrary, the allegation of violation of section 4 of the Act is not established.

16. The Commission observes that no other issue emerges from the facts of the case and in the light of foregoing discussion the Commission comes to the conclusion that no case of violation of section 3 or 4 of the Act is established against the Opposite Parties. In view of the above findings the matter relating to this information is disposed of accordingly and the proceedings are closed forthwith.
17. Secretary is directed to inform the parties accordingly.

**Sd/-**  
**HC Gupta**  
(Member)

**Sd/-**  
**GeetaGouri**  
(Member)

**Sd/-**  
**AnuragGoel**  
(Member)

**Sd/-**  
**M. L. Tayal**  
(Member)

**Sd/-**  
**Justice (Retd.)S.N.Dhingra**  
(Member)

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