



**COMPETITION COMMISSION OF INDIA**

**Case No. 57 of 2017**

***In Re:***

**Mr. Arjun**

Jawahar Ganj, Gurudwara Road,  
Dabra, Madhya Pradesh, 475110

**Informant**

**And**

**Vaicom 18**

Zion Bizworld, Subhash Road- 'A',  
Vile Parle (E) Mumbai, Maharashtra, 400057

**Opposite Party No. 1**

**Aditya Chowksey**

301, Avichal, A-Block, Kalyan Complex,  
Yari Road, Varsova,  
Andheri (W), Mumbai, Maharashtra, 400061

**Opposite Party No. 2**

**UFO Movies India Ltd.**

Valuable Techno Park,  
Plot No. 53/1, Road No. 7,  
Marol MIDC, Andheri (E),  
Mumbai, Maharashtra, 400093

**Opposite Party No. 3**

**E-City Digital Cinema Pvt. Ltd.**

Plot no. 844/4, Industrial Estate,  
Off New Link Road, Andheri (W),  
Mumbai, Maharashtra, 400053

**Opposite Party No. 4**

**Real Image Media Technology Pvt. Ltd.**

No. 8, Shah Industrial Estate,  
Off Veera Desai Road, Andheri (E),  
Mumbai, Maharashtra, 400053

**Opposite Party No. 5**

**United Media Works Pvt. Ltd.**

B-501, Dhanashree Heights,  
Building No. 42, Behind Axis Bank,  
Azad Nagar, Veera Desai Road,  
Andheri (W), Mumbai, Maharashtra, 400053

**Opposite Party No. 6**



**K Sera Sera Digital Cinema Pvt. Ltd.**  
Unit No. 18, 4th Floor, Near Versova,  
Telephone Exchange, Lokhndwala Road,  
Andheri (W), Mumbai, Maharashtra, 400053

**Opposite Party No. 7**

**The Film & T.V. Producers Guild of India Ltd.**  
10003-04, 10th floor, Sri Krishna,  
Fun Republic Lane, New Link Road,  
Andheri (E), Mumbai, Maharashtra, 400053

**Opposite Party No. 8**

**CORAM:**

**Mr. Devender Kumar Sikri**  
Chairperson

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

**Mr. SudhirMital**  
Member

**Mr. Augustine Peter**  
Member

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

**Justice G.P. Mittal**  
Member

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

The present information has been filed by Shri Arjun (hereinafter, the '**Informant**') under Section 19(1)(a) of the Competition Act, 2002 (hereinafter, the '**Act**') against Vaicom 18 (hereinafter, '**Opposite Party No. 1**'/'**OP-1**'), Shri Aditya Chowksey (hereinafter, '**Opposite Party No. 2**'/'**OP-2**'), UFO Movies India Ltd. (hereinafter, '**Opposite Party No. 3**'/'**OP-3**'), E-City Digital Cinema Pvt. Ltd. (hereinafter, '**Opposite Party No. 4**'/'**OP-4**'), Real Image Media Technology Pvt. Ltd. (hereinafter, '**Opposite Party No. 5**'/'**OP-5**'), United



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Media Works Pvt. Ltd. (hereinafter, '**Opposite Party No. 6**'/'**OP-6**'), K Sera Sera Digital Cinema Pvt. Ltd. (hereinafter, '**Opposite Party No. 7**'/'**OP-7**') and the Film & T.V. Producers Guild of India Ltd. (hereinafter, '**Opposite Party No. 8**'/'**OP-8**'), (collectively referred to as the '**Opposite Parties**'/'**OPs**'), alleging contravention of the provisions of Section 4 of the Act.

### **Facts, in brief**

2. As per the facts stated in the information, the Informant is the sole proprietor of a cinema hall under the name of 'M/s Prakash Cinema' situated in Dabra, Madhya Pradesh. OP-1 to OP-7 are companies/individuals who are stated to be in the business of supplying necessary Digital Cinema Equipment ('**DCE**') used for the purpose of capturing signals of films to be exhibited in a cinema hall. OP-8 is stated to be the parent body of all the producers' associations, and almost every producer is a member of some producers' association that is affiliated to OP-8.
3. After producing a film, a producer either releases the film herself/himself or appoints a distributor. Either the distributor concerned may engage a cinema hall or the cinema hall owner can directly purchase the rights to exhibit the films in his/her cinema hall from the producers by making payment of royalty. The Informant falls in the latter category, as he is the owner of the cinema hall M/s Prakash Cinema and purchases rights of exhibition from the producers directly to exhibit their movies. For exhibiting movies in his cinema hall, the Informant is said to have acquired all the necessary licenses which are required and mandated under the provisions of law for the purpose of running a cinema hall.
4. The Informant alleges that he entered into an agreement dated 30.07.2015 (hereinafter, the '**Agreement**') with OP-7, wherein OP-7 agreed to install all the necessary cinema equipment, *i.e.* DCE, at the Informant's cinema hall premises, which were required for the purposes of screening films. The Agreement, *inter-*



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*alia*, provided for a lock-in period of 2 years prior to which the Agreement could only be terminated by OP-7 in 2 events: a) if the exhibitor fails to perform or observe the covenants obligatory on its part; or b) in the event of the business premises being declared illegal and/or unauthorised and cannot be put to any use for the purpose of the Agreement.

5. It is alleged by the Informant that on 18.11.2016, OP-7 sent a notice to the Informant terminating the Agreement *w.e.f.* 27.11.2016, acting in a prejudicial manner without giving sufficient opportunity to the Informant to present its case. It is also stated that immediately upon termination, OP-7 removed all the equipment from the Informant's theatre, which deprived him of his right to livelihood.
6. The Informant has highlighted an issue of piracy of the film titled '*Force-2*' in the information. It is stated that a First Information Report ('FIR') was lodged by OP-1 against OP-7 in January, 2017 regarding the said piracy. On 07.02.2017, the Informant and his father were arrested by the Cyber Crime Branch of a Mumbai Police Station, for investigation under Sections 72 and 72A of the Information Technology Act, 2000 read with the provisions of Section 420 of the Indian Penal Code, 1860 and Section 63 of the Indian Copyright Act, 1957. It is submitted that the Informant and his father were wrongly found to be liable for the said piracy. The Informant claims that even if the allegation of piracy is established against the Informant, he cannot be stopped from carrying on his business for which he has the requisite licenses.
7. It is alleged that the OPs are preventing the Informant from carrying on his business by abusing their dominant position in respect of supply of equipment to be installed in cinema theatres for the purpose of catching signals from satellite for exhibition of films in the cinema hall of the Informant, in contravention of the provisions of Section 4 of the Act. It is further alleged that OP-8 holds a dominant



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position and controls the production and/or exhibition of films and has issued directives to all the producers that the films produced by them shall not be exhibited in the cinema hall owned by the Informant.

8. Based on the above, the Informant has *inter alia* prayed for an enquiry against all the OPs for their alleged anti-competitive conduct. Further, the Informant has prayed that the OPs be directed to provide necessary equipment to the Informant to carry on its business.
9. The Commission has perused the information filed by the Informant and observes that the Informant is primarily aggrieved by the conduct of the OPs of restricting the supply of DCE used for the purpose of film exhibition to the Informant. It is alleged that OP-7 has abused its dominant position by unlawfully terminating the Agreement entered into by and between it and the Informant for installation of DCE in the Informant's cinema hall and OP-8 has abused its dominance by issuing diktats to all producers to not deal with the Informant. Such conduct has been alleged to be in contravention of Section 4 of the Act.
10. The Commission notes that the Informant has alleged abuse of dominant position by the OPs collectively as well as by OP-7 and OP-8 individually. With regard to the allegation of collective abuse of dominant position by the OPs, the Commission observes that Section 4 of the Act currently envisages prohibiting only unilateral abusive conduct by a dominant player. The Act does not provide for the concept of collective dominance *i.e.* the OPs cannot be considered to hold a dominant position collectively. This issue has been dealt with in detail by the Commission in Cases No. 6 and 74 of 2015 (*M/s Fast Track Call Cabs and Another v. ANI Technologies Pvt. Ltd.*) wherein the allegation was of two cab aggregators holding a dominant position collectively in the market. The Commission, *vide* final order dated 19.07.2017, held in context of 'collective dominance' as follows:



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“104. The Commission observes that there are various provisions in the Act that signify the intent of the legislature that there cannot be more than one dominant enterprise in the relevant market at a particular point of time.

105. Provisions of Section 4 of the Act clearly stipulate that dominant position can be held by only one enterprise or one group. Section 4(2) states that “There shall be an abuse of dominant position, if an enterprise or a group—.” The term ‘a’/‘an’ used in section 4(2) evidently states the singular form, which shows that the intention of the legislature was never to hold more than one enterprise to be in a dominant position, unless they are part of the group within the meaning of Section 5 of the Act.

106. Besides the usage of ‘a’/ ‘an’ in Section 4(2), the explanation (a) to Section 4 of the Act states as follows:

“dominant position” means a position of strength, enjoyed by an enterprise, in the relevant market, in India, which enables it to –

- (i) operate independently of competitive forces prevailing in the relevant market; or
- (ii) affect competitors or consumers or the relevant market in its favour.

(emphasis supplied)

107. The usage of words ‘operate independently’ appearing in the aforesaid definition clearly shows that the concept of ‘dominance’ is meant to be ascribed to only one entity. Further, the underlined words in the above explanation indicates that the whole essence of Section 4 of the Act lies in proscribing unilateral conduct exercised by a single entity or group, independent of its competitors or consumers. In the presence of more



*than one dominant entity, none of those entities would be able to act independent of one another.*

108. *Further, Section 19(4) of the Act, which enlists factors assessment of dominance, is also of relevant in this regard. The plain reading of the factors mentioned under Section 19(4) signifies that the focal point of such assessment is the alleged dominant entity, around which the assessment revolves. If there was any scope of more than one entity being envisaged by the Act, factors like 'size and resources of competitors', 'economic power of the enterprise including commercial advantages over competitors' etc. would not have found place under Section 19(4) of the Act.*

109. *Furthermore, in Section 28 of the Act, which specifically deal with division of enterprises enjoying dominant position, the usage of the words unambiguously indicates that the Act does not provide for more than one enterprise to be dominant in the relevant market.*

110. *Lastly, the Commission finds it appropriate to refer to the Competition (Amendment) Bill, 2012 (Bill No. 136 of 2012) which lapsed due to dissolution of Lok Sabha. Clause 4 of the said Bill states as follows:*

*'In section 4 of the principal Act, in sub-section (1), after the words "or group", the words "jointly or singly" shall be inserted.'*

*(emphasis supplied)*

11. Based on the foregoing, it is concluded that the Act does not allow for more than one entity to hold a dominant position within the meaning of Section 4 of the Act. Thus, the contention of the Informant regarding abuse of dominant position by all the OPs collectively is rejected, being *ultra-vires* to the legal framework of



Section 4 of the Act. Further, the Commission notes that the OPs are not engaged in the same line of business and are not similarly placed. OP-1 to OP-3 are producers while OP-4 to OP-7 (also OP-3) are suppliers of DCE services. Further, OP-8 is the parent body of all the producers and producers' associations. Thus, their act cannot even be scrutinised for concerted/collusive action under Section 3(3) read with Section 3(1) of the Act. Hence, the present argument of the Informant regarding collective anti-competitive conduct by the OPs is rejected.

12. The next allegation of the Informant is unlawful and one-sided termination of Agreement by OP-7, which is alleged to be a manifestation of abuse of dominant position by OP-7. In order for the Commission to deal with this allegation, the market power of OP-7 needs to be assessed in a relevant market. Only if the dominance of OP-7 is established in a relevant market, the question of examining the allegations of abuse of such dominant position would arise.
13. Section 2(r) of the Act requires the relevant market to be defined, in the context of both the relevant product market as well as the relevant geographic market. OP-7 is engaged in the business of providing DCE services involving digital projection and screening of films in India. The relevant product market thus, appears to be *“provision of Digital Cinema Equipment services for the purpose of screening/exhibiting films.”* In relation to the relevant geographic market, it is noted that as per the information available in the public domain, the services by DCE service providers (for supplying DCE) are provided to various cinema halls across India. It appears that the conditions of competition are homogeneous across India and thus, the Commission is of the view that the relevant geographic market would be *“pan-India”*, even though the Informant is based in Madhya Pradesh. Accordingly, the relevant market in the present case would be *“provision of Digital Cinema Equipment services for the purpose of screening/exhibiting films in India”*.





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14. It is observed that in the aforesaid relevant market, the Informant has many options to get the DCE installed in its cinema hall. Besides OP-7, there are various other players in the relevant market offering the said equipment *e.g.* OP-3, OP-4, OP-5, OP-6, Interworld, Prasad Extreme Digital Cinema Network Pvt. Ltd *etc.* These are all DCE manufacturers who operate in the same relevant market as OP-7. The Commission is of the opinion that presence of so many players *prima facie* suggests that the market is competitive and constrains OP-7 from acting independently of the market forces in the relevant market. In the aforesaid circumstances, OP-7 does not seem to hold a dominant position in the relevant market. In the absence of dominance, no case of abuse of dominance in contravention of Section 4 of the Act can be made out against OP-7.
15. Additionally, the Commission observes that the Agreement entered into by and between the Informant and OP-7 *prima facie* does not appear to be onerous or one-sided. The terms nowhere seem to reflect that OP-7 was in a position to misuse or modify the Agreement to its advantage. Further, with regard to the Informant's allegation in respect of termination of the Agreement, it is observed that such allegation can only be termed, at the most, as a breach of the Agreement and not a competition concern.
16. In this regard, the Commission further notes that the Informant has annexed a copy of the FIR filed by OP-1 (a film producer of the movie 'Force-2') against OP-7 for online piracy. In the said FIR, it was stated that the movie 'Force-2' was released on 18.11.2016 and the pirated version of the movie was available in full length on various websites for unauthorised download and streaming. Further, it was reported that OP-1 had developed an internal security mechanism, in the form of unique identifiers, for each copy of the said film before the digital content packages (DCPs) were distributed to the digital integrators in order to identify the



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source of leak, if piracy takes place. Based on such mechanism, the investigation conducted by OP-1 revealed that pirated copies had originated from the copy that was sent to OP-7 for digital integration. The Informant has also annexed the report of the Cyber Crime Branch, which contains the findings of the investigation. As per the findings of the Cyber Crime Branch, some static water mark were given by OP-7 to the copies of 'Force-2' movie before distributing the same to few cinema halls, including the Informant's cinema hall. The investigation revealed that the piracy had happened through the Informant's cinema hall and not by OP-7. For further enquiry, the Informant as well as his father, Shri Prakash Pramod Shivahare were summoned by the Cyber Crime Branch. However, as per the observations made in the report, neither the Informant nor his father gave any useful information. The report also states that these two 'accused' did not cooperate in the investigation. Without delving deep into whether the Informant was liable for the piracy of the said film or not, the aforementioned incident indicates that OP-7 possibly terminated the Agreement with the Informant because of the said piracy related issue. The present dispute between the Informant and OP-7 for alleged unlawful termination of the Agreement by OP-7 primarily appears to be a contractual dispute, for which the Informant may approach an appropriate forum.

17. With regards to the allegations against OP-8, the Commission notes that though the Informant has made allegations regarding OP-8 issuing instructions/*diktats* to all producers not to exhibit their movies/films in the Informant's theatre, there is no evidence to substantiate such allegation. On bare perusal of the information and documents annexed, there does not seem to be any material on record to establish that OP-8 had issued any oral or written *diktat* to any producer. In view thereof, the Commission concludes that there is nothing in the information to form an adverse *prima facie* view against OP-8.



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18. Based on the foregoing discussion, the Commission is of the opinion that the allegations made by the Informant do not make out any case of abuse of dominant position by any of the OPs. Thus, the Commission is of *prima-facie* opinion that no case of contravention of Section 4 of the Act is made out. In view thereof, the information is ordered to be closed in terms of the provisions contained in Section 26(2) of the Act.
19. The Secretary is directed to inform all concerned accordingly.

**Sd/-  
(Devender Kumar Sikri)  
Chairperson**

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

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

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

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

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

**New Delhi  
Date: 29/12/2017**