

COMPETITION COMMISSION OF INDIA

Case No. 70/2012

Dated: 5-03-2013

Prasar Bharti (Broadcasting Corporation of India)

Informant

Through Mr.Gurmel Chand, Assistant Research Officer

Director General, Doordarshan, Mandi House

TAM Media Research Pvt. Ltd.

Opposite Party

Through its Chief Executive Officer

2nd Floor, Phelps Building, 9-A Connaught Place

New Delhi 110001.

ORDER UNDER SECTION 26 (1) OF COMPETITION ACT 2002

The present information has been filed by Prasar Bharati (Broadcasting Corporation of India) (**‘informant’**) on 19.11.2012 u/s 19 (1) (a) of the Competition Act, 2002 (**‘the Act’**) against TAM Media Research Pvt. Ltd (**‘the OP’**). The informant alleged that the OP was a sole and dominant television viewership measurement firm in India and it has abused its position of strength with respect to measurement of viewership in contravention of the provisions of section 4 of the Act.

2. The Informant is a public broadcasting corporation established under Prasar Bharati (Broadcasting Corporation of India) Act, 1990 which runs Doordarshan and All India Radio Networks. The OP is a joint venture between Nielsen (India) Private Limited and Kantar Market Research, television audience measurement company incorporated under the Companies Act, 1956.

3. As per the information, the Informant conducts public broadcasting services along with broadcasting news and entertainment programmes. It had a vast reach covering both rural and urban areas. Doordarshan was the only Television

broadcaster in the country providing terrestrial transmission services. Such services were free to air and could be accessed through an ordinary roof top antenna.

4. It is pleaded that the main source of revenue for broadcasting firms like the informant was advertisement. The advertisers/advertising agencies place their advertisements on various channels/programmes based on the viewership rating/data as measured by the OP. The OP was the single entity in India which measured the television viewership in the form of TRP/TVR (Television Rating Points/Television viewership Ratings). The advertising agencies and broadcasters including the Informant largely relied upon the data reported by the OP.

5. It is submitted that for the purpose of measuring TRP/TVR the OP was using an electronic gadget called 'People Meter' connected to TV sets in selected sample households. The said meters monitored what was being viewed on the TV sets in the sample homes and for how long. Thereafter, the OP compiled the said data and published weekly and monthly reports in the form of TRP/TVR.

6. The Informant contended that the OP was owned and controlled by advertising agencies and thus had a vested interest in generating data which suited its owners. Thus, a vicious circle got developed resulting in a nexus between advertising agencies and the OP to the detriment of broadcasters like the Informant and others. The Informant also alleged that as a result of the unfair practices adopted by the OP, its viewership was being largely under reported thereby causing great financial loss to it besides affecting its reputation. The acts of the OP were not only abusive but also adversely affected competition in the market and were in contravention of the provisions of the Competition Act, 2002, especially section 4(2) (b) (i) and (ii).

7. The Commission considered the matter and heard the counsel for the informant at length. From perusal of information and material available on record, it is evident that TRP/TVR rating of a programme declared by the OP, was a tool to evaluate which television programme was being viewed the most. On the basis of popularity of a programme the advertisement rates for a program were decided by ad- agencies. For measuring this 'People Meters' were installed in sample homes and these electronic gadgets continuously record data about the channels being watched by the sample viewers and the agency prepares a national rating/data on the basis of its sample homes

readings. The instrument was able to digitally record as to which particular channel was being viewed at a particular point of time and for how long in sample TV homes.

8.The relevant market for the case is required to be determined keeping in view the provisions of section 2 (r), (s) and (t) read with section 19 (5), (6) and (7) of the Act.The relevant market in the instant case would be a service market of ‘popularity evaluation of T.V. Programmes’. Popularity of a programme is directly related to the advertisement revenue a broadcaster can generate from the programme. T.V. Programmes popularity rating, on a commercial basis,is being done mainly by the OP and,prima facie, the OP appears to be a dominant player in the above mentioned relevant market.

9. The total numbers of people meters installed by the OP were only 8000& these meters were installed only in urban areas i.e. cities. No meters were installed in rural areas. It is a well-known fact that the taste of cultural programmes and other programmes differ in urban areas from rural areas. In urban areas viewers may like to watch Big Boss or similar other programmes, while in rural areas people may watch folk dances etc. in the local language. Thus, installation of people meters only in urban areas can not reflect viewers choice Pan India. Moreover, the sample sizerepresented a very minuscule & narrow statistical base, keeping in view 120 millions television households (as per information). The OP had limited its surveys and viewers measurement only to the larger cities with a population of one lakh or more. The rural viewership was completely ignored and excluded from the television viewers measurement services provided by the OP. Therefore, it is apparent that OP was not displaying the true picture regarding TVR/TRP of Doordarshan, which had large presence in all rural areas and was broadcasting programme keeping in view the taste of rural viewers.

10.In India, within the Television Industry, about 34% of revenue comes from advertisements. The TRP generated by the OP was the basic criterion that indicatedthe popularity of a programme ofbroadcaster and assisted advertisers in determining their ad spend and ad placement. Thus, the rating generated by the OP has a great bearing on advertisement revenue of a channel. In such a situation any abuse of dominant position by the OP can have adverse consequences for broad-casters besides affecting the interests of the consumers.

11.For the same time slot the advertisement rates are directly proportionate to TRP/TVR rating. For a programme having larger viewership the advertisement rates are higher & for low viewership advertisement rates are lower. Exclusion of rural areas and smaller towns from the mechanism of television viewers measurement results in depriving advertisers as well as the consumers from the benefits of fair competition.

12.Next issue to be considered is whether there was prima facie abuse of dominant position by OP. Section 4 of the Competition Act provides that there shall be an abuse of a dominant position, if an enterprise directly and indirectly discriminates in providing services to the customers or restricts technical development relating to services to the prejudice of the customers (section 4(2)(b)(i), section 4(2)(b) (ii)) or indulges in practice resulting in denial of market access in any manner to a customer (section 4(2)(c)).The installation of people's meter by opposite party only in cities catches mood of urban viewers and gives a distorted picture of the viewership PAN India. TRP rating provided by Opposite Party of the different programmes is not stated to be 'specific city based' but it is provided as if it was PAN India, which apparently was a misrepresentation as the opposite party has not installed people meters in any rural areas. The sample size of 8000 homes in a vast country like India, having population of more than 126 crores was also minuscule and misleading. In a country as vast as India with diverse culture, different languages, where the urban population was only 30% and rural population about 70%, not installing people meters in rural areas, prima facie, amounted to restricting use of technology of measuring viewer's choice to the prejudice of customers (in this case Doordarshan). In order to have a pan India viewership data, it was essential for the OP to have larger sample size and to distribute this sample size in rural and urban population according to the ratio in which the population stands distributed in rural and urban areas. Because of this non-distribution of sample, the taste of rural viewers was being totally blacked out. People in rural areas might be interested in different kind of programmes; might be viewing agricultural related, folk dances or local problems related programmes or the programmes more centred around rural culture. But viewership of this entire area of programmes was not being measured and was not reflected in the TRP/TRV. Doordarshan is the only channel which broadcasts many such programmes like Krishi Darshan, Gyan Darshan, Kalyani, etc., which relate to the taste of rural areas. It is the only channel which has extensive reach to the rural areas. Non-providing of people's meter in rural areas amounted to

discrimination to Doordarshan and other similar channels, if any, catering to the needs of the rural areas. Due to this discrimination between rural and urban viewers and basing TRP only on the basis of urban viewers, the OP was prima facie indulging in practice of denial of advertisement market.

13. Resultantly, the Commission is of the opinion that *Prima Facie* there was sufficient material to refer the case to the Director General (DG) to cause an investigation to be made into the matter under section 26(1) of the Act.

14. It is ordered accordingly.

15. The Secretary is directed to send a copy of this order to the office of the DG. DG shall investigate the matter about violation of the provisions of the Competition Act. In case the DG finds OP company was in violation of the provision of Competition Act, it shall also investigate the role of the persons who at the time of such contravention were incharge of and responsible for the conduct of the business of the Company so as to fix responsibility of such persons under section 48 of the Competition Act. DG shall give opportunity of hearing to such persons in terms of section 48 of the Competition Act. The report of DG be submitted within 60 days from receipt of the order.

16. Nothing stated in this order shall tantamount to a final expression of opinion on merit of the case and the DG shall conduct the investigation without being swayed in any manner whatsoever by the observations made herein.

Sd/-
(H.C. Gupta)
Member

Sd/-
(GeetaGouri)
Member

Sd/-
(AnuragGoel)
Member

Sd/-
(M.L.Tayal)
Member

Sd/-
(Justice S.N. Dhingra[Retd.]
Member

Sd/-
(Ashok Chawla)
Chairperson