

COMPETITION COMMISSION OF INDIA

Case No. 8/2009

ORDER UNDER SECTION 27 OF THE COMPETITION ACT

Date of Order: 30.08.2011

M/s JAK Communications Pvt. Ltd.

402, CTH Road, Avadi, Chennai-54

----- **Information Provider (I.P)**

M/s Sun Direct TV (P) Ltd. 4/1017,

3rd Cross Road, Nehru Nagar,

Kottivakkam, Chennai – 41

----- **Opposite Party (O.P)**

As per R. Prasad (Dissenting)

1. Brief facts and allegations:-

- 1.1 The present information has been filed by M/s JAK Communications Pvt. Ltd alleging contravention of various provisions of the Competition Act, 2002 by M/s Sun Direct TV (P) Ltd, the opposite party.
- 1.2 The I.P is a Multi System Operator. Multi System Operator (MSO) is a part of cable TV industry and its main function is to collect various signals of satellite TV channels, aggregate them and transmit the bundled signals to homes either directly or through Local Cable Operators (LCO).
- 1.3 The informant receives satellite TV Channels of various broadcasters which include both pay channels and free to Air Channels. Pay Channels are available in encrypted form and are made available only after paying the subscription charges to the respective broadcasters whereas free to Air Channel are available freely in the air and anybody with a C-band antenna can tune to receive the same.
- 1.4 The Opposite Party (O.P) is in the business of Direct to Home (DTH) operations. A Direct to Home (DTH) operator receive the signals of various satellite TV

Channels, aggregate them and distribute the same to subscribers via satellite. Both the I.P and the O.P are the distributor of TV Signals. While the I.P is distributing the TV Signals through cable medium, the O.P is distributing the TV signals via satellite medium.

- 1.5 O.P is offering about 130 channels in their basic package, e.g. "**Freedom Package Tamil**" for which it is charging Rs. 99/- per month. According to the I.P TRAI issued a circular dated 18/4/2008 based on TDSAT Judgement (Telecom Dispute Settlement & Appellate Tribunal) whereby rates for the DTH operators for the paid channels is 50% of the rates at which these channels are offered for Non CAS Cable distribution (Non- addressable platform). Thus, as per the above notification of TRAI, the total value of "**Freedom Package Tamil**" offered by the OP, the basic price of these pay channels to DTH operators comes out to Rs.156.55. The I.P , therefore has alleged that the O.P has subsidized DTH Services by offering it at Rs.99 to the consumers, which is a predatory pricing and is contrary to the provisions of Competition Act, 2002.
- 1.6 It has also been alleged by the I.P that the offer made by the SUN Direct DTH in its brochure and other advertisements that the Sun Direct has offered to provide DTH services to the subscribers for Rs.440 per month with a monthly subscription charges for Rs.99 amounts to anti-competitive agreement and all in the nature of monopolizing the trade by abusing dominant position by providing the subsidy to consumer to eliminate its competitors.
- 1.7 M/S SUN TV network limited is enjoying the dominant position in one relevant market namely broadcasting to enter in to other relevant market namely DTH through their Group company, violating thereby the provisions of section 4(2) (e) of the Act.

2. Relief Sought:

- 2.1 The I.P. therefore, has requested the Commission to direct the O.P, its associates, officers or employers as the case may be who are involved in the aforesaid Anti Competitive agreements with the consumer and also indulge in

abuse of dominant position to discontinue and not to re-enter such agreement and such abuse of dominant position hereinafter.

2.2 May impose such penalty against the O.P as this Hon'ble Commission may deem fit and proper in the facts and circumstances of case.

2.3 Pass such and further order as this Hon'ble Commission may deem fit and proper in the facts and circumstances of the case.

3. **Order under section 26(1) of the Act**

3.1 The above allegations were examined by the Commission on various dates and after considering the information filed by the I.P and all the relevant material available on record including the additional information, oral and written submissions, made by the I.P, the Commission formed an opinion that there exists a prima facie case and directed the Director General to cause an investigation into the matter under Section 26(1) of the Act.

4. **Findings of the DG (Investigation)**

4.1 Accordingly, the DG has carried out the Investigation in the above case and submitted a detailed report to the Commission on 5th April, 2011. As per the DG, the investigation has gathered facts and information from the I.P, opposite party, third parties, and TRAI and other relevant information available in public domain, to ascertain and verify the allegations made out in this case. The investigation considered the evidences on record to appreciate the competition issues involved in this case. Statement of CEO of Sun Direct TV Pvt. Ltd was also been recorded and considered in the investigation report. The investigation has thus mainly focused on following key questions:

- (i) Whether Sun Direct TV was dominant undertakings in the relevant product and geographical market as per Explanation (a) to Section 4 read with Section 19(4) of the Act;
- (ii) Whether there was any conduct of abuse of dominant position in terms of provisions of Section 4 of the Act.

(iii) Whether there was any anti competitive agreement between Sun Direct TV and its customers which causes AAEC in violation to Section 3(4) of the Act.

4.2 The investigation report, therefore, in the light of the aforesaid information has first of all delineated the relevant product and geographical market in this case so as to determine the dominant position of Sun Direct TV. After carrying out relevant inquiries and various factors of product differentiation as per Section 19(7), the investigation has reached to a finding that the relevant product/service market was "DTH transmission" and the relevant geographical market was whole of India as per definition 2(t) and 2(s) of the Competition Act, respectively.

4.3 The investigation also conducted inquiries to ascertain the position of dominance by Sun Direct TV in terms of its market size and structure and its share. The investigation after considering all the relevant factors, did not find the opposite party in the dominant position as per Explanation (a) to Section 4 read with Section 19(4) of the Act. Therefore, based on the information and evidence available on record, no case of abuse of dominance was found to be made out against Sun Direct TV in violation to Section 4 of the Act.

4.4 The investigation has also examined the conduct and practices of Sun Direct TV in the relevant market to ascertain any violation of Section 3 of the Act. Inquiries were conducted by the concerned officer on each of the allegations made by the I.P, and the findings are summarized as under:

(a) The investigation did not find any merit that Sun Direct TV was giving set top boxes free of cost to its customers and thereby bearing a subsidy burden of over Rs. 2200/- per subscriber. Inquiries have revealed that the set top boxes were given as a part of the subscription package and therefore it remained the property of Sun Direct TV. Further, such provision of DTH boxes to its customers was also followed by all other DTH operators in India as per chart given in the report. The rates charged by Sun DTH were effectively comparable to others.

(b) The inquiries also did not find any substance and merit on the allegation of resorting to predatory pricing by providing package of Tamil channels at

subsidized rate even below the rates prescribed by TRAI. The investigation found that the cost of Sun Direct TV for the Tamil freedom package was Rs. 32.14/- which was offered to subscribers at the rate of Rs. 99/- per month and hence no case of predatory pricing was made out against the opposite party.

- (c) Lastly, the allegation of Sun Direct TV providing connection at Rs. 440/- with monthly subscription charges of Rs. 99/- to its customers as anti competitive and to monopolize its business was also enquired. The so called agreement between Sun Direct TV and customers was a case of vertical agreement, and inquiries did not show any existence of any AAEC as outlined in Section 19(3) of the Act.
- (d) Thus to sum up, the investigation did not find any infraction of Section 3 or Section 4 by the opposite party, after analysis and consideration of the conduct of Sun Direct TV and prevailing practice in the relevant market as per evidence placed on record.

5. FINDINGS

- 5.1 I have carefully considered the facts of the case, the allegations made by the I.P. and the report submitted by the DG, the gist of which has already been stated above. DG did not carry out proper investigation but then the Commission decided that no further investigation was required. In order to examine whether it is a case of abuse of dominance, it is pertinent to decide what relevant market is in this case and whether Sun Direct is holding a dominant position in that relevant market.

6. What is Relevant Market in this case?

- 6.1 The DG has delineated the relevant market in this case as whole of India considering the fact that DTH services market and cable TV market cannot be regarded as interchangeable or substitutable by the consumer by reason of characteristics of the product, pricing and intended use based on various parameters such as distribution of TV channels, quality of signals, reliability of transmission, availability of add-on facilities and interactivity, viewing experience,

technology, scalability and availability of various options in the pricing of product and the seamless availability of signals for DTH services throughout India and pan India presences of all the DTH operators.

6.2 Whereas, according to stock analysts, the south Indian market comprises Tamil, Telugu, Kannada and Malayalam and this region has its own characteristics distinct from other regions/parts of India considering language as the main factor with negligible demand for Hindi Bouquet there. The DG has not considered the aspect of peculiar features of South Indian TV market. The other DTH service providers e.g. Dish TV and even SUN Direct categorize the packages available on their website in two categories – South India and Rest of India. As per the provisions of section 19 (5), (6) and (7) of the Act, while determining relevant geographical market and product market, it is important to give due regard to the local specification requirement; language; consumer preferences, etc. which DG has not considered at all in the present case. Secondly, the DG itself has stated in its report that “all the DTH operators have subscribers in each and every state of India but have comparative advantage over the others in a particular state depending upon the time of initiation of service and the efforts made for the same. So, going by the DG’s own analogy the relevant market in this case should have been restricted to the Southern India only. Accordingly, I hold that the relevant market in the present case is **DTH services in the south India** comprising the four states mentioned above and not the whole of India as determined by the DG.

7. Whether SUN Direct is holding a dominant position in the relevant market?

7.1 The DG in his report has concluded that none of the DTH service provider can be said to be dominant either on the basis of number of subscribers or on the basis of available resources at their disposal in the relevant market. All the DTH service providers have the backing of very big industrial houses and based on financial strength and integration aspects none of them can be said to be

dominant vis-à-vis others. Even by the number of consumers Dish TV has the largest consumer base at 9.4 million subscribers in India followed by Tata Sky which is providing its services to 6.5 million consumers. Sun Direct TV with a subscriber base of 6.1 million is the third largest DTH service provider in India. The remaining three DTH services operators viz. Airtel Digital, Reliance Big TV and Videocon d2h are relatively new in the DTH operation and also catching up fast with their subscriber base swelling to 4.9 million, 3.6 million and 2.2 million respectively. Therefore, it is not established that Sun Direct TV is a dominant player in the relevant market of DTH services within the geographical boundaries of India.

7.2 I do not subscribe to the view of DG as stated above because the CEO of Sun Direct himself stated that it has 65% market share in the DTH market in the Southern States. – (Source Business Today dated 21 July, 2010) Secondly, it is also found from the Stock Analysts reports available on the internet that the market share of Sun TV in the four Southern States it operates is: Tamil Nadu (70%), Kerala (34%), Karnataka (42%) and Andhra Pradesh (40%).

	South India				Total South
	Tamil	Telugu	Kannada	Malayalam	
Ad Market size CY09 (Rs bn)	9	7	3	3.5	22.5
Ad Market size CY10 (Rs bn)	10	7	5	5	27
YoY growth (%)	11%	0%	67%	43%	20%
No. of Channels (approx.)	38	36	21	25	120
Sun TV Channels	6	6	6	2	20
Viewer ship share of top 3 players	88%	78%	77%	94%	
Viewer ship share of Sun TV channels	70%	40%	42%	34%	

Source: Company FICCI-KPMG 2011. PINC Research

7.3 Further, the same stock analyst reports that Sun TV being one of the largest Indian broadcasters has benefited from increasing penetration of digital

distribution. Moreover, its favorable position in South India provides it an additional advantage and more than 60% of its DTH revenue is from Sun Direct (a promoter group company), a major player in the South Indian market. Its subscriber base has grown from 1.1mn in FY08 to 6.7mn in Q3FY11, a whopping increase of more than 5x in a 30.6mn subscriber market. Given the tremendous opportunity of further penetration of DTH services in the current markets of Sun TV, we expect this segment to grow at 32% CAGR during FY10-13E and contribute 18% to the overall top line in FY13E. Thus, we find that even from revenue point of view, the Sun Direct DTH is a dominant player in the relevant market, being the major contributor of revenue.

7.4 Coming to the subscribers base in Tamil Nadu, the DG, has not given any figure of the subscribers base in South India in respect of Sun Direct DTH. However, from the above Stock Analyst Report, it is found that the subscriber base of Sun Direct DTH is increasing five times and is having a subscriber base of 6.7 million in whole of India. So, if 60% of revenue is coming from Sun Direct DTH to Sun TV, it can be concluded that Sun Direct is a dominant player in the relevant market.

8. **Abuse of dominance by Sun Direct DTH**

Once it is established that Sun Direct DTH is a dominant player in the relevant market, it is to be examined now whether it has abused its dominant position. Coming to the allegations of abuse of dominance the I.P has made the allegations against the Sun Direct DTH **"That the Sun Direct DTH is providing "Freedom Package Tamil" consisting of 130 channels at Rs. 99/- the actual cost of which is Rs. 156.55 per month and thus, subsidizing the services to reduce competition or eliminate competitors."**

8.1 According to I.P, the cost of the Freedom Tamil Package works out at Rs. 156.55/- per month which was calculated as per TRAI order dated 18th April, 2008. According to The TRAI order which is based on TDSAT Judgement, the

rates for the DTH operators for the paid channels is 50% of the rates at which these channels are offered to Non CAS Cable distribution (Non- addressable platform) i.e the cable operators without STB. For example, if a broadcaster is offering its pay channel to cable TV operator at Rs. 10, it cannot charge more than Rs. 5 from the DTH operators for the same channel. Thus, the I.P has calculated the cost of the pay channels contained in the "**Freedom Package Tamil**" numbering 31 at Rs. 156.55/- .

8.2 The OP, however, has worked out the actual cost of this package at Rs.32 considering 22 channels are the pay channels. Thus, the number of pay channels in this package worked out by OP is different from what has been worked out by the I.P. The DG, on the other hand has relied upon the cost taken by the OP and not by the I.P on the ground that the cost worked out by OP is in line with the bouquet prices of various channels available on the TRAI website for the non-CAS areas as on 25.8.2009 by applying a factor of 0.5 as suggested by TRAI through its press release dated 18.4.2008. The DG further adds "it would not be out of place to mention that the DTH services market is following the footsteps of mobile telephony market so far as the competition is concerned. With the new and new DTH service provider entering into fray, the rates of packages offered to the consumers are declining routinely. This is possible because of the addressability of the system which ensures complete transparency in terms of number of subscribers and the services offered. As against this, the cable transmission system is completely opaque and does not guarantee data integrity. The TRAI circular dated 18.04.2008 takes this factor into consideration and therefore does not grant any concession to the cable operators in non-CAS areas when it follows the TD SAT judgments dated 14.07.2006 and 31.03.2007 which stated that the rates for DTH operators to be 50% of the rates at which various bouquets / channels are offered by broadcasters for non-CAS cable distribution (non-addressable platforms).

8.3 It is therefore clear that the allegations of the I.P are based on a-la-carte pricing rather than bouquets based pricing on the basis of which Sun Direct TV is procuring the broadcasting rights for various channels covered under Tamil Freedom Package. The cost in bouquets based pricing for the DTH service providers comes out to be much less than a-la-carte based pricing. Investigation therefore does not see any merit in the allegation."

8.4 I have carefully considered the cost worked out by the I.P as well as the OP and found that while I.P has worked out the cost on the basis of "a-la-carte" based pricing, the OP worked out the same on "bouquet" based pricing. So, the reason for the difference in cost is explained. However, the OP is not able to explain why it has considered only 22 channels instead of 31 channels as worked out by the I.P, for arriving at the cost. The DG has also not explained this difference. If we consider these 9 channels and consider their cost then certainly it would be more than Rs.99 and in that case the allegation that the Sun Direct DTH is making available the Tamil Freedom Package at Rs.99 to its subscribers instead of Rs.156.55 or any price lower than the actual cost, there would not be any doubt of a case of predatory pricing.

9. **Offering of CPE (consumer premises equipment) free of cost to the subscribers. This would cover the allegations that SUN Direct is subsidizing its customers by bearing a subsidy burden of over Rs. 2200/-**

9.1 The I.P in his information has attached an advertisement published in Business Standard which says that "Get Sun Direct DTH for just Rs. 440 and get 4 months subscription with 'Dish and Set-top Box Free'. Further, in the foot note of the same advertisement it is written that 'the installation/ activation charges Rs. 1250- extra'. The I.P, therefore, has alleged that the offer of Dish and Set-top Box free of cost made by the O.P is in contravention of the provisions of Competition Act as it is a straight away bearing a subsidy burden of over 2,200 per subscriber. Explaining it further, the I.P has submitted that since the Direct to

Home (DTH) platform is directly fed from the satellite, it needs an antenna and a set top box along with a viewing card as main ingredients to constitute a system so that the TV Signals can be provided to the consumers through Television sets. Apart from this the wires and fixtures also add cost to the hardware set. The O.P is using an advance technology called "MPEG-4" wherein the cost of set top boxes are more that of conventional "MPEG-2' technology. From the reporting of press it is understood that set top box above would cost Rs. 2160 to Rs. 2,280/- per piece.

- 9.2 In order to substantiate its claim, the I.P has also enclosed the copies of the Brochure of the O.P and interview of its' CEO dt. 15.12/08 wherein the CEO of the O.P in its exclusive interview to www.Indiantelevision.com posted on its site on 15 December, 2008 admitted that the O.P is providing subsidy the consumer as high Rs. 4.50 Billion just to capture the market, and for that the O.P CEO in its exclusive interview has justified that grant of the subsidy is necessary to build up a roots in the market. Basically from their plan and language used the CEO in interview to www.Indiantelevision.com, it appears that the O.P by using its dominant position in the Television Market is giving high subsidy to the consumer thereby reduced its price of DTH services by the name of Sun Direct below the cost which is actually incurred by it only to eliminate its competitors thus using its dominant position to monopolize the television market. This is evident from the fact that the cost spent to acquire one customer is Rs. 4,500/- as per his own admission.
- 9.3 On the other hand the O.P has submitted that it is procuring one set of CPE which includes STB, Antina, Smart Card, no noise booster, connectors, cables, clips with tie and the dish approximately Rs. 4,000. The CPE is given to the customers for sole purpose of receipt of the signals of Sun Direct. The CPE is not sold to the customer and hence no charges are sought for the same. The CPE remains the property of the Sun Direct and is returnable to it after discontinuation of services. This is evident from the subscriber agreement entered into by Sun

Direct with its subscribers. The CEO of the O.P in his statement before the DG has also reiterated that CPE is given free of cost to the consumers who avail the service of Sun Direct TV and are asked to return the same on discontinuation of service.

9.4 In order to ascertain the facts of reducing the prices of CPE below the cost, the DG asked the O.P to provide details of monthly charges on various bouquets of channels offered by it to its consumers and also the details of capital cost of set top boxes incurred by it in procuring the same and the amount charged for its customers for these boxes. The DG called for the similar information from the other DTH Service Operators and compared the element of subsidy in the offers given by all the service providers. The DG has prepared a table of comparable rates as on 31.11.2010 wherein the cost of different equipments have been compared in respect of other service providers and has come to the conclusion that all DTH Service providers are more or less charging the same amount of money on monthly basis from their customers and therefore, there is no merit in the allegation of the I.P that Sun Direct TV has reduced the prices of its DTH service to eliminate competitors. The DG has also concluded that it was clear from the subscriber agreement that the ownership of the CPE vests with Sun Direct TV and is given to the customer only to enable them to receive the signals of Sun Direct TV. Thus, the allegation that Sun Direct is subsidizing the cost of hardware does not hold good in the absence of transfer of the rights in the hands of the customers.

9.5 I have carefully considered the allegations made by the I.P, the response of the O.P and the findings of the DG on the issue of offering the hardwares (CPE) at subsidized price in order to eliminate the competitors and found that though all the DTH service providers are following the same practices of giving the hardwares at subsidized price but since Sun Direct is holding a dominant position in the relevant market as defined in preceding paragraphs, the practice adopted by the O.P is in the nature of predatory pricing because it is abusing its dominant

position in the relevant market to eliminate the other competitors by way of providing the hardwares at subsidized rates. Since the Sun Direct is a dominant player in the relevant market, the other competitors may be following the same practices adopted by the market leader to remain in the market.

10. **Allegation pertaining to section 4(2)(e)**

- 10.1 It has been alleged by the I.P that the Sun Direct DTH is a group company of Sun Group which is the most dominant broadcaster in South India and with this dominant position in the broadcasting market, it has entered into the DTH market for the distribution of TV channel signals in various states of South India by the name of the O.P i.e. the Sun Direct, therefore, it is using its dominant position in one relevant market of broadcasting to enter into or protect, other relevant market of DTH service provider thereby contravening the provisions of Section 4(2)(e) of the Competition Act.
- 10.2 In order to substantiate its contention, the I.P has described the entire group activities of the Sun Group of Companies. Sun TV Network Ltd. is the main flag bearer company of the entire Sun Group of Companies which was promoted by Mr. Kalanithi Maran and Mrs. Kaveri Kalanithi who enjoy the majority share in the said company. These very promoters have also promoted the following enterprises in the horizontal integration of media industries.
- (a) SUN TV NETWORK LIMITED is the flagship enterprise with over 20 TV channels in four south India languages namely Tamil, Telugu, Kannada and Malayalam plays a most dominant player in TV broadcasting industry.
- (b) KAL Publications Pvt. Ltd is the company promoted and owned by the said promoters and in the business of publishing daily, evening and magazines, inter alia in print media industry. The said KAL Publication Pvt. Ltd., is owning the Tamil daily newspaper "Dinakaran" claiming to be with a circulation of 1.1 million prints, a leading tamil evening and 4 magazines in tamil. The publications of

KAL Publications Pvt. Ltd. enjoy a dominant position in print media industry in the state of Tamil Nadu.

- (c) Kal Radios Pvt. Ltd., is the company promoted and owned by the said promoters and owns 45 FM radio channels in the country which runs the FM radio channels in the brand of "SURYAN FM" and "RED FM" and the said FM stations enjoys a dominant position in transmission of FM radio.
- (d) SUN Pictures is the enterprise promoted and owned by the same group and in the business of production and distribution of films and the same is holding a dominant position in its respective field of operation.

10.3 In addition to the said enterprises as above which dominate the media industry in horizontal integration the said group has also promoted the following enterprises in the vertical integration of the broadcasting industry.

- (a) Kal Comm Pvt. Ltd. is the company promoted and owned by the said promoters and in the business of distribution of TV Signals which in turn has two divisions namely
 - (i) Channel Plus which takes care of distribution of TV signals of all Pay Channels of the SUN TV Network private limited, inter alia selling TV signals to the general public through distribution medium like cable, DTH, IPTV and etc.
 - (ii) S.C.V which acts as a Multi System Operator and controls about 50% of market in the state of Tamil nadu by giving its signals to cable operators.
- (b) SUN Direct TV Pvt. Ltd. is the present O.P in the complaint/information which is again promoted by the same group of persons the majority of shares are held by them and the management of the enterprise is also controlled by them. SUN Direct Pvt. Ltd. is in the business of distribution of TV signals in DTH medium.

10.4 That it is further relevant to mention here that the said group in its website www.sunnetwork.in proclaimed themselves as India's largest media conglomerate and give the list of media units owned by them. (Copy of the information is already enclosed by the I.P as Annexure P-7 along with its

additional information) which is self explanatory and speaks about the dominant position enjoyed by the SUN group, it is piece of confession about there dominant position in the market. It is also relevant to mention here that in broader view the market is the media market and to define as a relevant market the same shall be the distribution of TV channels as the industry market and DTH market as product market. The geographical market is the south India comprising of four states namely Tamil Nadu, Andhra Pradesh, Karnataka, Kerala including to union territories in the zone. The above named referred markets may be taken into consideration for deciding the dominant position of O.P enterprise, it is also pertinent to mention here that the SUN Group is the most dominant broadcaster in South India and with this dominant holding dominant position in the broadcasting market, it has entered into the DTH market for distribution of TV channel signals in various states of South India by the name of O.P, which falls within the vertical integration of the broadcasting field thereby to dominate itself in the DTH market in the geographical area of South India by eliminating its competitors by reducing the price of its product. Whereas section 4 (2) (e) of the Competition Act 2002 which reads as **“uses its dominant position in one relevant market to enter into or protect, other relevant market.”**

10.5 In the present case it is the dominant position enjoyed by the flagship company M/S SUN TV network limited is one relevant market namely broadcasting to enter in to other relevant market namely DTH through their Group company the O.P herein.

10.6 When the DG report was examined nowhere it is found that the DG has investigated this aspect. In the absence of any finding of the DG on this issue I will have to rely on the information provided by the I.P and the information available in public domain. In order to decide whether there is a violation of section 4(2)(e), it is necessary to define and distinguish the two relevant markets. It is also necessary to prove that the O.P is dominant in one relevant market and now trying to enter or protect the other relevant market. For this the I.P has given

a detailed picture of how this group being dominant in one relevant market i.e. the broadcasting market is trying to enter or protect the other market of DTH service providers. So this is a larger business plan / strategy to integrate the two markets and dominate that market by the same group company. It has already been proved that SUN TV Network company is already dominant in the broadcasting market in south India by way of its size, resources and market share and also the economic power and commercial advantage it enjoys over its competitors and now because of these advantages it has entered into the market of DTH service providers and trying to dominate and protect the DTH service market. In the instant case it is found on the basis of the facts and figures provided by the I.Ps that because of its size, resources, market share, economic power, relative advantage etc., Sun TV Network is having dominance in the South Indian broadcasting market and because of its dominance in one relevant market i.e. the market of broadcasting, it is now trying to protect its DTH service market. Thus, it is a clear cut violation of Section 4(2)(e) of the Competition Act.

11. **Anticompetitive agreement between SUN TV and the subscribers 3(4)**

- 11.1 It has been alleged by the I.P that the offer made by the SUN Direct DTH in its brochure and other advertisements that the Sun Direct has offered to provide DTH services to the subscribers for Rs. 440 per month with a monthly subscription charges for Rs. 99 amounts to anti-competitive agreement and is all in the nature of monopolizing the trade by abusing the dominant position by providing the subsidy to the consumers to eliminate its competitors.
- 11.2 DG in its report has come to a finding that the agreement between the Sun Direct TV and its Subscriber is not an anti-competitive agreement in terms of Section 3(4) of the Act as this agreement does not cause any appreciable adverse effect on competition in India on the ground that this agreement is neither creating any barriers to the new entrants in the market nor is it driving the existing competitors out of the market. According to the DG, in fact, after the entry of Sun Direct TV in the DTH Services three new entrants viz., Airtel TV, Reliance Big TV, and

Videocon d2h have already entered into the trade and have also seen where subscribers' number is soaring. There is no foreclosure of the competition in the market for other DTH operators. The DG has gone to the extent that there are visible benefits to the consumers in terms of pricing and services. In the last four years the prices of new connections have come down to a third and the availability of choices has increased many folds. There is marked improvement in the provision of DTH services and the service providers are improving upon the technology.

11.3 All the consumers are free to select the DTH operators providing services and selection of SUN DTH by the consumers in no way hampers the competition process as this is a selection by consumer based on his criteria of preferences. This agreement in no way appears to block entry of new service providers or drive existing competitors out of the market. Consumer is free to go out of the deal any time and opt for other operator. Therefore, there is no contravention of the section 3(4) of the Competition Act, 2002.

12. I, therefore, am of the considered opinion that this is a fit case where following directions under Section 27 of the Act need to be issued:

12.1 M/s Sun Direct Pvt. Ltd. is directed to immediately stop from charging subsidized prices from the customers for DTH services (Hardware & DTH Transmission services).

12.2 A penalty of 5% of the average of the turnover for the last three preceding financial years is imposed upon M/s Sun Direct Pvt. Ltd. for deliberately charging such predatory prices to foreclose the competition and driving the competitors out of the market.

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