

**BEFORE THE  
COMPETITION COMMISSION OF INDIA  
Case No. 16/2011**

Dated: 09.08.2012

Mr. Sajjan Khaitan  
Proprietor, M/s Heart Video,  
65A, Nimtalla Ghat Street,  
Kolkata – 700006

- Informant

1. Eastern India Motion Picture Association,  
EIMPA House, 98E, B.N. Sircar Sarani,  
Kolkata – 700072

-through Sh. Manas Kumar Chaudhuri, Advocate.

2. The General Secretary,  
Co-ordination Committee of Artist and Technicians  
Of West Bengal Film and Television Industry,  
4, Babu Ram Ghosh Road, Technician Studio,  
Kolkata – 700040

-through Sh. Manoj Kumar Ghosh, Advocate.

3. Mr. Kunal Ghosh,  
M/s Channel 10  
63, Rafi Ahmed Kidwai Road,  
Kolkata – 700016

-through Sh. Ritesh Agarwal, Advocate.

4. Mr. Sanjoy Das  
CTVN PLUS  
89 M.B. Road, Birati,  
Kolkata – 700051

- Opposite Parties

**Order under Section 27 of the Competition Act, 2002**

The present matter relates to information filed under section 19 (1)(a) of the Competition Act, 2002 (hereinafter referred to as the 'Act') on



20.04.2012 by Shri Sajjan Khaitan, Proprietor, Heart Video (hereinafter referred to as the 'Informant') against the President, Eastern India Motion Picture Association, General Secretary, Co-ordination Committee of Artist and Technicians of West Bengal Film and Television Industry, Mr. Kunal Ghosh of M/s Channel 10 and Mr. Sanjoy Das of CTVN PLUS channel (hereinafter referred to as the OP-1, OP-2, OP-3 and OP-4 respectively) alleging that the Opposite Parties have contravened the provisions of the Act.

2. The Informant is engaged in the business of distributing video cinematographic TV serials and telecasting regional serials in the States of Eastern India. Eastern India Motion Picture Association (OP-1) is a regional association of the film producers, distributors and exhibitors having its office at Kolkata and operates mainly in the State of West Bengal. Coordination Committee (OP-2) is the joint platform of 'Federation of Cine Technicians and Workers of Eastern India' and 'West Bengal Motion Pictures Artistes Forum' to coordinate amongst various stake holders including producers' associations and affiliated bodies. Channel 10 (OP-3) is a 24-hours News- cum- Entertainment channel in Bengali, owned by M/s Bengal Media Pvt. Ltd., a company incorporated under the Companies Act, 1956. CTVN Plus (OP-4) is a television channel owned by M/s Calcutta Television Network Private Limited, Kolkata, a private limited company registered under the Companies Act 1956.

3. The facts and allegations of the case, in brief, as mentioned in the information, are as under:-



3.1 As per the information, M/s B.R. TV, Mumbai, producer of the TV serial 'Mahabharata' entrusted sole and exclusive rights to M/s Magnum TV Serials to dub the Hindi version of the said serial in Bengali language and for exploiting its Satellite, Pay TV, DTH, IPTV, Video, Cable TV and Internet Rights till September 2016. The Informant was appointed sub-assignor by M/s Magnum TV Serials. Accordingly, the said serial was dubbed by the informant.

3.2 The Informant executed an agreement for Time Slot on Revenue Sharing basis for the telecast of aforesaid dubbed serial with M/s. Bengal Media Private Ltd, Kolkata (owner of 'Channel 10') and Calcutta Television Network Private Ltd, Kolkata ('Owner of CTVN Plus Channel'). These two channels were given hard disks of four episodes of the serial on 02.02.2011 and 12.02.2011. Thereafter, an advertisement was placed in daily newspaper on 19.02.2011 that the serial would be shown on Channel 10 at 10 AM in the morning and on CTVN Plus at 10 PM every Sunday.

3.3 According to the Informant, on 18.02.2011, the OP-4 received a letter from the OP-2 to stop the telecast of the above serial. The Informant also received a letter from OP-1 on 01.03.2011 wherein he was directed to withdraw/ stop the telecast of the serial. On same day i.e. 01.03.2011, OP-3 and OP-4 also received similar letters from the OP-2 and OP-1 respectively. On 11.03.2011, the OP-4 received another letter from OP-2 to stop the telecast of the serial.

3.4 As per the information, on 12.03.2011 and 14.03.2011, the OP-4 received letters from the OP-2 wherein the OP-4 was asked to stop the



telecast of Mahabharata serial in the interest of healthy growth of film and television industry in West Bengal. It was also mentioned that the convention of restricting the telecast of Bengali dubbed National programs in Kolkata was prevailing for the last 13 years (from 1997 onwards). The said letter further mentioned that the OP-4 should stop telecast of the dubbed serial 'Mahabharata' by 17.03.2011, failing which it will have to face non-cooperation.

3.5 As per the Informant, on 15.04.2011, it was informed by the OP-4 that since the OP-2 was adamant to stop the telecast of the serial and OP-3 had also decided to stop the telecast on and from 17.04.2011; unless the Informant takes suitable measures it would also have no other option but to stop the telecast of the said serial.

3.6 Based upon aforesaid facts, it has been alleged by the Informant that the conduct of OP-1 and OP-2 in the matter is in contravention of the provisions of the Act.

3.7 The Informant also sought interim relief in terms of directions from the Commission to OP-3 and OP-4 not to bow down to the threats of OP-1 and OP-2 and restart the telecast of the serial stopped since 17.04.2011 and to telecast the TV serial dubbed in Bengali language as agreed vide agreement executed between the concerned parties to save it from irreparable loss.

#### **Prima Facie Opinion**

4. The Commission considered the matter and after having formed a prima-facie opinion, directed the Director General (hereinafter referred to



as the 'DG') vide order dated 03.05.2011 passed under section 26(1) of the Act, to conduct an investigation and submit his report to the Commission. As far as interim relief is concerned, the Commission deemed it fit not to pass any orders.

### **Findings of DG**

5. The DG, after receiving the orders of the Commission, conducted investigation and submitted his report dated 15.11.2011. The findings of DG, in brief, are as under:-

5.1 DG has submitted that the matter pertains to 'Mahabharata serial' which was produced and telecast in late eighties by the BR TV, Mumbai. The license holders of this serial M/s Magnum Films granted the rights to the Informant vide agreement dated 02.03.2009 to telecast the dubbed version of serial in Bengali language on the satellite channel (except Doordarshan). After getting the rights the Informant prepared the dubbed versions of episodes of the serial and entered into agreement with Channel 10 (owned by Bengal Media Pvt. Ltd., Kolkata) and CTVN Plus channel (owned by Calcutta Television Network Pvt. Ltd., Kolkata) for telecast.

5.2 According to DG, the OP-2 named in the instant case, is a Co-ordination Committee of Artistes & Technicians of West Bengal Film & Television Industry. This Committee is comprised of West Bengal Motion Picture Artists' Forum, Federation of Cine Technicians & Workers of Eastern India, Welfare Association of Television Producers in West Bengal, Association of Television Affiliates and Eastern India Motion Picture



Association. The objective of the Co-ordination Committee is to coordinate the activities of organizations of West Bengal Film and TV industry and resolve disputes relating to various issues.

5.3 DG has submitted that the relevant market for the purpose of section 3 of the Competition Act, in this case is the 'Film and Television Industry of West Bengal'. The Coordination Committee consists of persons engaged in the business of visual films for exploitation of Theatres or the Television Channels. The joint efforts of all the persons associated with the OP-1 and OP-2 culminates in the single end product i.e. a visual film in the form of feature film or Television serial or any other program like documentary etc. Thus the persons or the Association of persons who are part of Coordination Committee are dealing in the identical market that is film making and any agreement or joint action taken by the co-constituents, being in the nature of horizontal agreement, may be examined under the provisions of section 3(3) of the Competition Act.

5.4 DG has submitted that when the Coordination Committee came to know about the telecast of dubbed version of Mahabharata serial, it objected by passing a resolution and issuing letters to Channel 10 and CTVN Plus on 18.02.2011 requesting them to stop the telecast of the dubbed serial. However, the telecast of serial was started on the scheduled date and time on both the channels from 20.02.2011 onwards.

5.5 After that several letters were issued by the Coordination Committee and EIMPA to the concerned channels and to the Informant asking them to stop the telecast of the serial, or to face the consequences like non-cooperation with the channel and agitation/ demonstration and strike. On



07.04.2011 a demonstration and one day strike was organized by the Coordination Committee in Kolkata. Subsequently, on 15.04.2011 the Informant received a letter from Channel 10 intimating that it was going to stop the telecast of the serial from 17.04.2011 due to restriction imposed by the Coordination Committee. Accordingly, Channel-10 stopped the telecast of serial on their channel.

5.6 DG has further submitted that the other channel CTVN also wrote a letter to the Informant on 15.04.2011 intimating the pressure put by the Coordination Committee to stop the telecast of serial. However, the Informant vide letter dated 18.04.2011 asked CTVN to continue telecasting the serial. Thus the serial continued to be telecast on that channel.

5.7 DG has submitted that all over the world the foreign movies or television serials are allowed for exhibition to the local people for viewing either after dubbing in the local language or by providing subtitles in the local language. This has been allowed by the governments all over the world for providing exposure of world cinema and entertainment to their citizens. In India also there is no restriction under the law on exhibition or telecast of dubbed programmes.

5.8 However, in the instant matter OP-1 alongwith OP-2 and other Associations namely Welfare Association of Television Producers in West Bengal and Association of Television Affiliates jointly restricted the telecast of dubbed version of serial Mahabharata and thereby its commercial exploitation. The Opposite Parties also forced one of the channels to stop the telecast of serial.



5.9 DG has submitted that the argument of the Coordination Committee that they have right to agitate on grievances of their members is valid since the trade unions or similar associations have a right to take action for the welfare of its members under the provisions of Industrial Disputes Act 1947. However no person or association of persons can restrict, limit or control the distribution and supply of a product which is lawful otherwise. In the instant matter, the Coordination Committee and its associated organizations have tried to impose the restriction on the commercial exploitation of dubbed version of serial which is permissible under the law. The Coordination Committee by way of joint and concerted actions with Producers' Associations and other affiliated Associations of West Bengal has imposed restrictions on the persons or enterprises engaged in the business of distribution and telecasting of Television serial. They have a right to raise their concerns before the government authorities to formulate some law in order to protect the regional language cinema. However, entering into an agreement to limit or control the supply of a programme cannot be justified and it is anti-competitive in nature.

5.10 DG has further submitted that the argument that by allowing telecast of dubbed serials the Bengali language film and TV industry will be affected and may result in joblessness of local artistes is also not valid. As per DG, in the present era of information technology all the popular programs are available on internet or by way of pirated CD/DVDs. In such a scenario it is very difficult to assess as to how the telecast of a legally licensed dubbed version of a serial could have affected the local industry. Further, it is also difficult to establish that when there are more than 100



channels having 24 hours telecast for viewers, a serial shown on one or two channels once a week could have affected the entire industry.

5.11 According to DG, the success of any program depends upon its contents and preference of viewers. The study conducted by ATM Media research has revealed that India has 150 news channels with the English ones commanding the highest advertising rates due to their connect with the urban audience. However, in terms of numbers, regional entertainment channels are four times as many as national channel which shows that in India the regional language entertainment channels have also grown very fast. Even the OP has stated that the local Bengali language industry has grown 3 times in last 10 years.

5.12 According to DG, there is a huge potential for the local film artistes. There is no empirical study or analysis to support the claim of the OPs that dubbed programs will lead to downfall of the local industry. Rather these dubbed programs make the local industry improve the quality and efficiency to compete with the dubbed programs. Further no local producer was planning to produce a serial based on 'Mahabharata', whom the telecast of dubbed version of the serial might have affected. DG has argued that it is not clear how a serial made in late eighties with old technology and limited budget can destroy the local industry which has no dearth of artistic, financial or technological resources.

5.13 According to DG, investigation has also revealed that the number of television channels in Bengali language has been on the increasing trend for last many years. The telecast of Bengali language channels is done through satellite all over the world including Bangladesh, which makes the



Bengali language television channels a lucrative industry. The information gathered shows that many new general entertainment channels in Bengali language have started recently. Thus the argument of the opposite parties regarding detrimental effect of dubbed version of 'Mahabharata' serial on local industry is not based on facts.

5.14 As per DG, Coordination Committee is the prime body of West Bengal having control over the artistes and technicians of local film industry. Any producer or person engaged in the business of Film and TV programs cannot do business without the involvement of artists and technicians. In 1997 because of their protests, the producers of 'Lav Kush' a Hindi film dubbed in Bengali stopped its screening. In the present case also, the Coordination committee started pressurizing the channel owners to stop the telecast or to face non-cooperation.

5.15 DG has submitted that the power exercised by the Coordination Committee on the Film and Television industry of West Bengal had so much influence that on 07.04.2011 all the leading artists, technician and stakeholders joined together to support the call of strike and demonstration.

5.16 As per DG, OP-2 adopted all kinds of methods and tactics to thrust its decision on the channels to stop the telecast of dubbed version. Initially it requested through letters jointly signed by five (5) associations to the concerned channels not to telecast the serial. After that it threatened non-cooperation and also a strike on 18.03.2011. Subsequently, they also held a mass rally and strike on 07.04.2011 and thereafter persuaded the leading Actor Shri Mithun Chakravarty who is



also the Chief Advisor of Channel 10 to intervene in the matter, which ultimately resulted in stoppage of the telecast by Channel 10. According to DG, the Coordination Committee by virtue of the coordinated action of its members and constituents associations is able to impose decisions and its directions on the stakeholders of the West Bengal Film and Television Industry.

5.17 According to DG, following conduct of OP-2 is in contravention of the provisions of the Act:-

- a. Act of the Coordination Committee writing a letter on 18.02.2011 to CTVN Plus Channel asking it to stop the telecasting of Mahabharata serial.
- b. Further, act of the Committee writing a letter on 01.03.2011 to Channel 10 and letters on 11.03.2011, 12.03.2011 and 14.03.2011 to CTVN Plus Channel asking them to stop the telecast of Mahabharata serial.
- c. Observance of one-day work stoppage on 07.04.2011 against telecast of the Mahabharata serial by the members of all the constituents of Coordination Committee and demonstration on the same day from 11.00 a.m to 2.00 p.m at Rani Rasmoni Road in Kolkata.
- d. The Coordination Committee approached Shri Mithun Chakraborty, the leading actor of Indian Film industry and the Chief Advisor, Channel 10 and finally succeeded in getting the telecast of Mahabharata stopped by Channel 10.

5.18 According to DG, the constituents of the Coordination Committee, namely, West Bengal Motion Picture Artistes' Forum, Technicians Studia,



Kolkata, Federation of Cine Technicians & Workers of Eastern India, Kolkata, Welfare Association of Television Producers in West Bengal, Association of Television Affiliates and Eastern India Picture Association, Kolkata, who jointly agreed, signed and participated in the above mentioned activities are liable for the aforesaid anti-competitive activities.

5.19 The DG has further submitted that the conduct of OP-1 of writing a letter to the Informant on 01.03.2011 and letters to CTVN Plus and Channel 10 on 01.03.2011 asking them to withdraw/stop telecast of the Mahabharata serial was also in contravention of the provisions of the Act.

5.20 DG has further submitted that following activities and bye-laws/rules framed by EIMPA are in violation of the provisions of the Act:

- (a) Restricting its members to deal with non- members.
- (b) Making compulsory the registration of each film before release in their territory.
- (c) No member of EIPMA shall enter into contracts for the distribution of exhibition of films the title of which are not registered with it in accordance with Bye-laws.
- (d) For registration of a title, membership of EIPMA is compulsory.
- (e) Clause 12 of registration rules regarding registration of dubbed films. Dubbing of films in Bengali language is permitted only if the original is produced in any of the languages specified in bye-laws.

5.21 As per DG, EIMPA being an association of Film Producers, Distributors and Exhibitors have been found to be indulging in violation of section 3 by entering into agreement with the co-constituents of the



Committee in the relevant market of West Bengal Film and Television Industry.

5.22 With regard to the role of OP-3 and OP-4, DG has reported that these channels, who had obtained rights to telecast the dubbed Mahabharata serial, as per the agreements entered into with the Informant, did not indulge in any activity which may be termed as contravention of the provisions of section 3 or 4 of the Act. One of the channels namely Channel 10 stopped the telecast on 17.04.2011, but resumed it from 03.07.2011. The other channel CTVN did not stop the telecast and continued it despite the directives of OP-1 and OP-2. Moreover, these two channels were not part of the Coordination Committee, nor were they involved the decision taken by it. In fact they resisted the decisions and agreements regarding telecast of dubbed version of Mahabharata. Thus the role of OP-3 and OP-4 in this case does not appear to be in contravention of the provisions of Competition Act.

5.23 DG has submitted that the activities of OP-1 and OP-2 in the instant matter resulted in foreclosure of competition by hindering entry into the market. According to DG, these Associations are collectively deciding not to allow any person who is involved in the business of distribution and exhibition of films/serials dubbed in Bengali language from Hindi or other languages to operate.

5.24 After evaluating the conduct of OP-1 and OP-2 in light of the factors mentioned under section 19(3) of the Act, DG has concluded that the activities and bylaws of the OP-1 and OP-2 have the elements of potential competitive harms which may restrict freedom of trade in the market. By



not allowing any dubbed version of a serial, the OP-2 forecloses the business opportunities for the businessmen engaged in the production, distribution, and exhibition/telecast of such programs. The OP-2 has been formed to coordinate the various stakeholders involved in the film/serials making in the local film industry of Kolkata. However, the conduct and activities of OP-2 by restricting the telecast of dubbed programs has resulted in depriving the consumers to watch the program of their choice.

5.25 According to DG, the activities of OP-2 in no way help in bringing improvements in film making or distribution of films/serials. By restricting the telecast of dubbed versions of Hindi serials, it has not contributed to improvement in the relevant market. DG has also observed that OP-2 was not able to substantiate that its activities in the instant matter have contributed in promotion of technical, scientific and economic development in the distribution of films.

5.26 As per DG, the acts and conduct of OP-1 and OP-2 are in violation of provisions of section 3(3)(b) of the Act since they restrict and control the market and supply of dubbed versions of serials on the Television Channels through collective intent of all the constituents/associations coming together on one platform.

6. The Commission, after considering the report of DG decided to send a copy of same to the concerned parties for seeking their comments/objections. The reply/objections filed by various parties are as under:-

#### **6.1 Reply of OP-1**



6.1.1 The OP-1 in its written and oral replies contended that the decision of Channel 10 to suspend telecast of the dubbed serial was not in any manner brought about by it or any of its office bearers. The OP has submitted that Channel 10 and CTVN did not discontinue telecast of the said serial at the request of its President. Channel 10 discontinued telecasting of the said serial at the requests of Mr. Mithun Chakarborty, who is Chief Advisor of the Channel 10 and a very well-known and Senior Film Star who wields considerable influence in the Film & Television Industry. As per the reply of OP-1, CTVN Channel i.e. OP 4 did not stop the telecast and the Channel 10 also resumed telecast of the serial from 03.08.2011.

6.1.2 The OP-1 has further submitted that it is not concerned with production, distribution and exhibition of serials which are telecast on television. It is an association of persons engaged in production, distribution and exhibition of "Feature Films" which are primarily exhibited in cinema houses. It is not engaged in running or abetting any cartel of film producers, distributors or exhibitors or any of them and exercises or wields no statutory authority or power in connection with its activities.

6.1.3 As per the contentions of OP-1, the disputes regarding telecast of the said dubbed serial are beyond the scope of its functioning or jurisdiction and it is in no position to issue any official diktat with regard to matter in dispute.



6.1.4 The OP-1 has also submitted that OP-2 had objected the telecast of Hindi serial "Mahabharata" dubbed in Bengali language and resolved to request the OP-3 and 4 to desist from telecasting the said serial dubbed in Bengali language to protect the interest of the regional industry producing such television serials and that of the artists and technicians depending thereon for their livelihood. In deference to the wishes of the OP-2, its President addressed letters to Informant and the other two OPs, OP-3 and OP-4 to withdraw telecast of the Bengali dubbed version of the Hindi serial Mahabharata.

6.1.5 The OP-1 has further submitted that the Informant is also its member and its President made a request to him appealing to his good senses not to telecast the said Hindi serial dubbed in Bengali in the channels (Channel 10 and CTVN) bringing to his notice that telecasting such dubbed version of Hindi serial would be detrimental to the interests of the regional Artists and Technicians affecting their "right to work". The said request was made at an unofficial level without threat of any punitive action and in fact no action was taken against the Informant. There was no punitive action against Channel 10 and CTVN either at any time.

6.1.6 The OP-1 has argued that it did not violate any provisions of the Act by merely requesting Channel 10 and CTVN from discontinuing telecast of the Hindi Serial 'Mahabharata' dubbed in Bengali language in view of it being a member of the Coordination Committee and by expressing solidarity with the regional Artists and Technicians agitating to protect their interests and their 'Right to Work'.



6.1.7 According to OP-1, it appears undisputed and unambiguous from the report of DG that the television industry in India has been growing at a rapid speed. The number of channels has increased from 120 in 2003 to over 600 in 2011 and the penetration has been increasing with the growth in the number of TV households. The OP-1 has submitted that these factual information as collated and compiled by the DG unambiguously indicate strong pro-competitive factors which cannot be checked, controlled or interfered with by any artificial external force / pressure much less by it or its office bearers.

6.1.8 The OP-1 has further submitted that the television industry in India, which is regulated and on its own grew and became competitive cannot be affected by some directives of association, members of which are not in direct competition with the Informant but are representatives of distributors, producers, exhibitors and associates (studio & lab owners etc.) of the Film industry and not the TV industry.

6.1.9 According to OP-1, it is not the case of the Informant or the DG that it is a dominant enterprise and in exercise of its dominance abused its position by imposing unfair or discriminatory conditions upon the Informant. Thus, it is neither a competitor of the Informant nor is a dominant player in the relevant market in West Bengal as such no breach of either section 3 or 4 of the Act could be attributable to it. The OP-1 has further submitted that the conclusion of DG that in collusion with OP-2 it has breached section 3(1) and 3(3) (b) of the Act is strongly denied and disputed since it is not engaged in identical or similar trade of goods or provision of services with Informant and therefore provision of section 3(3) does not get triggered.



6.1.10 According to OP-1, Bengali language TV has a vast global geographical reach but in the Report of DG, the relevant market for purpose of the investigation has been defined as "West Bengal". The findings of the DG are therefore contradictory. Moreover, in an allegation of breach of section 3 (1), 3(3)(b) the findings relating to "relevant market" is irrelevant because the same is not the intent of the legislature as such the conclusion made by the DG in this regard is misleading and liable to be rejected forthwith.

6.1.11 The OP-1 has submitted that it is noteworthy that CTVN obtained a stay from a Court of Calcutta and continued telecasting the serial uninterrupted up to 07.08.2011 till the arrangement between it and the Informant remained economically viable. Therefore, it is undisputed that Hon'ble Court prima facie did not find that the dispute between the Informant and the Respondents was within the ambit of Competition Act, 2002. The alleged stoppage of telecast even if, for argument's sake, may have arisen out of agitation by Associations cannot be considered a breach of Competition Act. Further, the continuance of telecast of the serial by Channel 10 post 07.08.2011 clearly indicates that the Informant and the Channel 10 have established a relationship post-exit of CTVN which is economically viable for both of them.

6.1.12 It has been submitted that EIMPA is a not for profit organization incorporated under section 25 of the Companies Act, 1956 and the motive of the Association is not to earn any profits or perform any commercial activity but the welfare of the Film Industry. The Association does not have any profit or loss accounts and the fee received from members is utilized towards the welfare of the Industry in the form of Income and expenditure accounts being a service oriented organisation.



The DG did not examine the response of the Informant that it has no role in the TV industry. The DG also did not examine as to whether or not the impugned dispute was a breach of competition law or civil law but with reasons known to it went on to conclude that its act was in breach of section 3(1), 3(3) (b) of the Act when it was and is admittedly not a competitor of the Informant, hence not engaged in same or similar business or trade in India.

## **6.2 Reply of OP-2**

6.2.1 The OP-2 in its replies/objections submitted that it has never threatened anyone but requested OP-3 and OP-4 to stop the telecast of Mahabharata serial for the sake of welfare of the artists, technicians and workers in the Industry. As per the OP, Channel 10 stopped the telecast not because of it, but on the advice of its Chief Advisor, Mithun Chakraborty.

6.2.2 The OP-2 has contended that it comprises of artistes and technicians of West Bengal Film and Television industry which consist of West Bengal Motion Picture Artists' Forum and Federation of Cine Technicians and Workers of Eastern India only. WATP, ATA and EIMPA are not in the Coordination Committee but in extra-ordinary circumstances to safeguard the interest and development of the West Bengal Film and TV Industry it takes measures in consultation with these organizations.

6.2.3 The OP-2 has further submitted that it comprises of artists and technicians who sell their labour against remuneration given by the



producers. They are not a part of any enterprises and are organized under Trade Union Act, which does not come under the purview of section 3(1) of CCI Act. It has no control over the distribution and supply of a product. It cannot control production, programming, marketing and uplinking of any serial in the Satellite Channel. As per OP-2, Doordarshan, justifiably defended the Regional Bengali Industry by stopping telecast of Hindi programmes dubbed in Bengali in Kolkata Doordarshan vide their letter dated 19.06.97. Hence, its action cannot be said to be anti-competitive in nature.

6.2.4 In the whole analysis, its action is not in contravention of the provisions of the Competition Act but in consonance with democratic movement taken up by trade union organisations to safeguard the interest of their members. The activities and by laws of the Coordination Committee is guided by Trade Union Act. The Coordination Committee has got no connection with any sort of business and cannot restrict freedom of trade in the market. According to OP-2, it does not have the authority in hindering entry into the market of any business activity in the Production, Distribution, Exhibition and telecast of such programmes in Satellite Channels and therefore question of violation does not arise at its end.

6.2.5 It has also been contended that DG has somehow accused WATP and ATA as part of the Coordination Committee. However, Federation of Cine Technicians and Workers of Eastern India and West Bengal Motion Picture Artists' Forum both registered under Trade Union Act are the only two organisations of the Coordination Committee. The other two organizations- WATP and ATA are registered under Society Act and are



not part of the committee. Before accusing them it would have been proper to give them a chance to express their opinion in this regard.

6.2.6 According to OP-2, it is incorrect on part of DG to say that combination of OP-1 and OP-2 culminates in the single end product of feature film or television serial. The consumers were never affected because they had the option to watch the serial "Mahabharata" on CTVN plus channel during the short period when it was not shown on Channel 10. The OP-2 has also submitted that it has no connection with any sort of business hence; it cannot restrict freedom of trade in the market. OP-2 has also contended that it has no authority in hindering entry into the market of any business activity in the Production, Distribution, Exhibition and telecast of such programmes in satellite channels and therefore question of violation does not arise from its end.

6.2.7 As per OP-2, telecast of dubbed programme is the real impediment for improvement in production and distribution of audio visual programme. The glaring example is closing down of Mahua Bangla Entertainment Channel creating job loss for around 500 audio personnel. The OP-2 has submitted that it is in no way engaged in the business of films/serials production, distribution and exhibition and has no control over telecast and exhibition of serials and films.

6.2.8 Since DG has found in his report of investigation that the Coordination Committee in addition to "Eastern India Motion Picture Association" (OP-1) also consists of "West Bengal Motion Picture Artists' Forum", "Federation of Cine Technicians & Workers of Eastern India," "Welfare Association of Television Producers in West Bengal", and



“Association of Television Affiliates” notices were also issued to them to file their replies.

6.2.9 In reply, the Welfare Association of Television Producers in West Bengal (WTA) contended that it supported the OP-2 unknowingly and morally. WTA requested that it should be granted pardon and it will not repeat the same conduct in future. It contended that Welfare Association of Television Producers’ in West Bengal is a newly registered body under West Bengal Societies Registration Act 1961, since 13<sup>th</sup> day of September 2010 and have 65 members. Being an Association of Television Producers in Bengal it renders service to its members. It encourages members to make good serials observing the guidelines framed by the Ministry of Information & Broadcasting, Government of India.

6.2.10 No other constituent members of Coordination Committee submitted replies on the findings of DG.

6.2.11 The OP-3, Channel 10 (Bengal Media Pvt. Ltd.) in its replies submitted that it is a Bengal news and entertainment Channel, which had agreed with the Informant to telecast Bengali Dubbed version of the epic serial “Mahabharata”. No part of such agreement was violated by the O.P. No.3. In fact, Channel 10 lost huge revenue on account of the stoppage of the telecast of the serial under pressure from EIMPA and agitation by the Co-ordination Committee of Artists and Technicians of West Bengal, to its detriment. Therefore, it is not at all responsible for any illegality or breach towards the Informant since it had to stop the



telecast in the face of circumstances of such pressure and agitation which were beyond its control.

6.2.12 Thus, according to OP-3, there can be no occasion or opportunity of violation of the Competition Act by it as it was interested in continuing with the telecast but had to give in due to adverse circumstances beyond their control.

6.2.13 According to OP-3, the present case against it is not maintainable as there is neither any violation of any of the provisions of the Act nor any anti-competition agreement entered by it. In fact it is also a victim who has suffered heavy losses due to the stoppage of telecast of the Bengali version of serial Mahabharata under the pressure of the O.P-1. Admittedly, the Informant has no grievance against the O.P-3 who was telecasting the Bengali dubbed version of serial Mahabharata as per the consent of the Informant after duly entering agreement with them in the respect. Even the Director General after conducting his detail investigation in the case has held in his report that it has not been found to be indulging in any activity which may be termed as contravention of the provisions of section 3 or 4 of the Competition Act.

#### **Decision of the Commission**

7. The Commission has taken into consideration the findings of DG, the relevant documents available on record and the written and oral submissions of the Opposite Parties. On the basis of the findings of DG and facts on record, following issues arise for determination in the case:



Issue 1: Whether EIMPA and Coordination Committee imposed/attempted to impose restrictions on the telecast of dubbed serial “Mahabharata”?

Issue 2: Whether the act and conduct of imposing restrictions on telecast of the said serial is in violation of provisions of the Act?

### **Determination**

#### **7.1. Whether EIMPA and Coordination Committee imposed/attempted to impose restrictions on the telecast of dubbed serial “Mahabharata”?**

7.1.1 The Commission notes that the facts on record reveal that the Informant, Shri Sajjan Khaitan of M/s Heart Video was assigned a Power of Attorney by M/s B.R. TV, Mumbai, the Producer of Hindi TV serial “Mahabharata” and was appointed the sub-assignor of M/s Magnum TV Serials, Delhi who were entrusted the sole and exclusive right holders to dub the Hindi version of the serial in Bengali language for exploiting the Video, Satellite, Cable etc. of the said TV serial till September 2016.

7.1.2 M/s Magnum Films granted rights to the Informant, M/s Heart Video vide an agreement to telecast the dubbed version of serial in Bengali language on the satellite channel.



7.1.3 The Informant, after getting the said rights, prepared the dubbed versions of episodes of the serial and entered into agreement with OP-3 (Channel 10 owned by Bengal Media Pvt. Ltd., Kolkata) and OP-4 (CTVN Plus channel owned by Calcutta Television Network Pvt. Ltd., Kolkata) for telecast on their channels. The dubbed version of the serial was to be telecast from 20.02.2011 and accordingly the concerned parties started the publicity and advertising of the said serial.

7.1.4 The Commission notes that when the fact of the telecast of dubbed version of Mahabharata serial came to their notice, objections were raised by the Co-ordination Committee of Artistes & Technicians of West Bengal Film & Television Industry which comprises of "West Bengal Motion Picture Artists' Forum", "Federation of Cine Technicians & Workers of Eastern India," "Welfare Association of Television Producers in West Bengal", "Association of Television Affiliates" and "Eastern India Motion Picture Association". The Committee passed a resolution and issued letters to OP-3 and OP-4 on 18.02.2011 requesting them to stop the telecast of the dubbed serial.

7.1.5 The Commission observes that the contents of letter dated 18.02.2011 signed by office bearers of all the five (5) organisations on the letter head of Coordination Committee are as under:

*"We came to know that you are publicizing in your channel that Bengali dubbed version of "Mahabharat" will be telecasted in your channel, shortly. It is for your kind information that the whole TV and Film Industry had fought back ruthlessly against telecast of Bengali dubbed versions of Hindi serials in DD-1 slot in 1997 and since that agitation DD*



*National Network has stopped telecasting any Bengali dubbed version of Hindi programs. At the same time, it is to be noted that the film industry was also successful in debarring the release of Bengali dubbed version of Hindi Movie "Luv Kush" produced by Mr. Dilip Kankaria of Deluxe Films in the year 1997.*

*We have done this to stop withering away of the prestigious and internationally acclaimed Bengali Film and Television Industry, thereby creating job for artistes, workers and allied people associated with this Industry.*

*Hence we would request you to stop telecast of dubbed Bengali version of "Mahabharat" in your channel."*

7.1.6 Even when the aforesaid letter was issued, the telecast of serial commenced on the scheduled date and time on both the channel from 20.02.2011 onwards. Subsequent to that, several letters were issued by the Coordination Committee and EIMPA to the concerned channels and to the Informant asking them to stop the telecast of the serial, or to face the consequences like non-cooperation with the channel, agitation demonstration and strike. On 07.04.2011 a demonstration and one day strike was also organized by the Coordination Committee in Kolkata. There are newspaper reports on record which support this fact.

7.1.7 The Commission further notes that the original telecast was on Channel 10 of Bengal Media Pvt. Limited, OP-3 in the present matter and repeat telecast was scheduled on CTVN. On 15.04.2011 the Informant received a letter from OP-3 intimating that it was going to stop the telecast of the serial from 17.04.2011 due to restriction imposed by the



Coordination Committee. The contents of letter are reproduced hereunder:

*"We are sorry to inform you that due to restriction imposed by 'Coordination Committee of Artists' Technicians of West Bengal Film & Television Industries' we are going to stop telecasting of MAHABHARATA SERIAL (DUBBED) in Bengali language with effect from 17<sup>th</sup> April, 2011.*

*We appreciate your cooperation but due to dominating attitude of the local associations, we are left with no other option but to stop telecasting because the artists and technicians are not cooperating with our journalists on duty and even the artists of the tollygunge industry those who are closely associated us. In this circumstances, Sri Mithun Chakraborty (Actor) had called up a tripartite meeting where delegation team of Tollygunge Artists' Forum led by Sri Pranab Chowdhury and the delegation team from our side led by our C.E.O. Mr. Kunal Ghosh were present. There we have already raised our discontentment regarding the stoppage of telecasting MAHABHARATA. But Sri Mithun Chakraborty (Actor) who requested us to stop, we decided not to telecast the said MAHABHARATA we regret it as unfortunate and feel sorry and bad. So, we request you to terminate our contract with you regarding the telecast of MAHABHARATA in our channel.*

*I hope you understand our position why we decided to stop."*

7.1.8 Accordingly, Channel 10 (OP-3) stopped the telecast of serial on their channel.



7.1.9 The Commission notes that after signing the agreement with M/s Heart Video, CTVN Plus (OP-4) also commenced repeat telecast of "Mahabharata" dubbed in Bengali version from 20.02.2011 as per agreement. On 22.02.2011, it got a letter from Coordination Committee with a request to stop the telecast of the dubbed serial. On 01.03.2011, it received another letter from EIMPA asking it to withdraw/stop telecast of the serial. It got a letter dated 11.03.2011 again from Coordination Committee asking it to stop telecast the said serial from 13.03.2011. On 12.03.2011, it got another letter from Coordination Committee wherein the channel was threatened that it would go on a strike on 18.03.2011 against the telecast of the dubbed serial. Again on 14.03.2011, the channel got a letter from Coordination Committee threatening the channel with non-cooperation.

7.1.10 The Commission further notes that on 12.04.2011, Channel 10 announced that the original telecast of the serial would be suspended from 17.04.2011. Channel 10 wrote a letter to the Informant on 15.04.2011 intimating the latter about the pressure being put by the Coordination Committee to stop the telecast and also to take necessary action. The Informant vide letter dated 18.04.2011 wrote to CTVN to continue to telecast the serial. Thus the serial continued to be telecast on CTVN channel. After that the Informant aggrieved by the activities of opposite parties filed an information u/s 19(1) of the Act before the Commission on 20.04.2011.

7.1.11 The Commission observes from aforesaid that it is clear that Coordination Committee and EIMPA had exerted pressure on both OP-3 and OP-4 not to telecast the dubbed serial. The OP-3 i.e. Channel 10 also



stopped telecast of the serial, although subsequently, it resumed the telecast of the serial from 03.07.2011.

7.1.12 Based upon above, the Commission observes that it is clear that both EIMPA and the Coordination Committee tried to impose restrictions on the telecast of dubbed version of serial 'Mahabharata' and also succeeded in stopping telecast of the serial on one of the two channels on which the serial was to be telecast.

## **7.2 Whether the act and conduct of imposing restrictions on telecast of the said serial is in violation of provisions of the Act?**

7.2.1 The Commission observes that the ex-post assessment of competition within the framework of the Act has to be carried out either under the provisions of section 3 relating to anti-competitive agreement or section 4 relating to abuse of dominance.

7.2.2 The Commission notes that the applicability of provisions of section 4 of the Act has been discussed in detail in the order dated 16.02.2012 passed in case no. 25 of 2010 involving EIMPA and other associations. The Commission after examining the provisions of the Act has concluded while passing order in case no. 25 of 2010 that EIMPA or other film associations as named in those cases do not qualify to be \* 'enterprise' since they are not engaged in any activity enumerated in section 2 (h) of the Act. The Commission has also held in that case that once an association is not an 'enterprise' in terms of section 2 (h) , its



conduct also cannot be examined under section 4 of the Act since it is only the conduct of an 'enterprise' or a group of enterprise as defined in section 5 of the Act, which is subject matter of examination as is apparent from wordings of section 4 (1) which states that 'No enterprise or group shall abuse its dominant position'.

7.2.3 Considering the findings in case no. 25 of 2010, in the instant matter also, the Commission holds that EIMPA (OP-1 in the instant case) cannot be held as an 'enterprise' within the meaning of section 2(h) and consequently its conduct, rules and regulations cannot be a subject matter of examination under section 4 of the Act.

7.2.4 The Commission also observes that Coordination Committee (OP-2) comprises of artistes and technicians of West Bengal Film and Television industry which consist of West Bengal Motion Picture Artists' Forum and Federation of Cine Technicians and Workers of Eastern India. It has been contended that these two bodies are Trade Unions. However, Trade Unions are not exempted from the purview of the Competition Act, 2002 and therefore their acts and conduct are liable for examination under the provisions of the Act. The Coordination Committee also takes measures in consultation with other organizations like WATP, ATA and EIMPA in extra-ordinary circumstances to safeguard the interest and development of the West Bengal Film and TV Industry. Therefore, the Coordination Committee for the purposes of the present matter comprises of five organizations which in turn consist of artistes, technicians and other professionals associated with the film and television industry. On its own, it is not engaged in any economic activity. On the basis of these facts, the Commission holds that Coordination Committee is not engaged in the activities mentioned in



section 2(h) of the Act. Accordingly, Coordination Committee also cannot be held as an 'enterprise' within the meaning of section 2(h) and consequently, its conduct too cannot be examined within the meaning of section 4 of the Act.

7.2.5 The Commission further observes that while the act and conduct of OP-1 and OP-2 cannot be examined under section 4 of the Act, they are subject to inquiry under section 3(3) of the Act in the present matter by virtue of the fact that the OP-2 (Coordination Committee) comprises of associations whose members are engaged in televisions and film industry. The Informant is distributor of video cinematographic films as well of TV serials and is operating at the same horizontal level of production and supply chain along with the other members of associations who are part of the Coordination Committee. Thus, the conduct of the OP-1 and OP-2 both becomes subject matter of inquiry under section 3(3) of the act with reference to the allegations of the Informant.

7.2.6 The facts of the case establish that OP-1 and OP-2 have by their activities imposed restriction on the business of dubbed version of serial in this case. They have by their joint action tried to stop the telecast of dubbed version of the said serial. The OP-1 and OP-2 have collectively issued letters to the channels to stop the serial or face their non-cooperation. They have also been found pressurizing the Informant and the OP-3 & OP-4 to stop the telecast by resorting to strikes and demonstrations against the telecast of the said Serial. Their activities also ultimately resulted in temporary stoppage of the serial on Channel-10.



7.2.7 The Commission observes that OP-1 and OP-2 are in fact associations of enterprises (constituent members) who in turn are engaged in production, distribution and exhibition of films. They are taking decisions relating to production or distributions or exhibition on behalf of the members who are engaged in the similar or identical business of production of the films or distribution of exhibition of the films. Any decision taken by them reflects collective intent of the members. Therefore, giving call of boycott of a competing member i.e. Informant in the instant case, tantamount to depriving the Informant due opportunity of fair and free competition in the market.

7.2.8 The Commission observes that the OP-1 and OP-2 not only issued caution letters to the Informant, OP-3 and OP-4, but also warned them that in case their directions were not followed, they would be forced to take action against them. The Commission also notes that subsequent to the issue of said letters, the constituents of OP-2 observed one day work stoppage on 07.04.2011 against the telecast of dubbed Mahabharata serial. On the same day, they also made a demonstration from 11.00 a.m to 2.00 p.m in Kolkata.

7.2.9 The Commission observes that prohibition on the exhibition of dubbed serial on the Television prevented the competing parties in pursuing their commercial activities. The protection in the name of the language goes against the interest of the competition depriving the consumers of exercising their choice. The plea of the OPs that allowing the dubbed films will take jobs away from Bengali artists is also a specious argument. If the Bengali films and TV serials are preferred over the non-Bengali content as a result of competitive process, ultimately



the Bengali artistes will get benefited. The protectionist policies which are being followed will not come to the aid of Bengali artistes, if on content they cannot compete. Such policies are anti-thesis of the principles of free market.

7.2.10 The Commission observes byelaws, rules and regulations of EIMPA have been dealt with in detail in its order in case no. 25 of 2010. It was found in that order that certain byelaws, rules and regulations of EIMPA are anti-competitive in nature. In the present matter, the Commission notes that clause 12 of registration rules of EIMPA which prohibit registration of dubbed films goes against the spirit of competition since as per the said rule dubbing of films in Bengali language is permitted only if the original is produced in any of the languages specified in bye-laws. Thus, films of other languages if dubbed in Bengali language cannot be registered and thus exhibited in the territories under the control of the Association.

7.2.11 When analysed under the conditions of section 19(3) of the Act, the Commission observes that the acts and conduct of OP-1 and OP-2 have caused harm to the consumers as they were deprived for watching the dubbed serial on a TV Channel for a brief period. The act and conduct of the OP-1 and OP-2 have also hindered competition in the market by barring the dubbed TV serials from exhibition on TV channels in the areas under their control. The Commission also observes that the conduct of the Opposite Parties created barriers to the entry to a new content in form of a dubbed TV serial. The acts and conduct, rules of the Associations also did not have any efficiency defence in terms of improvement of services or production.



7.2.12 On the basis of above facts, circumstances and evidences, the Commission holds that the act and conduct of OP-1 and OP-2 is anti-competitive in nature since it imposes restrictions on the free and unrestricted distribution and exhibition of non-Bengali TV serials dubbed in Bengali language. This act and conduct of limiting and controlling the supply of serials dubbed in Bengali language is in violation of provisions of section 3(3) (b) of the Act.

7.2.13 As regards the role of CTVN and Channel 10, the Commission observes that channel 10 stopped the telecast of the Mahabharata serial under the threat of OP-1 and OP-2 for a brief period. However, it resumed the telecast after some time and continued to telecast the serial as per the schedule. CTVN Channel, although received directives for stopping the telecast, never stopped the telecast of the said serial. OP-3 and OP-4 are not the part of Coordination Committee, nor were they involved in the decision taken by it. In view of these, the Commission is of the view that the act and the conduct of OP-3 and OP-4 in the instant matter cannot be held in the contravention of the provisions of the Act.

## **8. Order under section 27 of the Act**

8.1 The Commission has found the acts and the conduct of the OP-1 and OP-2 as violative of section 3(3) (b) read with section 3 (1) of the Act since they limit and control the distribution and exhibition of dubbed TV serials in their areas of operations. Their acts and conduct are anti-competitive and against the spirit of free competition in the market.



8.2 The Commission has already imposed penalty on EIMPA, OP-1 in case no. 25 of 2010. Proceedings against the executive committee members are separately being conducted and are in progress. Therefore, the Commission deems it fit not to impose penalty either on EIMPA or its office bearers in the present matter.

8.3 As regards OP-2, the Commission observes that apart from EIMPA it is a committee of four different organizations. As per its submissions, it does not have any financial transactions. However, by virtue of the fact that it comprises of five different bodies (including EIMPA) that are having members engaged in economic activities and hence are enterprises, the Committee partakes the character of 'Association of Enterprises'. The constituent associations of the coordination committee and the office bearers who had signed letters regarding prohibition of telecast of the dubbed serial on the letter head of the Coordination Committee were asked to submit their financial statements. However, except for EIMPA, no other association in the Coordination Committee involved in the present matter has filed any financial details. Proceedings against such associations and the office bearers shall be taken up separately.

8.4 The Commission also directs the OP-1 and OP-2 to 'cease and desist' from the following practices and take suitable measures to modify or remove them from their articles of association, rules and regulations;

- i) The existing rules of EIMPA, OP-1 on dubbing must be dispensed with and there should be no bar or prohibition on



exhibition of dubbed films or serials produced in any language in the areas under its control.

- i) The Co-ordination Committee of Artist and Technicians of West Bengal Film and Television Industry should not impose any restrictions in any manner on distribution and exhibition of the Films or TV serials in the areas under its control.

9. The Commission decides accordingly.

10. Secretary is directed to communicate this order as per regulations to all the parties.

Sd/-  
Member (R)

Sd/-  
Member (GG)

Sd/-  
Member (G)

Sd/-  
Member (AG)

Sd/-  
Member (T)

Sd/-  
Chairperson

Certified True Copy



*S. P. Gahlaud*  
13/08/2012  
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