BEFORE THE

COMPETITION COMMISSION OF INDIA

Case No. 52 of 2010

Eros International Media Limited	: Informant

Against

Central Circuit Cine Association, Indore	- Opposite Party- 1
Film Distributors Association, Kerala	- Opposite Party-2
Northern India Motion Pictures Association	- Opposite Party-3
Motion Pictures Association	- Opposite Party- 4

Case No. 56 of 2010

Sunshine Pictures Private Limited	: Informant

Against

Motion Pictures Association	- Opposite Party-1
Northern India Motion Pictures Association	- Opposite Party-2
Central Circuit Cine Association, Indore	- Opposite Party- 3
Telangana Telugu Film Distributors Association	- Opposite Party - 4
Film Distributors Association, Kerala	- Opposite Party- 5
Karnataka Film Chamber of Commerce	- Opposite Party - 6

भारतीय प्रतिस्पर्धा आयोग Competition Commission of India नई दिल्ली / New Delhi

Date of Order: 16.2.2012

Order

1. Background

1.1 A number of cases have been filed under the provisions of section 19(1) (a) of the Competition Act, 2002 (Act) alleging certain anti-competitive acts on the part of Karnataka Film Chamber of Commerce (KFCC), Central Circuit Cine Association, (CCCA), Motion Pictures Association (MPA) and other film bodies/associations which are associated with the business of film distribution and exhibition in India. The Commission has passed a consolidated order in case nos. 25, 41, 45, 47, 48, 50, 58 and 69 concerning such associations. The present order relates to case nos. 52 & 56 of 2010 in which Central Circuit Cine Association, Northern India Motion Pictures Association, Motion Pictures Association and Film Distributors Association, Kerala are the common respondents. In case no. 56, in addition to these four, Telangana Telugu Film Distributors Association (TTFDA) and Karnataka Film Chamber of Commerce (KFCC) happen to be the other two respondent parties.

1.2 In all these cases, the basic issues raised by the Informants are identical. It has been alleged that these film bodies/associations have indulged in various anti-competitive activities in violation of the provisions of sections 3 and 4 of the Act viz; asking the producers-distributors to compulsorily register their films before release, with them in territories under their control, forcing them to abide by their unfair and discriminatory rules, directing the members not to deal with the non-members, prescribing undue long holdback period for satellite, DTH and other rights in respect of exhibition of films and imposing bans, penalties and giving a call of boycott against those who violate the rules and regulations of the associations.

1.3 In addition to the aforesaid issues, the Informants also pleaded for interim orders under section 33 of the Act in these cases in order to secure release of their films.

1.4 Since the issues in these two cases are almost identical, the Commission has considered it fit to dispose of these cases with one common order.

Background and Profile of the parties

1.5 The business of film making consists of various stages involving pre-production, production, post-production, distribution and exhibition. A distributor acquires distribution rights from the producer of a film and thereafter recovers his costs from the revenues earned through exhibition of that film. Now-a-days, many producers are also performing the role of distributors and prefer to distribute their own films.

1.6 For the purposes of assignment of film distribution rights, territory of entire India at present is broadly divided into 12 circuits. In each of these circuits, associations of film distributors and exhibitors have generally been formed either under section 25 of the Companies Act, 1956 or under the Societies Registration Act, 1860. These associations regulate the business of film distribution and exhibition in their area of control and have their own Memorandum and Articles of Association. In addition, rules and regulations to regulate the activities of film distribution and exhibition have also been framed by them. These associations mainly consist of the persons engaged in the business of film distribution and exhibition. However, some of the associations also have the producers as their members.

1.7 A brief profile of such associations who have been named in these two cases under consideration is given below;

Profile of Respondents

A) Central Circuit Cine Association (OP-1 in case no. 52 and OP-3 in case no. 56)

1.7.1 Central Circuit Cine Association (CCCA) was formed in 1952 and is registered under section 25 of the Companies Act. It is the representative organization of the film distributors and exhibitors from the State of Maharashtra, Chhattisgarh, Madhya Pradesh and Rajasthan (Vidarbha &Khandesh Regions).

B) Film Distributors Association, Kerala (OP-2 in case No 52 and OP-5 in case no. 56)

1.7.2 **Film Distributors Association** (FDA), Kerala is registered under section 25 of the Companies Act. It is the representative organization of the film distributors and exhibitors from the State of Kerala and Tamil Nadu.

C) Northern India Motion Pictures Association, Jalandhar (OP-2 in case no. 56 and OP-3 in case no. 52)

1.7.3 Northern India Motion Pictures Association (NIMPA) is an association of film distributors and exhibitors registered under section 25 of the Companies Act, 1956. The areas of its operations are Punjab, Haryana, J&K, Himachal Pradesh and Union Territory of Chandigarh.

D) Motion Pictures Association, Delhi (OP-1 in case no. 56 and OP-4 in case no.52)

1.7.4 Motion Pictures Associations (MPA) is an association registered under section 25 of the Companies Act. It is an association of film distributors and exhibitors for the areas of Delhi and U.P.

E) Telangana Telugu Film Distributors Association, Secunderabad (OP-4 in case no. 56)

1.7.5 It is association of distributors registered under A.P. Public Societies Registration Act and regulates Nizam circuit comprising of parts of Karnataka, Maharashtra, Andhra Pradesh including cities of Hyderabad, Aurangabad, Mahbubnagar.

F) Karnataka Film Chamber of Commerce (OP-6 in case nos. 56)

1.7.6 Karnataka Film Chamber of Commerce (KFCC) is an association of film producers, distributors and theatre owners which regulates the production, distribution and exhibition of Kannada and non-Kannada films in the territory of Mysore and most of the other parts of Karnataka. The association is registered under Karnataka Societies Registration Act and is having about 5000 members as on date.

Profile of Informant in the Case

1.7.7 The Informants who have filed information in these cases are some of the prominent producers and distributors of Indian Film Industry. A brief profile of Informants is brought out in the paras below.

Informant in case no. 52

1.7.8 The Informant in case no.52 is Eros International Media Limited, a company incorporated under Companies Act, 1956, which inter- alia, carries on the business of production, distribution and exploitation of cinematograph films.

Informant in case no. 56

1.7.9 The Informant in case no.56 is Sunshine Pictures Pvt. Ltd., a company incorporated under Companies Act, 1956, which inter-alia carries on the business of distribution and exploitation of cinematograph films.

2. Information

2.1 The facts and allegations in the information filed in two different cases which are being dealt under this order are discussed in brief, as under:

Information in case no. 52 filed by Eros International Media Limited

2.1.1 The information in case no. 52 was filed on 15.09.2010 by Eros International Media Ltd. Although the informant has named CCCA as the main respondent, it has been stated that since the practices adopted are identical, reference to CCCA in the information should also be construed as reference to other opposite parties, namely, (a) Film Distributors Association, Kerala (FDA), (b) Northern India Motion Pictures Association, Jalandhar (NIMPA) and (c) Motion Pictures Association, Delhi (MPA) for their respective territories.

2.1.2 The facts of the case, in brief, as stated in the information are as under:-

2.1.3 The Informant has alleged that under the garb of a trade Association, CCCA has become a vehicle for collusive conduct for persons and enterprises engaged in identical business of distribution and exhibition of films.

Competition Commission of India

नई दिल्ली / New Delhi

2.1.4 The Informant has also alleged that there are explicit agreements between the members of CCCA which are in the nature of "tie-in," "exclusive distribution" and "refusal to deal". Further, the activities, agreements, understandings and arrangements between the members of CCCA are also actions in concert.

2.1.5 According to the informant, CCCA and its members have adopted a coercive mechanism for ensuring the enforcement and compliance of anti-competitive agreements amongst themselves. Any member who violates the terms of the agreements or acts contrary to the circulars and directives of CCCA is isolated or blacklisted by it. Circulars and directives are issued by Associations to its members prohibiting them from dealing in any manner with persons or members who infringe the terms of the agreements or act contrary to the directives and diktats of Associations.

2.1.6 The Informant has submitted that like CCCA, other associations also issue show cause notices, impose penalties and on failure to pay the penalties, issue cautions/circulars, directives, and orders cautioning their respective members to cease, desist, refrain and otherwise not to deal with the producers or distributors.

2.1.7 According to the Informant, anti-competitive agreements among the members of CCCA are reflected in various documents such as Memorandum of Association, Articles of Association and Rules and Regulations framed by the association including "Rules for Registration of a Picture" and "Rules for Prevention of Unauthorized Procuration, Exploitation and/or Exhibition of Films." These documents, rules and regulations impose unfair conditions and also control, limit and restrict production, distribution, exhibition and supply of cinematograph films through theatres, thereby causing an appreciable adverse effect on competition in India in violation of Section 3 of the Act.

2.1.8 The Informant has also brought out that various clauses of Articles of Association of CCCA, viz; Article 4 (a), 4 (b), 42(a) and Article 45 provide for self regulation by the Association. Due to these, CCCA prohibits its members from having business dealings and contracts relating to distribution and exhibition of films unless and until the other person is its member or recognised by it. As a result of the aforesaid conditions imposed by CCCA, any person who wishes to do business of distribution or exhibition of films in the said territories, has to become its member and once the person carrying out the business of distribution or exhibition of films becomes its member that person is bound by its rules and regulations.

2.1.9 The Informant has also alleged that various rules for registration of a picture made by CCCA make registration of films compulsory before its distribution and exhibition and failure to obey the rules of association makes the members liable for penalties. Further, as per arbitration rules of CCCA, all claims and disputes are to be settled by the Court of Arbitration of the Association whose decision shall be binding on them.

2.1.10 It has been brought out that for registering a film with CCCA, the producers and distributors or distributors and sub-distributors have to submit an application in a standard form known as Producer-Distributor certificate under Rule 10 of the Rules for Registration together with Declaration and Undertaking forming an integral part thereof, which contains provisions which are in contravention of section 3 and 4 of the Act.

2.1.11 It has also been alleged that the producers or distributors of the films are compelled to execute these agreements, certificates, documents, undertakings and declarations as a condition precedent to exhibit, distribute and exploit films in the territories which has the effect of (i) controlling, limiting, restricting and withholding the distribution and supply of the cinematograph films, b) foreclosure and denial of market access and (iii) imposition of supplementary obligations on the producers and distributors which by their nature have no nexus with the business of theatrical distribution of the films.

2.1.12 According to the informant, the supplementary obligation inter-alia provide for a) curbs and restriction on the broadcasting and telecasting the film via Satellite for a period of 1 year from the theatrical release of the film, (b) adherence to the rules and circulars issued by CCCA and other associations (c) acceptance of association only as the arbitrator in the event of dispute between the producers/distributors/sub-distributors regardless of the agreement with the distributors to the contrary.

2.1.13 The informant has stated that although the producers, distributors, sub-distributors object to the restrictive condition of associations regarding release of the films through satellite television, video or cable, the association insists for compliance of the declaration(s)/undertakings given by the producers and distributors. On release of the films on satellite television, CCCA issues show cause notices and imposes fines on the producers. In the event the producers or distributors fail to pay the penalty, CCCA issues warnings to all its members not to deal with the alleged defaulting producers/distributors. On many occasions just before the release of next film, the producers and distributors are compelled to pay the penalty running into lakh of rupees to associations.

2.1.14 The informant has also brought out that it had acquired all rights of a cinematographic film titled "Housefull" and was approached by Marudhar Entertainment Pvt. Ltd,. & Sanman Exhibitors Pvt. Ltd. who are the members of CCCA for acquisition of a licence to distribute, exhibit and exploit the film "Housefull" in the territory under its control. The Informant, Sanman Exhibitors Pvt. Ltd. and Marudhar Entertainment Pvt. Ltd., out of free will and consent entered into the distribution agreements dated 22.04.2010 and 26.04.2010 for licensing the theatrical rights of the film "Housefull".

2.1.15 Since as a condition precedent to distribute, exhibit and exploit the films, the producer, distributor and sub-distributor of the film is compelled to register the film and execute agreements, documents, declarations and undertakings with CCCA, Sanman exhibitors Pvt. Ltd. and Marudhar Entertainment Pvt. Ltd. requested the Informant to sign and execute documents for registration of the film "Housefull" with CCCA which included (i) producer-distributors certificate, (ii) declaration and undertaking by the producer/titleholder. As the declarations and undertakings contained terms and conditions which were inconsistent with the agreements dated 22.04.2010 and 26.04.2010, the Informant was reluctant to sign and execute the same.

2.1.16 However, in view of the fact that in the absence of registration of the film, the film would not be distributed, exhibited or released in the said territories, the Informant had no other option but to sign and execute the undertaking and declaration, required for the release of the film in the said territories.

2.1.17 The informant has alleged that on the lines of CCCA, the other opposite parties named in the information, namely, Film Distributors Association, Kerala, Northern India Motion Pictures Association and Motion Pictures Association are also indulged in similar anti-competitive activities and practices.

2.1.18 According to the informant, action of CCCA and all other associations in various territories and film circuit in India are per-se illegal and are violative of provisions of Section 3 and 4 of the Competition Act, 2002 The Informant has also alleged that the acts of associations also violate the provisions of Section 4 (2) (a), 4 (2) (c) and 3 (4) (d) since these associations enjoy a position of strength and dominance and if any producer or distributor wishes to enter or access the relevant market of film distribution in the territories under their control, he is compelled to do business or route the business with or via associations failing which the person or enterprise cannot distribute or exhibit any film.

2.1.19 As regards specific facts relating to the case under consideration, the Informant has alleged that vide letters dated 10.03.2010 and 20.03.2010, CCCA had demanded 50% of the amount received by the Informant from non-theatrical release of its films - "Namastey London", "Love Aaj Kal" and "Kambakht Ishq", stating that these films were released against the conditions prescribed by the association.

2.1.20 Apprehending that non-payment of the amount demanded by CCCA would entail ban from the said territories since all the distributors and exhibitors in the said territories were cautioned to refrain from dealing with it, the informant vide letter dated 06.04.2010 paid a sum of Rs. 7,50,000/- to the association.

2.1.21 Vide letter and Information circular dated 19.04.2010 and letter dated 02.06.2010, CCCA further informed the Informant that it was liable to pay 10% of the share out of the 50% amount received by it for assigning the telecast rights of the films "Veer" and "De Dana Dan", in violation of the declarations and undertakings. However, the Informant did not pay the specified amount to the association.

2.1.22 The Informant has stated that it had reason to believe that since it had not paid the penalties earlier demanded by CCCA, the association would impose a ban from dealing with its members consequent to which the Informant would be prevented from distributing and exhibiting its forthcoming Hindi cinematograph film "Anjaana Anjaani" scheduled to be released in the said territories on 24.09.2010. It was also brought out that the President of CCCA had also issued public/press statements that the said Film "Anjaana Anjaani" would be banned in the said territory; although, according to the informant, the proposed ban on the film was on the basis of alleged complaints filed by the distributors claiming certain amount from a third party and no claim as such was made against the Informant.

2.1.23 The Informant , accordingly, also prayed for restraining CCCA to act in any manner which impedes release of all the forthcoming films of the informant including the film 'Anjaana Anjaani" and prohibiting the association from enforcing "Rules for Registration of a Picture", "Rules for the Prevention of

Unauthorised Procuration, Exploitation and/or Exhibition of the Films" on such films.

Information in Case No. 56 filed by Sunshine Pictures Pvt. Ltd.

2.2 The facts of the case, in brief, as stated in the information are as under:-

2.2.1 As per the Informant, the associations makes it compulsory for every film distributor and exhibitor in their respective territories to become the member of respective association and register his film with the respective associations. Producers- distributors who refuse to become the member of the association and refuse to register their film with these trade bodies/associations are not allowed to distribute or even release their films in the concerned territories governed by respective association.

2.2.2 The Informant has submitted that due to the aforesaid conditions imposed by the association in their respective territories of operation, the distributors and producers are deprived of their fundamental right to do business if they choose not to become their members.

2.2.3 According to the information, the reason for filing the information is that Informant had acquired the entire exploitation rights for the film "Action Replayy" directed by Mr. Vipul A. Shah and produced by his proprietary concern "Block Buster Movie Entertainers" vide an agreement dated 14.06.2009 as amended by an agreement with the producer dated 05.05.2010. The Informant had engaged PVR Pictures Ltd. (hereinafter referred to as "PVR") as distributors for the theatrical exploitation of the said film vide an agreement dated 30.08.2010 for India and Nepal with certain agreed conditions. When PVR approached the

Opposite Parties for registration of the said film for exhibition in their respective territories, they denied the registration of the said film citing the reason that the said film belongs to Mr. Vipul A. Shah and unless and until the claims of their members are settled, the film would not be registered.

2.2.4 PVR Pictures Limited conveyed to the Informant that there were directives from the associations not to accept any film of Mr. Vipul A. Shah to be displayed or exhibited in their territories. The Informant also received a letter dated 21st October, 2010 wherein PVR very clearly and categorically stated to the Informant that the Associations had denied the distribution of the said film in their respective territories.

2.2.5 According to the Informant, the associations are acting in an arbitrary and malafide manner in order to boycott all films of Vipul A. Shah, with an effort to secure certain alleged monetary claims of some of their members in respect of the film "London Dreams" directed by Vipul A. Shah and produced by Head start Film Pvt. Ltd.

2.2.7 The Informant has further submitted that Telangana Telugu Film Distributors Association had also issued a circular dated 05.05.2010 to all its members, inter-alia calling upon them not to release the said film "Action Replayy" in its territory unless the claims of its member for the film "London Dreams" were settled. Further, Film Distributors Association, Kerala had also issued a similar circular to all its members on 13.08.2010 calling upon them not to distribute any films of Headstart Films Private Limited, Eros International, Mr. Vipul Shah and Raksha Entertainment Private Limited.

2.2.8 The Informant stated that the said Film "Action Replayy" was a totally new commercial product, distinct and separate from "London Dreams". It had in fact no concern with either Eros International Media Limited or Raksha Entertainment Pvt. Ltd. or Headstart Films Pvt. Ltd. and any claim by any distributor against any of these parties including Mr. Vipul A. Shah in respect of "London Dreams" could not have been allowed to reflect upon the commercial exploitation of the film "Action Replayy. The Informant has contended that the Opposite Parties named in the information, in order to coerce Mr. Vipul A. Shah, have started demanding the claims of their members against any and all the films with which Mr. Shah is associated, without even such claims of distributor members of the Opposite Parties being proved before any court of law.

2.2.9 According to the informant, the said associations have employed an ingenious methodology or device of directing all their distributor and exhibitor members, not to exhibit/ distribute any film related to Vipul A. Shah or other parties involved in the above so called dispute in any of the theatres without first settling the claims made by their distributor members.

2.2.10 Alleging that these associations are cartelised form of association of distributors , the Informant has stated that it has acquired the exploitation rights of the said Film "Action Replayy" for a sum of Rs. 60 crore and not even a single claim is made by any party against the Informant prior to or after the purchase of these rights on 14th June, 2009. However, since the said film is slated for release in theatres on 5th November 2010, the distributor members of the associations have suddenly become active and have started pressurizing the Informant by refusing to register its said film distributed through PVR and thereby not allowing their distributor/ exhibitor members to exhibit the said film without first settling the claims of their members in respect of the film "London Dreams".

2.2.11 The Informant has stated that the distributor members of the present associations instead of initiating any legal action either against Eros International, Headstart Films Pvt. Ltd., Raksha Entertainment Pvt. Ltd. or Mr. Vipul A. Shah, have filed their claims with the present associations who act as a cartel and dictate their terms without having any legal authority against the provisions of the Competition Act, 2002.

2.2.12 The Informant has further alleged that the associations are in a position of dominance, who by virtue of their position of strength are able to compel the distributors to become their members and be obliged to abide by their unfair and discriminatory restrictions. As per the Informant, the impugned action of the associations not to allow the registration of the film of the Informant in their respective territories is prohibited by Section 4(2)(a) of the Act. It has also been alleged by the Informant that the impugned action of the associations also amounts to denial of market access to the Informant which is prohibited under section 4 (2)(c) of the Act.

2.2.13 The Informant also filed an application for interim order to restrain the associations from imposing any restrictions in relation to release and exploitation of its film "Action Replayy" and also its other forthcoming films viz "Kuch Love Jaisa", "Darr, "Pyaar Ka U Turn" "Attack" and "Singhh is Kingg-2, until the inquiry is complete and until further orders is passed. In this regard, the Informant also brought out that earlier in case no. 52 of 2010 wherein information was filed by Eros International Media Limited, associations including Film Distributors

Association, Kerala were restrained by the Commission from imposing any restriction, direct and indirect, preventing distributors/ exhibitors in relation to exhibition of film "Anjaana Anjaani" in the State of Kerala. Therefore, similar orders may be passed in the instant case also.

Proceedings for interim relief and Prima-facie Orders of the Commission

3. After considering the information and having found that a prima facie case exists in the two cases, the Commission passed an order under section 26(1) directing DG to conduct investigation into the matter.

Prima facie and interim order in case no. 52 of 2010

3.1 In case no. 52 of 2010, the Commission passed order dated 22.09.2010 under section 26(1) of the Act, directing the DG to conduct an investigation in the case. The Commission after considering the information and allegations in the case also passed an interim order on 30.09.2010 restraining the CCCA and FDA from imposing restrictions, direct or indirect, to prevent any distributor/exhibitor in relation to exhibition of film "Anjaana Anjaani" to remain effective till 13.10.2010. Thereafter, after hearing the parties concerned, it was decided vide order dated 13.10.2010 that the restrain shall remain effective till further orders. On another application filed in respect of film "Game", interim order was passed on 31.03.2011 restraining CCCA from imposing restrictions, direct or indirect, to prevent any distributor/exhibitor in relation to exhibition of the said film in the territories operated by it .

Prima facie order and interim order in case no. 56 of 2010

3.2 In case no. 56 of 2010, order u/s 26(1) was passed on 03.11.2010, directing the DG to conduct an investigation in the case. The Commission after considering the information and allegations brought out by the Informant in this case also passed an interim order on 03.11.2010 restraining Motión Pictures Association, Northern India Motion Pictures Association, Central Circuit Cine Association, Telangana Telugu Film Distributors Association, Film Distributors Association, Kerala and Karnataka Film Chamber of Commerce from refusing to register the film "Action Replayy' on the grounds of past claims of some of their members against Vipul A. Shah till further orders.

4. Investigation by DG

4.1 The DG after receiving the orders under section 26(1) of the Act, conducted investigation into the case. The DG first submitted a common investigation report on 28.01.2011 in five cases, viz; case nos. 50, 52, 56, 58 and 69. Thereafter DG also conducted a supplementary investigation based on the orders of the Commission dated 24.02.2011 on certain issues and submitted separate reports of investigation in all these cases.

4.2 After examining replies received from the opposite parties and documents supplied by the information provider, DG has come to the conclusion that the relevant product market in the two cases is the business of cinematographic films distribution and exhibition. The relevant geographic market has been determined as territories under the control of respective associations. The relevant market, therefore, has been determined as business of cinematographic films distribution and exhibition in the territories of the said associations.

4.3 After examining the provision of Section 4 of the Act, DG has concluded that being a non-profit making organisation, KFCC & other associations are not enterprises within the meaning of section 2(h) of the Act and also do not constitute a group, within the meaning of section 4 read with section 5 of the Competition Act, 2002. Therefore, the activities of the opposite parties may not attract the provisions of section 4 of the Act. Based upon above, DG has concluded that no case can be made out against KFCC and other associations under Section 4 of the Act.

4.4 DG consequently examined the allegations against KFCC and other associations under the provisions of section 3 of the Act.

4.5 DG has reported that over a period of time these associations have become a kind of self appointed regulators of the distribution business. Although during the course of inquiry, all these associations maintained that their membership is voluntary, the investigation has shown that to carry out the business of film distribution in the territory of any association, it becomes essential for a distributor to take the membership otherwise he may not be able to do the business smoothly.

4.6 DG based upon his investigations has reported that all the said associations have restricted their members to deal with non-members. Although the associations claim that the membership is voluntary and restriction clauses are meant for the members only, it is almost impossible to carry out film distribution and exhibition business in their territory without becoming their members.

4.7 According to DG, in the Articles of Association of the associations, it is categorically mentioned that dealing with non-members may result in suspension.

As regards FDA, Kerala, it has been stated by DG that although the Memorandum and Article of Association of the association do not show any restriction on dealing with non-members, it imposes restrictions on its members to join a rival or other association.

4.8 DG has stated that a distributor or exhibitor who does not opt for the membership is not allowed to do business with the members of the associations. These associations boycott or blacklist the exhibitor or distributor who deals with a non-member. In view of these, it becomes mandatory for every distributor and exhibitor to take the membership of these associations. While concluding so, DG has relied upon the statements of Shri Vinod K. Lamba, General Secretary, MPA, Shri Nand Kishore Jalani, Joint Secretary, CCCA, Shri Dharampal Arora of NIMPA, Shri Arun Mehra of M/s. Aum Moviez, replies and submissions of Mr. Rajiv Khanna, an owner of a Film Theatre of Rewa (Madhya Pradesh) and FICCI-Multiplex Association of India.

4.9 DG has also submitted that all these associations (except FDA Kerala) have also framed various rules for registration of films. Any producer or distributor desiring to do business in the respective territory under the control of these associations has to get his film registered and also abide by the rules and regulations framed for this purpose. It is practically impossible to release a film without following the registration clause of these associations. A producer/distributor has also to get registered his film with each association separately.

4.10 DG has drawn his aforesaid conclusions based upon examination of various parties during the course of investigation viz; Shri Nand Kishore Jalani, Joint Secretary, CCCA, Shri Vinod K. Lamba, General Secretary, Motion Picture

Association (MPA), Shri Dharampal Arora of NIMPA, Arun Mehra of Aum Moviez (a distributor in the territories of Bihar, Jharkhand, Assam, Orissa, West Bengal and Rajasthan), Shri Deepak Sharma, Chief Operating Officer, PVR Pictures Ltd. and Shri Gaurav Verma, Vice President, UTV Software Communications Ltd.

4.11 DG has reported that for the purpose of registration the producers and distributors have to fill a prescribed proforma also called as "Acquiring form". It is necessary to fill this form by the producers and distributors before release of every film in each territory, mentioning the details of film, agreeing for certain conditions or declarations. DG has also reported that the associations (except FDA Kerala) are imposing restrictions of time limit for broadcasting/releasing a film on satellite/television/ cable/radio etc. on the producers. These restrictions are invoked by way of taking declarations through the registration form or the acquiring form. The informant producers have alleged that if they don't abide by the conditions laid down in the registration form, the opposite parties refuse to register the film which affects the film distribution business.

4.12 DG has reported that the restrictions in respect of the Satellite/TV/Video release of films are imposed on the basis of a joint agreement of the associations of distributors and producers. One of such agreements was entered on 10.06.1994 between Film Distributors' Council (an apex body of All India Film Distributors including Motion Pictures Association, Delhi; Northern Motion Pictures Association, Jalandhar; IMPDA, Mumbai; CCCA, Bhusawal; BJMPA, Patna and Eastern India Motion Pictures Association, Kolkata) and Film Makers' Combine (an apex body of film producers). This agreement was entered into with an objective of regulating and fixing the time period of film exhibition through video cassette, cable TV. The representative of CCCA also cited another agreement dated 21.06.2000 between the apex body of Distributors' Association and Producers' Association on the issue.

4.13 DG has also reported that during the course of investigation it has been accepted by all the concerned parties that the shelf life of films has been drastically reduced. Therefore, now-a-days, producers and distributors agree for a time gap of three months after the first theatrical release for satellite broadcasting. If producers do not violate this time gap, the distributors do not have any grievance.

4.14 According to DG, it has been found in course of investigation that in none of the cases producers have breached the terms of agreement with distributors relating to satellite broadcast of films. The associations have provided a fixed time gap in their form for registration (time gap ranges from 6 months to 5 years) and do not accept the terms and conditions in the agreement between the producers and distributors. Since all the producers and distributors sign these registration forms to ensure the registration for smooth release of their films, these associations take action if the time gap as per their registration form is not honoured by the producers. It was also found during the course of investigation by DG that the distributors have issued letters to the producers clarifying that the declaration made in the registration form was only to get the film registered with the association. They don't have any objection if the film is released on satellite as per the terms of agreements.

4.15 However, based upon statements of various producers, distributors and exhibitors recorded in course of investigation on the issue, DG has found that actually restrictions relating to satellite television/cable television/video release are imposed by the associations (except for FDA Kerala) which is beyond the defined activities of the associations.

4.16 DG has reported that some of the associations are even imposing penalties on the producers and also issuing circulars among all the members mentioning not to deal with the defaulting producers. MPA and CCCA have issued caution circulars and letters to producers regarding premature telecast of the film asking to deposit the claims in this regard, otherwise the registration of forthcoming film will not be eligible. DG has also reported that the action taken by these associations are suo - motu and not on the basis of complaint from the distributor who may be the affected party.

4.17 DG has also noted during the course of inquiry that the associations also issue letters to producers mentioning that their films will be registered or bans and penalties will be imposed in case their directions or byelaws are violated. In the case no. 52, letters were issued against the informant by all the opposite parties to settle the outstanding payment of their members otherwise the forthcoming films of the informant would not have been registered or released in their territories. For instance, Motion Picture association issued interim circular dated 13.03.2010, in which members were cautioned to refrain from dealing with the certain producers.

4.18 As regards caution letter issued by MPA to their members forbidding to deal with all the parties relating to film "London Dreams", DG has noted from the replies of the association that a complaint from Kapur Films was received and on receipt of the same the complaint was lodged with MPA as per rules. Notices were issued to all the parties and the claim was made applicable against M/s

Headstart Films Pvt. Ltd. (The Producer), M/s Raksha Entertainment Pvt. Ltd. (The Master Distributor), Shri Vipul Amrutlal Shah (The Confirming Party). Subsequently M/s Kapur Films, Delhi informed the Association that M/s Eros International Media Limited was also involved. Legal opinion was sought and the name of M/s Eros International Media Limited was included. However, neither any decision was enforced nor any decision was taken against M/s Eros International Media Limited. Thereafter, the matter came up before the Commission.

4.19 DG has brought out that CCCA is also engaged in practice of issuing caution letters. For instance, caution letter was issued by the association against film 'Anjaana Anjaani of M/s Eros International Media Ltd. on 18.09.2010 by which the member exhibitors were directed not to enter into contract or release the film until and unless the film was registered with CCCA. It has also issued confidential letter to members dated 18.09.2010 not to deal with said film otherwise a penalty of Rs.1,00,000/- shall be imposed on the defaulting member. Similar letters were also issued by CCCA against the film 'Action Replayy' , subject matter in case no. 56. According to DG, CCCA has also been found issuing caution letters against producers for the claim on account of premature telecast of films on satellite television. The producers are directed to settle the claim otherwise no forthcoming picture shall be eligible for registration.

4.20 According to DG, NIMPA has also issued letters to the informant in case no. 56 to settle the claim of its members. It has also issued letters to the producers of film 'Action Replayy' threatening them to settle the claim otherwise the film may not be registered. Direct evidences of non-cooperation by FDA has also been found in the form of circular dated 13.08.2010 against the informant in case no. 56 directing its members to not deal with the Informant and other persons.

4.21 As regards infringement of various provisions of the Act, after considering the replies and evidences produced during the course of investigation, DG has reported that the following rules & regulation and activities of MPA tantamount to the infringement of the provision of section 3 of the Competition Act:

(i) Para 13(vii) & (x) of the Articles of Association of MPA which prohibits dealing with non-members.

(ii) Rules 16(i) of Articles of Association which says that no member of the Association shall distribute/supply and/or screen any picture unless it is registered with the Association. No picture shall be obtained/ supplied by the members from/to a non-member. The restriction under these articles shall apply to all films in Hindi/Urdu/Punjabi/Bhojpuri/Haryanvi/Brijbhasha/Awadhi.

(iii) Rule 42 of the Articles of Association which give power to take action against such members, who are involved in violation of the rules of MPA.

(iv) Issuing interim circular among the members like letter dated 13.03.2010 to refrain from dealing with the certain Producers.

(v) Imposing conditions and terms on screening of a film on satellite/DTH not before six months from the date of premier release in the country.

(vi) Imposing conditions on selling video/CD rights not before two weeks from the theatrical release of the film in the country.

(vii) Imposing a time limit of 10 years for agreement between producer and distributor.

(viii) Reserving the rights for arbitration between producer and distributor.

(ix) Pressurizing the producers/distributors of film for payment to the member distributor by refusing to register the film.

4.22 As regards CCCA, DG has found that the following rules & regulations and activities of CCCA tantamount to the infringement of the provision of section 3 of the Act:

i) Para 4(a) and 15(c) of the Articles of Association of CCCA which prohibits dealing with non-members.

ii) Rule 4 of the Rules for Registration of a Picture which states that all Motion Pictures in Hindi, English, Bhojuri, Rajasthani, Punjabi, Haryanvi, Sindhi, Gujarati, Chhattisgarhi, Malvi and Urdu Languages and Dubbed Version in such other languages as may be decided by the Committee from time to time, shall be compulsorily registerable unless an exemption is granted by the Committee in that behalf.

iii) Rule 5(a) of the Rules for Registration of a Picture which provides that no distributor, sub distributor or exhibitor member shall enter into an agreement for exhibition or distribution or/and exhibit a picture, with any party unless the picture is registered with the association in favour of the party contracting or supplying the picture, for the purpose of exhibition or distribution.

iv) Issuing caution letters against producers for the claim on account of premature telecast of films on satellite television. The producers are directed to settle the claim otherwise no forthcoming picture shall be eligible for registration.

v) Issuing caution letter against picture 'Anjaana Anjaani of M/s Eros International Media Ltd. on 18.09.2010.

vi) Issuing confidential letter for members only like letter dated 18.09.2010 to not deal with film Anjana Anjani otherwise a penalty of Rs.1,00,000/- shall be imposed on the defaulting member.

vii) Issuing confidential letter for members only like letter dated 15.10.2010 regarding dealing with the producer of 'Action Replayy'.

viii) Imposing terms and conditions on screening of a film on satellite/DTH not before one year from the date of premier release in the country.

ix) Imposing conditions on selling video/CD rights not before six months from the theatrical release of the film in the country.

x) Pressurizing the producers/distributors for payment to the member distributors by refusing to register the film.

4.23 On considering the replies and evidences produced during the course of investigation, DG has reported that the following rules & regulations and activities of NIMPA tantamount to the infringement of the provision of section 3 of the Competition Act:

i) Provisions mentioned in rule 16(a) of Regulations imposing restriction on its members on dealing with non-members.

ii) As per the provisions of rule 22 members are prohibited to release/screen/book the picture unless it is registered.

iii) As per the registration form it is mandatory to undertake that the film cannot be released on satellite/television before expiry of one year.

iv) Similarly, it imposes restrictions on selling video/CD rights before two weeks from the theatrical release of the film in the country.

v) It further imposes restrictions on selling and/or disposing of TV rights of the film for release in India and Nepal before six month from the premier theatrical release of the Film in India.

vi) Issuing letter to Eros International Media Ltd. to settle the dispute.

vii) Refusing to register the film 'Action Replayy' and pressurizing the producer/distributor to settle the outstanding claim.

4.24 During the course of investigation following activities and restriction of FDA, Kerala have been found by DG in contravention of the Act.

i) Issuing circular against the informant party dated 13.08.2010 directing its members to not deal with the Informant and other persons. Above mentioned circular caused adverse effect on two Films due for release of film "Anjana Anjani" produced by Eros International(the Informant in this case) and "Action Replayy" directed by Vipul Shah and Produced by Sunshine Pictures(Informant in case no.56/2010). The action of FDA restricted the distribution of films in its territory.

ii) Restricting the film distribution business by invoking non-cooperation call against the informant party.

iii) Restricting its members to join other association of film distributors and restricting the members of other similar associations to join FDA.

iv) Using methods like threats and ban on Producers to settle the disputes of members.

v) Imposing penalties on producers. As per minutes of FDA a penalty of Rs.2 lac was imposed on Reliance Big Pictures for disobeying the decision of FDA related to Ravana film.

4.25 As regards Telangana Telugu Film Distributors' Association (TTFDA), DG has found that it was refusing to allow the release of film 'Action Replay' in their territory unless outstanding payment was settled. This conduct of TTFDA, according to DG, is in contravention of the provision of Competition Act.

4.26 As regards KFCC, like in case nos. 25, 41, 45 , 47 and 48, DG has brought out following acts and conduct to be anti-competitive

i) Prohibiting its members to deal with non-members.

ii) Enforcing the provision of mandatory registration of each film in its territory.

iii) Enforcing the restrictions on the number of cinema halls for non-Kannada film.

iv) Enforcing restriction on number of multiplexes for a non-Kannada film.

v) Enforcing restriction of 5 maximum shows daily of all non-Kannada films

vi) Not allowing dubbing in Kannada language of other language movies.

vii) Imposing ban/boycott against the producers, distributors and exhibitors

viii) Issuing letters to the theatres to withhold the share amounts of the producers/distributors.

4.27 DG has concluded his findings by stating that the intent of members of association is to collectively keep watch, inform each other of the developments of the market conditions and take decisions accordingly. Further, the conduct of opposite parties shows that they are exercising their authority to regulate entries and exits and also has the power to impose heavy penalties for re-admission of the members. Thus, realizing that the association has the authority to boycott and penalize, members obey the directions and orders of the association. The activities and bylaws of the opposite parties have the elements of potential competitive harms which may restrict freedom of trade in the market. According to DG, when seen under the conditions of Section 19(3) of the Competition Act, 2002, these conditions/clauses do not bring any efficiency or any other possible defence for keeping such conditions/clauses in rules and regulations.

4.28 According to DG, following activities of associations have been found to be in contravention of provision of section 3(1) 3(3) and 3(4) of the Act.:

i) Dealing with non-members is prohibited by these Associations. These provisions create a situation which leads to refusal to deal as per the provisions of section 3(4) of the Act.
ii) Provisions relating to compulsory registration which hampers the release of film resulting in tremendous pressure on the producers. Therefore, producers are compelled to get their films registered in each territory.
iii) By issuing circular/information among the members to boycott a distributorthereby pressurize him to accept the directions and orders of these Associations.
iv) Entering into joint agreement with other associations to control the film distribution business in India. Their conduct indicates concerted action to restrict the market and impede the competition by controlling the market.

5. Having considered the report of DG, the Commission forwarded it to the parties for submissions of their replies/objections. The replies received by various parties on various dates in both the cases are as under;

Reply of CCCA

5.1 CCCA has submitted in its replies that the information is not maintainable under the Competition Act, 2002. Director General has acknowledged that the activities of a Trade Association have various functions and their activities are subject to 'rule of reason' analysis and is not condemned per se.

5.2 Rule of reason enunciated by the Hon'ble Supreme Court of India 1979) 2 SCC 529, Mahindra & Mahindra Ltd. Vs. Union of India, inter-alia, states that "It will thus be seen that the 'rule of reason' normally requires an ascertainment of the facts or features peculiar to the particular business; its condition before and after the restraint was imposed; the nature of the restraint and its effect, actual or probable; the history of the restraint and the evil believed to exist, the reason for adopting the particular restraint and the purpose or end sought to be attained and it is only on a consideration of these factors that it can be decided whether a particular act, contract or agreement, imposing the restraint is unduly restrictive of competition so as to constitute 'restraint of trade'. Furthermore the Supreme Court of India in (1977) 2 SCC 55 TELCO vs. Registrar of Restrictive Trade Agreements has also held that the question of competition cannot be considered in vacuo or in a doctrinaire spirit. The concept of competition is to be understood in a commercial sense.

5.3 According to the association, in the present case, the theoretical assumption that Trade Association "remains vulnerable to stepping beyond limit" is based on misconception, conjectures and surmises as well as erroneous inferences of facts.

5.4 According to CCCA, any effort to weaken or dilute its role of 'neutral umpire' would result in chaos, defaults and unfair trade practices and will unleash unhealthy competition, in particular in cases of the defaults in payments and copyright violation through multiple sales of same movie by the producers who are generally operating from far off places like Mumbai, while the distributors and exhibitors are operating in far flung areas.

5.5. It has been submitted that there is not even an allegation that it has played any role in inflating or deflating the price for distribution and exhibition of movies in favour of or against any of its members. The fact remains that except regulatory function, it has no role in transactions with members for distribution or exhibition of films.

5.6 The report of DG has ignored several facts of vital bearing on the issues. It has been ignored that there are various distributors and exhibitors who are not the members, yet they are operating in the areas under the control of these associations. The conclusion drawn by DG ignores the fact that access to membership of the association is unlimited without any restriction. There is not even any allegation that any new person without any past record of default is denied membership as a distributor or exhibitor.

5.7 It has been also submitted that no non-defaulting member or even a non-defaulting non-member has ever raised any grievance against it regarding access and/or continuance of membership. Restriction regarding dealing with non-member is only to enforce discipline and money claims arising out of agreement made between producer and distributor of the movies that are released. Such a discipline is not possible, if members dealing with the distribution rights and exhibitor are free to deal with anybody in any manner without any accountability to adverse consequences in course of business.

5.8 It sounds anomalous to suggest that defaulter may carry on business despite the admitted default and the victim distributor should only go for litigation, howsoever time consuming and uncertain it may be. This again would distort the competition, if the members are left to fend for themselves without any collective action. There is no reason to lend any helping hand to defaulters so as to provide free access to market, to the peril of unsuspecting new distributor. Such a situation would again distort the competition or abuse the idea of free competition.

5.9 The conclusion of DG that if the distributor or exhibitor of the territory does not take the membership of CCCA, he is not allowed to deal with CCCA members, consequently the distributor or exhibitor has no choice but to become their member is based on three circulars dated 28.01.2011, 18.09.2010 and 15.10.2010. However, these three circulars cannot be read in isolation. These three circulars were issued as the distributor members of CCCA, Kasat Films and Marudhar Entertainment Pvt. Ltd. had got claim registered with CCCA against unrecouped advances of film "London Dreams", which was released on 30.10.2009, but flopped at the Box Office.

5.10 The movie 'London Dreams' was released by the producer M/s. Headstart Pvt. Ltd., Mumbai having directors namely Shri Paramjeet Singh Alhuwalia Mrs. Geeta Bhalla Singh, Vikram Rajani, Ms. Sundari Ramamurthi and Shri Bipin Chandra K. Talati, besides Vipul Amrutlal Shah, Mumbai and M/s. Raksha Entertainment Pvt. Ltd., Mumbai through director, Ramesh Sippy. The film flopped at the box office and the two distributor members of the replying association namely M/s. Kasat Films Amravati and M/s. Marudhar Entertainment

Pvt. Ltd., Jaipur got their claim of unrecouped advance for 'London Dreams' registered with Central Circuit Cine Association for a sum of Rs.39,04,704/- and Rs.66,63,705/- respectively. M/s Headstart Films Pvt. Ltd., Mumbai and Vipul Amrutlal Shah were the confirming parties to the agreement executed with the distributors - Kasat Films and Marudha' Entertainment Pvt. Ltd. Raksha Entertainment Pvt. Ltd. also had informed the association laying complete liability on Vipul Shah as a confirming party to liquidate the unrecouped advance of Marudhar Entertainment Pvt. Ltd. and Kasat Films.

5.11 It has also been stated that in M/s. Headstart Films Pvt. Ltd., 51% shares have been bought by M/s. Eros Groups particularly by Eros Worldwide FZ LLC vide an agreement dated 01.07.2008 and out of the aforesaid five directors of M/s. Headstart Films Pvt. Ltd., three namely Vikram Rajni, Ms. Sundari Ramamurthi and Shri Bipin Chandra K. Talati were nominated by M/s. Eros Worldwide FZ LLC. Thus, Eros and Vipul Shah besides other parties were collectively responsible to make good any unrecouped advance of the distributors.

5.12 Neither M/s Eros International Media Ltd. nor Vipul Shah was saying that Kasat and Marudhar are not entitled for recovery of their claims. The dispute between M/s Eros International Media Ltd. and Vipul Amrutlal Shah, was, however, who was liable out of two for making the payments. The distributors were looking forward for recovery of their dues as and when both M/s Eros International Media Ltd. and Vipul Amrutlal Shah brought next movie viz. 'Anjana Anjaani' and 'Action Replay' respectively. In backdrop of these facts, it had also issued circulars dt. 26.03.2010 and 13.04.2010 making Eros International Media Ltd., which has voluntarily taken up the membership of the CCCA as a distributor on 16.01.2009, liable to pay the members of CCCA as it was going to release "Anjaana Anjaani". The Circular dated 15.10.2010 was further issued against the film "Action Replay" whose producer was Vipul Amrutlal Shah for recovery of goods.

5.13 In its replies, CCCA has also submitted that Shri Shah and M/s Eros International Media Ltd. who were going to release the respective movies, were asked to appear before the Joint Tribunal of CCCA/FMC, Mumbai. While the matter was pending before the Joint Tribunal of FMC and CCCA, which was to be adjudicated, M/s Eros was ill advised to knock at the doors of the Commission, rather than defending the case before the Joint Tribunal of CCCA and FMC, Mumbai. Eros International Media Ltd. filed information No. 52/2010 on 15.09.2010 and denied its liability to make good the claims against the film "London Dreams" of M/s. Headstart Films Pvt. Ltd., after the proceedings were initiated before the Joint Tribunal of CCCA and FMC. However, later on M/s Sunshine Pictures Pvt. Ltd. through its Director Shri Vipul Amrutlal Shah paid 50% of liability and compromised the outstanding dues of M/s. Kasat Films and M/s Marudhar Entertainment Pvt. Ltd. and undertook to further pay balance 50% liability at the time of registration of his forthcoming film "Force" and " Namastey London Part-II" but not later than 31.08.2012.

5.14 According to CCCA, the informant in case No. 56/2010 has honoured the financial commitment. The agreement of 07.05.2011 arrived at between Vipul Shah of M/s Sunshine Pvt. Ltd. (of case no. 56/2010) and his creditors Marudhar and Kasat distributors is already on record as part of the affidavit dated 25.05.2011 filed against the information No. 52/2010 &56/2010. In view of compromise by Shri Vipul Shah, director of M/s. Sunshine Pictures Pvt.Ltd. and informant in case no 56/2010, subsequently all the films of M/s Eros International Media Pvt. Ltd., in the pipeline applied for registration with CCCA were registered. The aforesaid developments show how without any litigation the claims of parties are being adjudicated peacefully.

5.15 The background of issuing the circulars dated 18.09.2010 and 15.10.2010 were never enquired by the DG from Shri Nand Kishore Jalani, Jt. Secretary of CCCA, Amitabh Lodha of Marudhar Entertainment Pvt. Ltd. and Sachit Jain of Sanman Exhibitors Pvt. Limited, otherwise they would have given the entire details.

5.16 According to CCCA, the members depend upon its good office as Domestic Tribunal and do not to go the court of law. A simple and effective mechanism adopted by the collective wisdom of all members not to deal with a defaulter cannot be termed as anti-competitive. To suggest that victim of default must further be subjected to delay and torture of normal litigation process, while defaulters be permitted to enjoy impunity, is preposterous. The alleged boycott or blacklisting is temporary to ensure recovery of dues and not to eliminate any member from the business.

5.17 As regards the issue of registration of films it has been submitted that the requirement to register a film is essential to protest the rights and obligations under Copyright Act, 1957 of member distributors and as such inquiry in this allegation would not be permitted by Section 3(5) (i) (a), of the Competition Act, 2002.

5.18 A defaulter or a person who does not wish to honour financial commitment or wishes to indulge in multiple sale or try to sell another movie despite existing default in an earlier movie would not understand the benefit of registration process, whereas the distributors and exhibitors who are worst affected by malpractices on the part of producers making multiple sales or defaults would be left high and dry because the basic information regarding agreement already taken place for distribution of a given film would not be available.

5.19 The association has argued that the regulatory measures about registration, dealing with members only and in-house settlement of claims is only a mechanism for self regulation to protect Copyright against multiple sales and ensure realization of claims which cannot be termed anti-competitive and is protected by Section3 (5)(i)(a) of the Competition Act, 2002.

5.20 For a product like a new movie with short shelf like, potential confusion of rival claims and litigation would only distort the competition whereas the requirement of registration only facilitate healthy competition, without any chance of malpractices of multiple sale and defaults.

5.21 The association has submitted that registration is declined when the producer seeking registration of a new movie is already a defaulter in order to ensure that a defaulter must not have free access to all other distributors, who may not even know of previous track record of defaulter due to lack of registration. Thus, no adverse effect is caused on competition by the requirement of registration.

5.22 The need for compulsory registration of a film and a circular not to deal with a film which is not registered cannot per-se be said to be anti-competitive. The Form 3A of CCCA which is made under Rule 10 of the Rules of Registration of a Picture, only discloses, the name of movie, Director, nature of agreement for consideration namely MG Royalty/Advance/Commission or outright sale, as the case may be. The form makes it incumbent for the producer to detail the sum taken by him from the distributor and if any un-recouped advance is to be refunded, that should be specified. By way of this form the producer gives an undertaking that the producer will not release the film on satellite channels in terms of mutual agreement dated 19.06.2000 of the apex body of producers and distributors, i.e. AIFPC (All India Film Producers Council) and CCCA.

5.23 Since the producer as per Form 3A above has already given an undertaking to CCCA that the producer will not make any arrangement contrary to the agreement dated 19.06.2000 and terms of Form of 3A, therefore the secretariat of CCCA assumes that no distributor member or producer has agreed to any term contrary to the agreement dated 19.06.2000 and therefore, invokes the clause of recovery of 50% revenue generated, on premature release of the film on satellite channels. So long as the agreement dated 19.06.2000 is a valid agreement, the CCCA or any member of the Executive Committee cannot be held guilty of any anti-competitive agreement.

5.24 According to CCCA, restrictions on satellite rights have been imposed upon every producer in view of the agreement between the Apex bodies – All India Film Producers Council (AIFPA) and CCCA in view of the specific problem of audience getting diluted because of release on Satellite / Television and Cable broadcasting simultaneously with theatrical release. There is now a growing perception that restriction on satellite rights may be reduced to 4 months or so. However, the matter has to be left to the apex body of film producers namely AIFPC and Apex body of film distributors namely Film Distribution Council (FDC) and other affiliated Associations. In absence of overall agreement, the association is duty bound to enforce restriction against Satellite, Television and cable broadcasting of film to protect interests of distributors. If according to the informant the shelf life of a film is to be reduced to few weeks or few months, the apex bodies of producers and distributors may be directed to sit together and resolve the dispute. However, so long as the agreement dated 19.06.2000 is not scrapped by both the apex bodies; it continues to remain in force and binding on its respective members of AIFPC and CCCA.

5.25 The association has also submitted that it has no say in determination of price of release for a new movie or revenue sharing between producer and distributor and thus its activity cannot be termed as anti-competitive.

5.26 According to CCCA , Article 4 (a) of the Articles of Association is justified and not anti-competitive as has been made out by DG since the jurisdiction of Domestic Arbitration Tribunal under the Rules and Regulations only extend to discipline the members inter-se. An award is made by the "Dues Recovery sub-Committee"/ Disputes Settlement Board/Joint Tribunal in accordance with "Arbitration Rules of CCCA and Rules for settlement of Disputes and claims between Distributor Members of CCCA and Producers of Motion Pictures" which are made in consonance with the provisions of the Arbitration and Conciliation Act, 1996. Accordingly the awards made by these Tribunals or Boards can be tested for their validity by the Civil Courts as any other Arbitration award is challengeable in any Civil Court, which acts as check and balance, against any arbitrary action, if any, taken by the CCCA. Even the rules for adjudication of claims by or against the member are subject to Arbitration and Conciliation Act, 1996 and all awards made by the concerned Committees are subject to scrutiny by the Civil Courts. A large numbers of inter se claims of members are settled effectively and fairly which has resulted into the association becoming very popular and widely accepted as its track record inspires faith in fairness. It would be erroneous in law and facts to confuse popularity with dominant position much less any abuse of alleged dominant position.

5.27 According to CCCA, associations like it have stood the test of time and have been changing the Articles of Association and Memorandum of Articles, besides the rules and regulations, to meet the fallout from silent cinema to advanced digital and satellite technology of exhibition and distribution of film. No distributor is put to any financial loss due to any rule and regulation of CCCA. However, the members, if want to avail, of the advantages of the association, have to abide by the rules and regulations which are certainly not anti-competitive. Since its inception nearly about thousand of disputes between the members have been successfully resolved to avoid litigation and as a matter of fact, the present informants are only trying to gain time by approaching the Commission to meet undisputed financial commitments and liabilities.

Reply of NIMPA

5.28 NIMPA in its replies has submitted that being a Trade Association the persons who are in the business of film distribution and exhibitions are entitled to become its members, should such distributors or exhibitors opt to become the members of the association. The rules and regulations are being followed which have been framed in consonance and due approval at the instance of the distributors and exhibitors members itself, and the association per-se is following such rules & regulations in letter and spirit. All these rules and regulations and the Memorandum and Article of Association of the associations as well as the rules and regulations of the producer association for constituting a joint tribunal in the event of any dispute between the distributors and producers clearly shows that for the purpose of enforcement of respective rules, there is a clear transparency in the trade which is otherwise required so as to ensure the smooth running of the entire film trade and also to ensure that no producer or distributor is able to either withhold or not pay the money of each other.

5.29 Such rules have been formed so that the disputes can be resolved amongst themselves without taking recourse to the Court and, thus, no grievance in regard thereto can be raised by the person concerned with the said trade who are the members of the appellants associations.

5.30 NIMPA as an association is a domestic tribunal by virtue of which it has a right to adjudicate upon the rights of or disputes between their members and non-members who submit to its jurisdiction. It is well settled legal proposition that the jurisdiction of a domestic tribunal like that of NIMPA is founded on the contract of its members, express or implied. The Memorandum of Association, the Article of Association, Picture Registration Rules and such other rules and regulations laid down by NIMPA subscribed to by its members constitute the contract between the members inter se vis-a-vis NIMPA and create the jurisdiction of the Joint Tribunals and other self-regulatory adjudication machinery which decides on the disputes between members and others involved in the transactions. The facility of arbitration offered by the NIMPA is comparatively less expensive and expeditious than litigation of disputes in Courts which prolong for years. The awards given by the arbitration machinery of NIMPA or other Tribunals set up voluntarily by the NIMPA in collaboration with other association in the industry, are generally upheld by the Courts who are normally not inclined to interfere with the decisions of such Tribunals, unless there is prima facie evidence of mala-fide and those who make such allegations are not able to prove the same before the Courts, or that the principles of natural justice have been violated.

5.31 According to NIMPA, various rules framed in consonance with its Memorandum and Article of Association are meant for and are binding only on its constituent members. That there are numbers of film distributors or film exhibitors who are not members of the association but are still functioning which clearly establish that the membership of the association is voluntary. The association would not involve itself in the business affairs of such persons or business entities that are not the members of the association nor would ordinarily let use the platform of association in their business matters or problems.

5.32 Being non-profit entities, the associations are not covered within the meaning of enterprise u/s 2(h) of the Act and may not be a group within the meaning of section 4 read with section 5 of the Competition Act, 2002. Therefore, there is no issue of contravention of section 4 on its part.

5.33 It has also been submitted that membership rules of NIMPA are concerned with the membership, while acquiring rules are concerned with the acquisition of any cinematograph films for the purpose of film distribution and exhibition in the territory of East Punjab as known in the film trade.

5.34 Any film cannot be released or exhibited in the territory of East Punjab without registration with NIMPA. Everybody who is in film trade has full faith upon the said association and it is only because of the its fair and reasonable rules, that every distributor/member of the association feels free to deal with any producer without any apprehension in his mind that in the event of any of the amount so advanced to the producer is not recouped from the distributor of the picture, the same would be paid to him before release of its second venture.

5.36 According to NIMPA, as per the rules and regulations, no picture can be allowed to be registered unless and until the claim which has been circulated against the producer is duly paid off. As regards the facts in the information, it has been stated that M/s Headstart Films Pvt. Ltd., M/s Raksha Entertainment Pvt. Ltd., M/s Knock Associates, one of its member and Shri Vipul A.Shah who is the producer of the film "Action Replayy" and was also producer of "London Dreams" entered into agreement and it was agreed to grant distribution rights to film 'London Dreams' to M/s Knock Associations on the terms and conditions incorporated thereunder.

5.37 As per the agreement, M/s Knock Associates had paid a sum of Rs.1,85,00,000/- to the supplier of the said film. It was also agreed and undertaken by M/s Headstart Films Pvt. Ltd. and M/s Raksha Entertainment Pvt. Ltd. that in case M/s Knock Associates were not able to recover their entire amount so advanced within a period of 90 days, the balance un-recouped advance amount would be refunded to them. On 23rd October, 2009 it was also agreed and undertaken by Vipul A. Shah that in the event of the said film does not do well in the territory and distributor (M/s Knock Associates) does not recoup the entire amount of the said refundable amount within the agreed period of 90 days from the date of release of film, it shall be liable to refund the unrecouped advance.

5.38 On 26th October, 2009 it was categorically agreed and undertaken by Vipul A. Shah and Paramjit Singh of Mumbai that they shall alone be liable to refund the unrecouped advance to the respective distributor including M/s Knock Associates and M/s Headstart Films Pvt. Ltd. and M/s Raksha Entertainment Pvt. Ltd. will not have any liability to refund the same as the aforesaid liability was taken over by them. Since the film "London Dreams" did not do well and could not recoup the advance amount paid by M/ s Knock Associates , therefore a sum of Rs. 1,06,78,916/- became due to be refunded to M/s Knock Associates. Shri Vipul Shah, the producer/guarantor as well as producer of the film "London Dreams" did not refund the amount of M/s Knock Associates despite repeated request and demands made in this regard. Since the money was not coming forward, M/s Knock Associates lodged its claim alongwith relevant documents with NIMPA.

5.39 It has further been submitted that there is close relation between the informant and the producer i.e. Vipul A. Shah. The informant company has been floated by Vipul Shah and has acquired the master distribution rights from him. The picture in question is not being registered in favour of the informant/distributor because of the fact that a claim has been duty registered against Vipul Shah. Therefore, the Informant without making the producer Vipul Shah as a party has chosen to file the present information so as to conceal the relevant information in the matter.

5.40 According to NIMPA, the film "Action Replayy" produced by Shri Vipul Shah is subject to clearance of various claims registered against the said producer with associations and unless those claims are duly settled, the films in question could not have been released. It is only in order to circumvent the liability and to avoid the lawful liability the informant has been put in forefront to file information in the present matter.

Reply OF FDA , Kerala

5.41 FDA , Kerala has submitted that the conclusion arrived at by the DG are patently erroneous and contrary to the provisions in the Competition Act. The report of the DG is based on surmises and conjectures and without applying the provisions of the Competition Act in its true perspective. The association has not done any act in violation of Sec.3(1), 3(3)(b) and 3(4) of the Competition Act as reported by the DG.

5.42 The conclusions reported by DG are contradictory. There is no proof that FDA impose restriction clauses in its Articles of Association for preventing its Members from dealing with members of other Association. In the bye-laws of FDA there is no prohibition against a member entering into a transaction with a non-member. There is no compulsory registration in case of FDA and it does not force terms and conditions of the business of film distribution.

5.43 The role of the FDA in this regard is to bargain collectively with the producers or exhibitors in respect of the film distribution rates and such an activity cannot in any way be termed as anti-competitive. FDA's role in the case of disputes between the member of the FDA or the producer or exhibitor is that of a mediator. In case the producer of a film does not pay the amount due from him to a member distributor, FDA would initially request the producer to settle the claim of the member distributor before release of his next picture and if the producer fails to make the payment, the members of FDA may not decide to co-operate with the films of the such defaulter producer and such an activity can never be said to be an anti-competitive activity.

5.44 If such an act is to be treated as offending section 3 of the Competition Act it would certainly enable a producer defaulter to go on producing and releasing films without paying the amounts due from him to the member distributor of the FDA. In the case no.52 also, the informant defaulted payment of the amount due to the member distributor of FDA and despite the request made by the FDA to settle the dues, the informant neglected to settle the matter and lodged a false complaint before the Commission. In fact this is a case where the informant should be ordered to pay exemplary costs to the FDA for making false information.

5.45 FDA has denied that it has ever entered into any agreement with another association for controlling film distribution. The conclusion arrived at by DG on the basis of minutes of the FDA dated 12.08.2010 is quite unwarranted in the facts and circumstances of the case. DG's report with regard to minutes has been made on suo-motu verification of the records of the FDA in this regard. DG's attention was not drawn to the minutes by any of the parties. By arriving at conclusions against the FDA on the basis of the said minutes, DG has acted beyond his power since he was directed by the commission to enquire into whether the FDA has done any act contrary to section 3 of the competition Act on the basis of the information furnished by the informant.

5.46 The informants - Eros International Media Limited in case no. 52 and Sunshine Pictures Limited in case no. 56 had nothing to do with minutes of FDA. The grievance of the informants namely Eros International Media Limited and

Sunshine Pictures is that FDA's action with regard to the release of the film 'Anjaana Anjaani' and 'Action Replayy' is violative of section 3 of the Act and there has never been any demure from anyone with regard to the decision of FDA recorded in minutes.

5.47 According to the association, in the facts and circumstances of the case, the only question is whether the decision of the member of the FDA not to co-operate with the release of the films of Eros International Media Limited, Vipul A. Shah, Raksha Entertainments (P) Limited and Headstart Films (P) Limited, amounts to violation of Section 3 of the competition Act. In this regard, attention has been drawn by FDA towards the fact that an amount of Rs. 6,28,394/- was due from them to Jawahar Films, a member of the association, in connection with the release of the Film 'London Dreams' and since it was not paid despite demands made by FDA, a circular was issued. This act does not in any way contravene section 3 of the Competition Act. Further, members of the FDA have every right to take or not to take their films for distribution and the decision of the association not to co-operate with the release of the films of the said persons does not in any way contravene section 3 of the Competition Act. DG's report to the effect that the members of the FDA have no right to abstain from taking the film 'Anjaana Anjaani' for distribution is absolutely incorrect.

5.48 It is fundamental right of every person or the member of the FDA to take or not to take films for distribution and there is no provision in the Competition Act curtailing such a right. It cannot be said that FDA controls or limits or restricts market or any of its acts had or have adverse effect on competition. It is fundamental that nobody can be compelled to do business with a person who does not pay the amount due to the former. Any decision by the members of the FDA will not prevent a producer of a film to distribute or exhibit his film. It is on a misconception of section 3 of the Competition Act that the DG has submitted the report stating that FDA violated the said section. Report to the effect that FDA infringed the provisions of the Act by issuing circular against the informant party and restricting film distribution business by invoking non- cooperation against release of the films the informant is not at all correct. A member who does not pay heed to the decision of the FDA may invite disciplinary action against him as provided in the bye-law of the FDA. These actions or non- cooperation do not in any way adversely affect competition.

5.49 In the instant case it was on account of the unhealthy trade practice of the informant, M/s. Eros International Media Limited and other associates, affecting adversely the trade interest of a member of the FDA that the members of the FDA decided not to co-operate with the release of the aforementioned films till the amount due to the member of the FDA was settled. The decision of the FDA in this regard has subsequently resulted in the settlement of issues. Since the issues have already been settled the D.G ought to have reported the same before the Commission and the case so far as relates to the FDA deserves to be dropped forthwith.

Reply of Motion Picture Association

5.50 Motion Picture Association in its replies has submitted that Eros International Media Limited, Mumbai , informant in case no. 52 is a member of Motion Picture Association, Delhi since 2007 in the capacity of a distributor and by virtue of membership has voluntary agreed to abide by its Memorandum, Articles, Rules and Regulations. The informant took the membership way back in 2007 of its own volition and without any coercion or force and therefore it has no locus standi or cause to complain against it regarding its rules.

5.51 The allegations in the, information have been filed as producer and the informant has concealed that it has membership of MPA since 2007 and continuing to be so, and that it is bound by its rules and regulations. Having concealed the said vital facts, the informant is not entitled to any relief.

5.52 It has been brought out that the membership to the association is fully and completely voluntary and no coercion or force is exercised by Motion Pictures Association on any one to take its membership. Not only distributors and exhibitors but producers are also members of association and all those who take membership of MPA by virtue of this membership get the benefits that the association offers to them. There are a large number of distributors in Delhi, U.P. and Uttaranchal who are not its members, but are doing film business in Delhi, UP and Uttaranchal. The informant has been filed not by any of them but by the informant who is a member of MPA, Delhi. While on one hand informant wants to avail the benefits of membership of MPA, on the other hand it is complaining.

5.53 It is also not compulsory for every film distributor to register their films with the association. MPA is like a Domestic Arbitral Forum to settle the disputes amongst members and with others to avoid unnecessary litigation.

5.54 As per MPA, it is not profiteering and whole purpose and aim is to help members to avoid long litigations. MPA is not a trading body and is not involved in any transaction in business of production, distribution or exhibition of films. It is neither concerned with purchase or sale of goods or services nor is concerned with technical or scientific development relating to goods or services to the prejudice of consumers. It is concerned with dues recoverable and payable to its distributor members and such money disputes are completely outside the purview of sections 3 and 4 of the Competition Act, 2002.

5.55 Further, it is not in dominant position or abusing its position at all as it is not selling any film nor is it stopping any other persons in the Delhi, UP and Uttaranchal territory from distributing films. The association is concerned only with interest of its members and is not selling or providing any goods or services to general consumers. MPA is not doing individual business of its own and there is no dominance within the Act. Since it is a non-commercial organization, none of its acts can cause infringement of section 3 or 4 of the Act.

5.56 According to MPA, due to advent of video and television the Indian Film Industry had been in turmoil. There were huge losses especially in distribution/exhibition and even in production sectors. These losses, it was realized, were causing damages to the industry and if remedial measures were not taken, Indian Film Industry would suffer irreparably damages and even might not survive. There were uncertainties and ambiguities about rights, obligations and liabilities of producers on one side and the distributors on the other side, in respect of video, cable TV and television rights. After examining the causes and problems, an agreement dated 10.06.1994 was executed between the Film Distributor Council, an apex body of All India Distributors and the Film Maker's Combine, the apex body of Film Producer's Associations. The said agreement continues to be in operation and has been substantially successful in protecting the interest of Indian Film Industry, film producers, distributors and exhibitors. It has also succeeded in curtailing litigation and clearly defined the rights, obligations and liabilities of the film producers and the distributors. That after the agreement dated 10.06.1994 was entered into, features of the agreement were circulated by MPA vide circular dated 27.10.1994. The distribution rights of the films are entrusted to distributors for period of 10 years. Under the agreement dated 10.06.1994 both the producers and distributors agreed to give a gap of 5 years for showing the film through Satellite/ Television from the date of Theatrical release, so as to safeguard the rights of distributors and exhibitors with huge financial stake.

5.57 However, the film distributor/exhibitors have always been exploited and remained at the mercy of the film producers. They are always at the receiving end and have to bear brunt, of losses, whereas the producers recover their costs and book profit at the time of effecting delivery of prints to the distributors.

5.58 The benefits of MPA include adjudication of disputes by arbitration of Joint Tribunal which is instituted by producer and distributors. During production of films and even prior to production of film, the producers sell the distribution rights of the film for various territories to different distributors. The distribution rights of a territory for a film are sold for consideration to a distributor and to avoid multiple sales of the very same distribution right of the same film, for very same territory, every territory has an association of distributors like MPA is for Delhi, UP and Uttaranchal Circuit, and whenever distributors rights are acquired by a distributor, the said rights of the film are registered with the associations.

5.59 According to MPA, upon receiving application for registration of distribution right in the name of a particular distributor, it takes out a circular for its members that it has received application for registration of distribution rights of the film in the name of that distributor. The said circular invites objections if any from its members and if no objection is received against registration of distribution rights, then the rights are registered in the name of particular distributor and the registration of the same is circulated by the association to its members. Such act cannot and does not fall in anti-competitive or abuse of dominant position.

5.60 According to MPA, the Commission does not have jurisdiction in the matter since complaint against it does not fall under any provisions of Competition Act. The report of the D.G. has held that being a non-commercial organization, KFCC and other Associations may not be an enterprise within the meaning of section 2(h) and may also not be a group within the meaning of section 4 and 5 of the Act. Since it has not entered into agreement by itself and is acting within its Articles and Rules and Regulations it does not fall within the ambit of section 3. In any case the DG in his report has given a conclusion that the Articles of MPA do not fall within the Anti-Competitive Agreement.

5.61 MPA has also submitted that the matter brought out in the case between M/s. Kapur films, member of MPA and Mr Vipul A. Shah proprietor of Block Buster Movie Entertainers has already been settled and therefore the proceedings may be closed.

Reply of Karnataka Film Chamber of Commerce (KFCC)

5.62 KFCC in its replies has denied the facts regarding registration of film "Action Replayy", bringing out that it never made any communication with PVR Pictures regarding non-registration of film 'Action Replayy' at any point of time and in order to establish the same, copies of registration form and fee receipts dated 19.10.2010 were also submitted in course of proceedings.

5.63 KFCC has submitted that it is an association of films producers, theatre owners and distributors and a regulatory body so far as production, distribution and exhibition of films by its members in Karnataka are concerned. Registered under the Karnataka Societies Registration Act, it has about 5000 members. Unlike other States in South India, in the State of Karnataka, films of six languages namely Kannada, Hindi, English, Telugu, Tamil and Malayalam are exhibited. As such the films produced in Kannada language have to find their complete business only within the State and marginally in neighbouring states. As far as Hindi films are concerned, the total percentage of its business accounts to between 5-10% in Karnataka. Keeping these aspects in mind, Film Chamber of Commerce regulates the production, distribution and exhibition of films in Karnataka amongst its members.

5.64 According to KFCC, the Competition Act is in addition to and not in derogation of any other law for the time being in force. Right to form associations and regulation of such society is a well established legal right and same is not less than any of the fundamental rights conferred under part III of the Constitution of India. The Rights to form associations being a constitutional and legal right cannot be subservient to the provisions of the Competition Act. Equally the right to regulate the affairs and the inter se dealings of the members of such association is a valid, legal, contractual and fundamental right. If the report of the DG were to be accepted, it would tantamount to saying that there can be never be any Trade Association or Society.

5.65 It has been denied that it is compulsory for any film distributor or exhibitor in Karnataka to become a member of the association as alleged. Every distributor or Exhibitor of film is free to do whatsoever business a member of the association. Any finding of the DG contrary to the above position is contrary to the actual facts.

5.66 Film Industry in Karnataka is divided into three broad territories, namely (i) Mysore-Karnataka (ii) Bombay-Karnataka and (iii) Hyderabad-Karnataka. Generally speaking the regulation by the association is normally limited to regulating the activities of its members in the territory of Mysore-Karnataka. As admitted by the informants, the KFCC is a voluntary association and is not compulsory for any distributor or exhibitor to become a member of the KFCC in order to do business in any part of the Karnataka. However, under the Memorandum and Articles of Association of the KFCC, its members have decided amongst themselves that they will deal with only other members of KFCC. Each member who applies for membership of the KFCC does so voluntarily and out of his own free will and volition.

5.67 There can never be any requirement of law which would mandate that members of an association who agreed amongst themselves to deal only with each other must necessarily and by force of law deal with the persons whom they do not want to.

5.68 It has been denied by the association that any exhibitor/distributor is deprived of any right to do business. However any such person who is not a member of the KFCC cannot insist that every member of the KFCC who does not choose to deal with them must necessarily and by force of law deal with him. All such dealings are pure contractual between parties and no one person has any right to insist that another person must by law contract with him.

5.69 It has also been denied by KFCC that it enjoys any so called position of strength, as alleged. The finding of the DG that section 4 of the Act has no applicability whatsoever to the present case or to it is correct in law.

5.70 KFCC considers several aspects while deciding the number of theatres in which non-Kannada films can be exhibited by its exhibitor members. This decision is taken keeping in view the languages of the film, number of films produced and sought to be exhibited and the area of exhibition. Thus the KFCC has an onerous responsibility and a duty towards its members to balance the number of films sought to be exhibited in different languages, locality of exhibition etc.

5.71 According to KFCC, the information to the Commission is not maintainable since explanation to Sec. 4(2)(a) specifically deals with a situation which is akin to the present one and there is an express exemption to such conditions which may be adopted to meet the competition. KFCC has imposed restriction for exhibition of non-Kannada films to protect Kannada films. The endeavour of the KFCC is to allow local and Kannada films to prosper and compete in the market whilst facing huge Multinational Corporations with their deep pockets. The impugned action of the KFCC in fact is in furtherance of its endeavour to promote competition rather than allowing one big distributor to monopolize entry into the market. The aforesaid regulation of the KFCC is applicable to all its members and all films languages other than Kannada. If the contentions of the informant were to be accepted, it would amount to healthy competition being stifled.

Telangana Telugu Film Distributors Association

5.72 Although copies of DG reports were sent to the association, no reply has been received from the association.

6. Determination of Issues

6.1 Having gone through information, investigation reports of DG and submissions of various parties in these cases, the Commission notes that following issues arise for determination in the cases under consideration;

Issue1: Whether KFCC and other associations are 'enterprise' within the meaning of section 2(h) of the Act and if the answer to this is in affirmative, can their acts and conduct be said to be violative of provisions of section 4 of the Act as has been alleged by the Informant ?

Issue 2: Whether the rules and regulations, acts and conduct of associations are subject matter of examination under section 3 of the Act?

Issue 3: Whether various acts and conducts of associations are anti-competitive as alleged in the information in terms of section 3 (3) read with section 3 (1) of the Act?

Issue 4: Has the action of KFCC and other associations caused Appreciable Adverse Effect on Competition in the market?

6.2 Although the aforesaid issues have also been determined in case nos. 25, 41, 45, 47, 48, 50, 58 and 69 of 2010 (hereinafter referred to as case no. 25 and others) , the Commission deems it fit to discuss them again in the light of specific information in these two cases under consideration. The issues involved in these two cases are accordingly determined as under;

Determination

Issue 1: Whether KFCC and other associations are 'enterprise' within the meaning of section 2(h) of the Act and if the answer to this is in affirmative, can their acts and conduct be said to be violative of provisions of section 4 of the Act as has been alleged by the Informant ?

6.3 The issue has been determined in great detail by the Commission in case nos. 25 and others, where like in the instant two cases, NIMPA, MPA, KFCC and CCCA were also the respondent parties. The Commission had noted in those cases that these associations comprise of the members who are producers, distributors or exhibitors. The associations themselves are not producing or distributing or exhibiting any film. These activities are being performed by their constituent members who in turn are the producers, distributors and exhibitors. It was held that competition laws seek to prevent unfair use of or artificial creation of market power. To acquire market power and to misuse that, either firms will collude and cooperate or act unilaterally and independently. Under section 3 of the Act, while agreements are examined, under section 4, unilateral conducts of the firms which are capable of behaving independently are subject matter of examination.

6.4 It was found that NIMPA, MPA, KFCC and CCCA or any other film association therein are not engaged in such activity. It is the constituent member who is individually engaged in production, distribution or exhibition of films and not the associations. The associations are only providing a platform to the constituent members engaged in economic activities and are regulating their affairs. The

Commission had also held that it is possible that some associations on their own might be engaged in some activity as mentioned in section 2(h) and in that case their conduct would also become liable for examination under section 4 of the Act. However, in cases of film associations named therein, they were not found to be engaged in any economic activity on their own. Therefore, the Commission had concluded that the film associations do not qualify to be called 'enterprise'. Further, once the associations are not 'enterprise' in terms of section 2(h), their conducts 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 state that *'No enterprise or group shall abuse its dominant position'.*

6.5 The Commission notes that like NIMPA, MPA, KFCC and CCCA, FDA, Kerala, and Telangana Telugu Distributors Association in the two cases under consideration are also not found to be carrying on any business activity or trade in respect of film.

6.6 The Commission observes that replies of associations, their Memorandum and Articles of Association, rules and regulations reveal that they are not engaged in any activity of the nature, by virtue of which they may be called 'enterprise' within the meaning of section 2(h) of the Act and therefore their acts and conducts are also not liable for examination under section 4 of the Act. Due to the sheer fact that generally the associations on their own do not engage in the commercial activities, they do not become 'enterprise' to be examined under the rigours of section 4 of the Act. The case may be different where the associations on its own or in addition to the member constituents are engaged in any activity mentioned in section 2(h) of the Act. However, in the cases under consideration, since no material has come to the notice that the film bodies/associations are engaged in the business of production, distribution or exhibition or any other commercial activity relating to these activities, they cannot be termed as 'enterprise' within the meaning of section 2(h) of the Act.

6.7 The Commission holds that once these associations are not 'enterprise', there cannot be contravention on their part under section 4 of the Act as has also been determined by DG.

Issue 2: Whether the rules and regulations, acts and conduct of associations are subject matter of examination under section 3 of the Act?

6.8 While passing order in the case no. 25 and others, the Commission had observed that the associations mentioned in the instant cases are association of enterprises (constituent members) who in turn are engaged in production, distribution and exhibition of films. The Memorandum and Articles of associations, rules and regulations reflect the collective intent of the member constituents based upon which the associations take particular decisions and carry on some common agreed practices on behalf of the members. The associations consist of individuals and firms with common interests in trade, which join together to further their commercial or professional goals. The associations take decisions on behalf of the members and their business practices are also reflection of the collective intent of the member constituents.

6.9 The Commission therefore had held that even though the associations themselves are not engaged in any activity which enables them to be termed as an 'enterprise', since they are taking decisions relating to production or distribution or exhibition for the interest of the members who are engaged in similar or identical business of production of films or distribution or exhibition, the practices carried on, or decisions taken by them as association of enterprises are covered within the scope of section 3(3).

6.10 The Commission had also observed that in the cases under consideration there was no vertical agreement between associations and any of Informants in terms of provisions of section 3(4). The associations themselves are not engaged in activity of production or supply of any goods or service as part of production or supply chain. The Commission accordingly had held that while acts and conduct of the associations named in the cases as respondents might be examined under section 3(3) of the Act, there was no occasion of examination under the provisions of section 3(4), since there was no issue of vertical agreement in those cases.

6.11 Since four respondent associations, namely, NIMPA, MPA, KFCC and CCCA were also parties in case no. 25 and characteristics and constitution of other two associations – FDA and TTFDA are also similar, the commission finds no reason to form a different opinion in the instant cases as well. Accordingly, the Commission holds that conduct of six associations named in the two cases under consideration merit examination under section 3(3) of the Act.

Issue 3: Whether various acts and conducts of associations are anti-competitive as alleged in the information in terms of section 3 (3)?

6.12 The Commission notes that the investigation by DG has found a host of acts and conduct on part of various associations which have been considered as anti-competitive by him. The Commission has examined each of such infringements by various associations as alleged in the information and as reported by the DG in its order in case nos. 25 and others concerning film associations in which some of these bodies were also the respondent parties. The Commission observes that the market in which such anti-competitive activities are to be looked into is the market of distribution and exhibition of films in the areas under the control of the associations in India to find out whether any appreciable adverse competition has been caused in such a market.

I. Restrictions in terms of dealing with non-members

6.13 The Commission notes that in course of investigation, DG has found that the Articles of Association and rules and regulations framed by various associations named in the information prohibit members from dealing with non-members. The Commission observes that in this connection the replies filed in course of investigation and statements of various parties recorded by DG would definitely suggest that the associations do not permit their members to deal with non-members. This gets clear from the following statements recorded by DG in course of investigation:

A) Statement of ShriNand Kishore, Joint Secretary, Central Circuit Cine Association

Q.5 Whether distributor member of your association can give his picture to an exhibitor who is not a member?

Ans.5 No, As per our rules and regulations a member distributor cannot deal with a non-member exhibitor. If he does so the association takes disciplinary action against him.

B) **Statement of Shri VinodK.Lamba, General Secretary, MPA**

Q.5 Whether a distributor member of your association can give his picture to an exhibitor who is not your member?

Ans. If a distributor member deals with an exhibitor who is not our member (suspended), then action is initiated against him as per article and rules of association which he has undertaken at the time of seeking the membership itself.

Q.6 Can you explain from your article of association and rules that if a distributor or exhibitor who has never opted your membership can be allowed to deal with your member-distributor –exhibitor and vice versa?

Ans.6 We do not permit to deal with such non-members as per our article of association.

C) **Statement of Shri Basant Kumar Patil, President, KFCC**

Q.4 Whether a producer/distributor member of your association can give his picture to a distributor/exhibitor who is not your member?

Ans.4 As per rule 10 of the Memorandum of Association (MOA), dealing with non-member may attract suspension. But to the best of my knowledge, this provision has not been invoked.

D) **Statement of Shri Dharampal Arora, NIMPA**

Q.4 Whether the NIMPA allows its member distributor/exhibitor to do film distribution/exhibition business with non-members?

Ans.4 As per the rule 16(a) of our regulations, the member distributor/exhibitor is not allowed to deal with a non-member distributor/exhibitor.

6.14 The Commission notes that as has been reported by DG in terms of Para 13(vii) and (x) of Articles of Association of MPA, Para 4(a) and 15 of Articles of Association in case of CCCA, Rule 16(a) of rules and regulations of NIMPA, dealing with non-members are restricted/prohibited by these associations and may also attract suspension and other disciplinary proceedings. Rule 10 of Articles of Association of KFCC stipulate that dealing with non-members may attract suspension. Article 15 of Articles of Association of CCCA also stipulates provisions for suspension from membership. These facts have also been confirmed by FICCI Multiplex Association of India in its submissions wherein it has been brought out that a producer, distributor or exhibitor who does not become a member of the regional associations is prohibited from doing business in that particular territory. These associations issue letters/notices to all their registered members urging them not to do carry on business with or transact with non-members.

6.15 The Commission on the basis of aforesaid observes that rules and regulations of NIMPA, MPA, KFCC and CCCA as well as their conduct establishes that they prohibit their members from dealing with non-members.

6.16 The Commission also observes that the associations have submitted that their memberships are voluntary. However, no producer, distributor or exhibitor can practically conduct business in the territories under control of various associations unless they become members of respective associations. The Commission has also taken note of the facts brought to its notice that in case a member deals with a non-member, either he is suspended, penalized or blacklisted. Further, such a member who deals with non-members is also boycotted. These actions make it virtually impossible to carry out the business of film distribution or exhibition without becoming member of such associations, unless one is ready to face various consequences like suspension or boycott.

6.17 The Commission observes that although it may not be compulsory to become member of the associations as has been contended by the associations, however, the restrictive provisions of the rules framed by the associations of not permitting their members to deal with a non-member, makes it mandatory for every distributor and exhibitor to take their memberships, if he wants to conduct business with the members of the associations.

6.18 The statement of Shri Arun Mehra, prop. of Aum Movies a distributor in the territories of Bihar, Jharkhand, Assam, Orissa, West Bengal, Mysore and Rajasthan before DG is also relevant in which it has been stated as under:

Statement of Shri Arun Mehra, prop. of Aum Movies

" Q.8 Whether it is compulsory for distributor to become member of association to carry out the film distribution business in a particular territory?

Ans.8 Yes. It is mandatory for a distributor to become a member of a local association prior to commencement of business in the respective territory.

Q.9 What are the consequences of not becoming member of such association?

Ans.9 In such a case the association informs exhibitors and asks them not to screen the film of the non-film distributor, failing which a penalty would be levied on all such exhibitors screening the film released by the said non-member. The exhibitors also may be blacklisted by the association. Thus, practically, no distribution business can be conducted in any territory without membership of the local association."

6.19 Mr. Rajiv Khanna, a theatre owner in Madhya Pradesh in his reply before DG has also confirmed that dealing with non-members attracts notices of warnings as well as imposition of penalty.

6.20 The Commission observes that since members of the associations named in para 6.15 above cannot deal with non-members and are penalized/blacklisted/boycotted for doing so, it becomes mandatory for a producer, distributor or exhibitor to become a member to conduct business.

6.21 The Commission in this regard also notes that DG has concluded that the conduct of the associations in dealing only with members leads to a situation of refusal to deal with non-members in violation of section 3(4) of the Act. However, the Commission observes that conclusions drawn by DG in this regard are not correct. The refusal to deal as per the provisions of section 3(4) (e) would involve agreement between the players operating at different levels of production or supply chain. In the instant case, there is no such situation as there is no business dealing between associations and non-members. In fact, the business transactions are between the members of associations and entities who are the non-members. There is no case of a vertical agreement between two entities involved in these cases – an entity which is a member of the association and an entity which is a non-member, stipulating that the said member or non-member cannot engage in transaction with some third entity.

6.22 The Commission observes that the rules, regulations and conduct of NIMPA, MPA, KFCC and CCCA reflect the collective behavior of all the members comprising of producers, distributors and exhibitors by which dealing with non-members who are their competitors in the business of production, distribution and exhibition are prohibited. Further, as DG has reported, FDA, Kerala has restricted its members to join other associations of film distributors and also restricted the members of other similar associations to join FDA. From the statement of Shri Ravi Machchar of TTFDA before DG also it is noted that for carrying out business of film distribution business, one is required to become member of the association. In effect, the non-members who are the competitors of the members of the association are prevented from competing effectively in the market. This collective intent and behavior of the members of the associations which find reflection in the rules and regulations of the association and decision of the association in a way is an agreement at horizontal level of the nature provided in section 3(3) of the Act. The agreement among the members acted upon through associations as decision and practice carried on by the associations, not to deal with non-members, in effect limits the supplies and distribution of the films in the territories under their control which is violative of provisions of section 3(3)(b) of the Act.

II. Condition of compulsory registration of films imposed by associations

6.23 The Commission notes that investigation by DG has also revealed that the associations have made it mandatory for the distributors and producers to get each and every film registered with their associations. These associations have provisions in their bye-laws and rules regarding registration of every film. A producer/distributor has to get registered his film with each association separately. For the purpose of registration of a film, the producer-distributor has to fill a prescribed proforma called "Acquiring Form", which contains certain terms and conditions. Each producer-distributor is bound to abide by such rules.

6.24 In case any film is released without registration, disciplinary action is initiated against the producer- distributor of that film. If a film is not registered with the associations of a distribution circuit, where it is released, the exhibitors normally refrain from screening the film in their theatres in fear of penalty or suspension. The Commission notes that in case of film, 'Tasvir' produced by Percept Films which was released in April 2010 without registration in the areas under the control of Central Circuit Cine Association, disciplinary action was initiated against the distributor.

6.25 The statements of Shri Nand Kishore Jalani, Joint Secretary, Central Circuit Cine Association, Shri Vinod K Lamba, General Secretary, Motion Pictures Association(MPA), Shri Dharampal Arora of NIMPA, Arun Mehra of Aum Movies, Shri Bijan Bose and Shri Deepak Sharma of PVR Pictures Limited, Gaurav Verma of UTV Software Communications Limited recorded before DG also indicate that it is compulsory to register the film before release in a particular territory or circuit under the control of respective association.

6.26 The Commission notes that Rule 22 of NIMPA as per statement of Shri Dharampal Arora, Rule 4 and 5(a), read with 8 and 9 and other rules of CCCA as regards registration, make registration of film compulsory before release in the territories under the control of these associations. Rules relating to unauthorized procuration, unauthorized supply and unauthorized exhibition of films of CCCA also make registration of films compulsory before distribution or exhibition.

Similarly, as reported by DG, rule 16(i) of Articles of Association of MPA also stipulates that no member of the association shall distribute/supply and/or screen any picture unless it is registered with it. In case of KFCC , there are no rules mentioned in the Articles of Association relating to registration of film, however, the members are required to register films compulsorily through a prescribed form for registration which has to be filed in by the distributors, accompanied with the authorization by producer along with a nominal fees.

6.27 The Commission observes that the associations have defended the rules and stipulations framed by them on the issue of compulsory registration by saying that registration is necessary to protect the interest of distributor and producer members so that the producers may not indulge in the multiple sale/distribution of films and also to inform the distributor and exhibitor members of the association that the theatrical rights of the said picture are assigned to a particular distributor and no other member of association may deal with the said producer. It has also been stated that registration of a film ensures arbitration by the association if required, to settle disputes between producers and a distributor member of the association.

6.28 The Commission, however, observes that by making it compulsory not to deal with the non-members and also making it compulsory to register a film before release in a particular territory, the associations keep a complete control over the business affairs of the producers , distributors and exhibitors both members and non-members. In such a case, a non-member producer-distributor of association, whose film is not registered with a particular association and who is not a member, cannot conduct its business in the territory under control of that association.

6.29 In the case No. 56 of 2010 evidence in form of a letter dated 21.10.2010 from PVR Pictures has been placed on record which shows that KFCC, MPA, NIMPA, CCCA, Telangana Telugu Film distribution Association and Film Distributors Association, Kerala had refused to register the film "Action Replayy" since the film was produced by Mr. Vipul Shah and certain monetary claims against Mr. Vipul shah and Eros International were pending with respect to film "London Dreams" . In the said letter it was also mentioned that unless the film is registered with these associations, no distributor or exhibitor will distribute or exhibit the film in respective territories. A letter dated 12.02.2011 from CCCA to Eros International in respect of registration of the latter's film 'Game' also establishes that registration is pre-requisite for exhibition of film in territory under the control of the association.

6.30 On the basis of aforesaid evidences, the Commission observes that KFCC, NIMPA, CCCA, MPA, FDA and Telangana Telugu Film Distributors Association insist for registration of films before their release in their territories and holds that such acts limit the supplies of films in different territories and contravene the provisions of section 3(3)(b) of the Act. The Commission also holds that these acts are anti-competitive since they restrict competition between members and non-members.

III. Restriction imposed on number of screens for exhibition of non-regional films in a particular territory.

6.31 The Commission observes that restriction on number of screens for non-regional films is another instance of anti-competitive conduct on part of the associations as has been revealed by the investigation of DG.

6.32 The Commission, however, notes that in the cases under reference no such allegation has been made by the Informant. Further, as has been noted in case No. 25 and other cases, no specific instance or provision in the byelaws of associations except for KFCC as regards number of films which can be screened in a particular territory, has been found by DG.

6.33 The Commission has observed in case no. 25 in detail the manner in which KFCC has prescribed norms for release of films in the territories under their control. The Commission observes that non-Kannada film can be released only in 24 screens as opposed to a Kannada film which can be released in 200 cinemas in areas under the control of KFCC. For Bangalore City, 20 screens have been prescribed, out of which 7 are to be in multiplexes and balance 13 in single screen cinemas. While reduction in number of multiplexes and corresponding increase in single theatres is permissible, it is not allowed otherwise. The Commission also notes that as per stipulations of KFCC, in case of multiplexes, the films are to be released only in one screen and only 5 shows can be accommodated in a day. It has also been stipulated that a non-Kannada films can be released in all cinemas only after completion of two weeks from the date of premier release.

6.34 The Commission while passing orders in case no. 25 and others in case of KFCC, based upon evidences cited therein has observed that KFCC has imposed restrictions on number of screens for exhibition of non-Kannada films in territories under its control and exhibitors are supposed to follow the dictates of the association on the issue.

6.35 The Commission notes that KFCC has justified its stand saying that the restriction on non-Kannada films has been imposed in order to promote regional

Tamil Films. In this regard, the Commission observes that there could be other ways to promote non-regional and non-language films. In any case, the preference to a particular film must be left to the consumers in the market. The restriction on number of screens imposed in certain pockets by KFCC in the name of promotion and protection of Kannada language films causes restriction and impedes competition in the market, which are prohibited under the Indian Competition Act.

6.36 The Commission holds that the above action arises out of agreement among the members of the association which gets reflected in decision or practice carried on by KFCC and results into limit on supply of films in the market which is violative of section 3(3)(b) of the Act.

IV. Restriction regarding unfair holdback period for exploitation of satellite, Video, DTH and other rights

6.37 The Commission observes that associations named in the information are also imposing restrictions and prescribing time limit for broadcast/release of a film on satellite, television, video, DTH and other form of media. The registration form or the acquiring form of the associations itself contains these type of conditions. If the prescribed conditions are not agreed to, the associations refuse to register the films. The investigation by the DG has revealed that MPA and CCCA have issued several circulars against the producers on premature release of films on media other than theatres. The investigation by DG has also revealed that MPA, CCCA, NIMPA are forcing the producers to accept the terms and conditions relating to the release of a film on satellite/television/video before registration of films in their respective territories.

6.38 MPA has imposed conditions that a film will not be screened on satellite/DTH before six months from the date of premier release in the country and also that video/CD rights will not be given before two weeks from the theatrical release of the film in the country. CCCA has prescribed conditions that a film on satellite/ DTH will not be screened before one year from the date of premier release in the country. Similarly, video/CD rights will not be sold before six months from the theatrical release of the film in the country.

6.39 As has been reported by DG as per the registration form of NIMPA, it is mandatory to undertake for producers-distributors that the film cannot be released on satellite/television before expiry of one year. Similarly, it imposes restrictions on selling video/CD rights before two weeks from the theatrical release of the film in the country.

6.40 The Commission in Order No. 25 and others has observed that there are evidences which have been placed before it to support that the associations impose unfair holdback restrictions for exploitation of Satellite, Video, DTH and other rights of a film for a certain period from the date of theatrical release of the film.

6.41 The Commission notes that associations have in their defence stated that these conditions arise from an agreement signed and executed between the Film Distributor Council, an apex body of all India Distributors and the Film Makers' Combine, the apex body of Film Producers' Associations on 10th June, 1994 according to which the distribution rights are entrusted for a period of 10 years. Under the agreement dated 10.06.1994, both the producers and distributors agreed to give a gap of 5 years for showing the film through satellite/television from the date of theatrical release. This gap in the period between theatrical release and release on satellite/television is prescribed so as to safeguard the rights of distributors and exhibitors with huge financial stake.

6.42 The Commission observes that the arguments of the opposite parties on the issue do not appear to be appropriate. The Commission observes that now-a-days due to advent of technology a long hold back period would prevent a producer-distributor from recovering his costs and cause losses since if the exploitation of film over other platforms is deferred for such an unjustified period, the film would lose its commercial value. Now-a-days many producers are also distributing the films. The Commission feels that such issues should be left to the concerned parties and the associations should not get into this.

6.43 The commission, on the basis of aforesaid holds that the aforesaid conduct of associations leading to restriction as regards time period on supplies of films on media other than theatres limits the market of distribution and exploitation of films, which is violative of the provisions of 3(3)(b) of the Act.

v. Imposing penalties, ban on films, issue of call of boycott and withholding share of distributors

6.44 The Commission notes that in order to discipline the market players, the associations also give a call of boycott of the producers, distributors and exhibitors and also impose a ban on films if their dictates are not followed. DG has reported such activities on part of KFCC, MPA, CCCA, FDA, Kerala, Telangana Telugu Film Distributors Association and NIMPA.

6.45 The Commission notes that DG has pointed out specific clauses in Articles of Association which gives powers to KFCC to discipline the members, viz; clause relating to suspension of membership (clause No.10) vide which a member may be suspended from the membership by the Executive Committee if he deals with a non-member or with members under suspension and fails to comply with the resolution and/or directions of the committee in respect of business conduct, dispute, awards, clause relating to removal & expulsion from membership (clause No. 11) and clause relating to powers of the committee to appoint, suspend and dismiss all temporary or permanent salaried employees of the chamber and to decide their service conditions, to warn, reprimand, fine, suspend, expel or otherwise penalize any member after giving him at least seven days notice (clause no. 14). Further, clause no. 36 concerning Self-Regulation Committee which regulates the conduct of the members who directly or indirectly violate or contravene the provisions of the Self-Regulation Code formulated by the Executive Committee from time to time so as to render himself liable to disciplinary action including suspension has also been found restrictive in nature.

6.46 The Commission notes that the aforesaid rules have the potential to punish the members who do not abide by the directions of the association and want to compete in the market with their films and deal with non-members. These rules, therefore, are anti-competitive and restrictive in nature. In the case No. 25 and others, a number of instances have been brought out to show that KFCC imposes bans, issues caution letters and gives a call of boycott if members or non members do not agree to the dictates of the association.

6.47 The Commission also notes that CCCA had issued caution letter against film "Anjaana Anjaani of M/s. Eros International Media Ltd. on 18.09.2010, by which the member exhibitors were directed not to enter into contract or release films until and unless the film was registered with CCCA. The letter also mentioned that the said picture was not eligible for registration due to pending settlement claims of a distributor member. It had also issued confidential letter to members dated 18.09.2010 not to deal with film 'Anjaana Anjaani' otherwise a penalty of Rs. 1,00,000/- shall be imposed on the defaulting member.

6.48 Similarly letter was also issued by CCCA on 15.10.2010 against film "Action Replayy' produced by Vipul A. Shah under the banner of Blockbuster Movie Entertainers Mumbai saying that the picture was not eligible for registration in favour of distributors for want of settlement of pending claims. In the letter dated 15.10.2010 issued to all exhibitor members, it was stated that rule 5(a) of Rules for registration of a picture stipulates that the picture should be registered in favour of distributors for Central Province, Central India and Rajasthan prior to entering into agreement and /or exhibitor of the picture, else for violation of the said rule, it attracts penalty of upto Rs.1 lakh provided for under Rule 23(a). A look at the Rule 23 and 24 of rules of registration of CCCA would clearly reveal that the associations enjoy power of disciplining its members in order to enforce its restrictive and anti-competitive conduct.

6.49 The Commission also notes that CCCA has also been found issuing caution letters against producers for the claim on account of premature telecast of films on satellite television. In the letters dated 10th and 20th March 2010 written to Eros International Media P. Ltd, it has been mentioned that as per agreement dated 19.06.2010 entered into by CCCA and AIFPC, no producer is to release his picture on Doordarshan or any satellite channel prior to completion of one year from the date of theatrical release. The producers were directed vide this letter to settle the claim in respect of premature telecast of Kambakht Ishq, Lov AajKal, Veer and Namastey London otherwise no forthcoming picture produced by them shall be eligible for registration.

6.50 Evidences have also been placed on record which shows that a circular dated 24.03.2010 was issued against M/s. Eros International Media P. Ltd. by CCCA for premature release of the movies Kambakht Ishq, Lov AajKal and Namastey London on non-theatrical media against as stipulated in rules. Subsequently Eros had also to pay an amount of Rs. 7,50,000/- on this account.

6.51 A letter dated 19.04.2010 was also issued by CCCA to Eros International to the effect that it was liable to pay 10% of the amount received on account of telecast of Film "Veer" on Star Plus channel on 17.04.2010 in violation of declaration and undertakings. Further, a letter dated 02.06.2010 was also issued to Eros International for payment of 10% of the share for assigning the telecast rights of the picture "Veer and "De Dana Dan". It is also noted that on 07.04.2010, CCCA had written a letter to Eros International stating that its pictures, "Housefull" "Paath Shaala" were not being registered for non settlement of claims against one, Ms Sundari Ramamurthy and claim for refund of unrecouped advance in case of film "London Dreams" in respect of which circular was issued. A letter dated 06.07.2010 was also issued to M/s. Eros International stating that it was liable to pay to M/s. Kasat Films and M/s Marudhar Entertainment towards unrecouped advance for the film "London Dreams". The film 'Action Replayy' of Vipul A.Shah could be registered only after payment of outstanding dues by Mr. Shah to M/s. Kasat Films and Marudhar Entertainment, members of the association as is evident from the letter dated 03.04.2010 of Shri Shah to CCCA.

6.52 Instances of Motion Picture Association imposing bans and enforcing restrictions on members have also been brought to the notice of the Commission. Motion Picture Association also imposes bans and enforces restrictions on members. For instance, it issued a circular dated 13.03.2010 asking the member to refrain from dealing with the film, 'London Dreams' since M/s Kapur Films had filed their claim for the recovery against the producers and distributors of the said film. The Commission further notes that MPA has also been found to have issued the letters of caution against the producers for violation of conditions relating to satellite/Television broadcast. MPA had also called a meeting on 24.09.2010 to discuss the issue of release of films ' Anjaana Anjaani' of Eros International in view of outstanding claim of Kapur Films in case of film, 'London Dreams'. Under rule 42 of the Articles of Association, there are provisions which give power to take action against such members, who are involved in violation of the rules of MPA by way of which it controls the film distribution business. Letters were also issued to Vipul A.Shah towards settlement of claims of Kapur Films towards film 'London Dreams ' for registration of film 'Action Replayy'.

6.53 A circular dated 25.05.2010 was also issued by Telangana Telugu Film Distributors Association in which it was mentioned that in the matter of dispute between Sahyog Films, Secunderabad against Vipul Shah, the association had unanimously decided to request all the film distributors not to release the said picture "Action Replayy" for the areas as mentioned above till the dispute was fully settled with M/s. Sahyog Films, Secunderabad. Subsequently, Shri Vipul A.

Shah also first paid the outstanding dues of Sahyog Films before registration of the film ' Action Replayy'.

6.54 Film Distributors Association, Kerala in their circular dated 13.08.2010 had also asked its members not to commit any film from Vipul Shah and Eros International, since outstanding dues in respect of its member Jawahar film was pending in relation to film "London Dreams". A letter dated 21.09.2010 addressed to Eros International by FDA, Kerala stating that since dues of its member - Jawahar film was pending , it has been decided not to cooperate with release of any film of Eros International has also been placed on record. Evidence of imposing penalties of an amount of Rs.2 Lakh on Reliance Big Pictures in respect of its film 'Ravana' by FDA has also been reported by DG in his investigation report.

6.55 The Commission further notes that NIMPA has also issued letter dated 26.10.2010 in case no. 56 to persons associated with the film 'Action Replayy' threatening them to settle the outstanding claims otherwise the film may not be registered. Various letters like letter dated 06.09.2010 were also issued by NIMPA to Eros International and Vipul Shah at the time of release of film, "Anjaana Anjaani" and "Action Replay" to settle the outstanding claims of M/s Knock Associates, a distributor member of the association who had distributed the film "London Dreams". Shri Vipul Shah also paid amounts to NIMPA towards settlement of claims vide letter dated 04.09.2010 to facilitate registration of his film "Action Replayy".

6.56 The associations have also mandated that the arbitration of all disputes shall be settled through their own arbitrator appointed under their own rules of arbitration. The Commission holds that such acts and conduct of enforcing their norms help the associations in maintaining the market power of the members and denies the non-members or the deviant members who do not follow their dictates and who do intend to be part of such anti-competitive acts and conduct, the opportunity to compete. This results into limit on supply and distribution of films in the market to the detriment of the competing players and also to the consumers, an act which is in contravention of provisions of the Act.

Issue No. 5: Has the action of MPA, CCCA and other associations caused Appreciable Adverse Effect on Competition in the market?

6.57 The Commission observes that provisions of section 3(3)(b) read with section 3(1) of the Act stipulate that the acts and conducts prescribed therein raise a presumption of appreciable adverse effect on competition in the market. However, the parties against whom such presumptions are raised are free to rebut them with their own sets of evidences and arguments. Although the associations in the case have not been able to dispute the facts of the case involving rules of registration, not permitting members to deal with non-members, imposing restrictions in terms of number of screens for exhibition of films, prescribing holdback period for release on media other than theatrical releases, issuing show cause notices, imposing penalties and announcing boycotts, they have defended their rules and regulations, impugned acts and conduct saying that these are in the overall interest of their members.

6.58 Once associations have defended their actions by bringing in their own arguments, it becomes incumbent on the part of the Commission to establish whether the impugned rules and regulations, acts and conduct have indeed caused anti-competitive effects in the market. As per the provisions of the Act, in order to find out whether an agreement as per provisions of section 3(3)(b) read with section 3(1) has caused appreciable adverse effects on competition, factors listed in Section 19(3) of the Act are required to be considered. The provisions and factors of Section 19(3) are as under;

" (3) The Commission shall, while determining whether an agreement has an appreciable adverse effect on competition under section 3, have due regard to all or any of the following factors, namely:—

(a) creating barriers to new entrants in the market;

(b) driving existing competitors out of the market;

(c) foreclosure of competition by hindering entry into the market;

(d) accrual of benefits to consumer;

(e) improvements in production or distribution of goods or provision of services;

(f) promotion of technical, scientific and economic development by means of production or distribution of goods or provision of services.'

6.59 The Commission, in this regard, notes that DG has analyzed the aforesaid factors in detail and the associations have not been able to convincingly refute the analysis of DG.

6.60 The Commission observes that it is true that the activities of an association may benefit their members and also play a significant role in encouraging and enforcing codes of ethics. These activities may include keeping association members informed of trade developments, improving the quality of products, and working together at improving trade and industry laws. Cooperation, education and information exchanges through trade associations may also lead to technological advancements.

6.61 In the instant cases, the Commission observes that the rules and regulations, acts and conduct of the associations are not making markets perform efficiently. They are in fact restricting and limiting the market in form of limit on supplies of films since without becoming the members, without registering their films with the associations, no producer or distributor or exhibitor can exploit his films and compete with the existing members of the associations. The producers-distributors and exhibitors are obliged to follow the dictates and directions of the associations and if they do not follow them they are punished or boycotted, thereby, depriving them an opportunity to compete effectively in the area of control of these associations.

6.62 The Commission feels that the acts and conduct of the associations brought out in the preceding paras of the order establish that they have caused restrictions on free and fair competition in the market. There is a foreclosure of competition in the areas under the control of KFCC, since non-Kannada films cannot be released in all the cinemas but only in restricted theatres. Further, hold back of films from exhibition of films on other media for a period prescribed as on date, ensures that films cannot be exploited on other media competing with the theatres leading to the loss to the producers-distributors.

6.63 The Commission also observes that the acts and conducts of association do not bring in any improvement in production or supply of films in any manner or bring any technological improvements which could have come to their defence. Instead, the terms and conditions, rules and regulations of the associations create barriers to entry for the producers, distributors and exhibitors who are not their members and who do not agree with their rules /regulations, terms and conditions. The boycott imposed by the association drives existing competitors out of the market since absence of a product of competing members or non-members from the market place would mean reduced competing products and lesser competition in the market.

6.64 The Commission also feels that restrictions on non-Kannada films in areas under the control of KFCC also do not benefit the consumers since the consumers are deprived of watching movies of their choice.

6.65 The Commission holds that the aforesaid analysis of factors as mentioned in section 19(3) establishes that the acts and conduct of the associations instead of bringing in pro-competitive effects have caused AAEC in the market.

6.66 The Commission in case no. 1 of 2009 (FICCI Multiplex and others vs. UPDF and others) had held the activities of film associations which caused limit in the supplies of films to be anti-competitive under section 3(3)(b) read with section 3(1) of the Act and penalties were also imposed. In its order in case no. 25 and others also, on similar acts and conducts, the associations (some of the associations are common in these two cases under consideration as well), were found to be in contravention of provisions of section 3(3)(b) of the Act.

6.67 In light of the foregoing, the Commission holds that Karnataka Film Chamber of Commerce (KFCC), Northern India Motion Picture Association (NIMPA) , Motion Picture Association (MPA),Central Circuit Cine Association (CCCA), Film Distributors Association, Kerala (FDA), and Telangana Telugu Film Distributors Association (TTFDA) have contravened the provisions of section 3(3)(b) read with section 3(1) of the Act and have also caused appreciable adverse effect on competition in India in terms of section 19 (3) of the Act.

6.68 The Commission further observes that DG in his report of investigation has also stated that there is joint agreement among other associations to control the film distribution business in India. However, the Commission feels that in absence of existence of such a joint agreement among all these associations, the findings of DG do not hold good. The Commission, accordingly, concludes that the associations named in para 6.69 above are individually held in contravention of the provisions of section 3(3) (b) read with section 3(1) of the Act.

7. Order under section 27 of the Act

7.1 The Commission feels that the anti-competitive behavior of any entity needs to be condemned heavily in order to ensure effective functioning of the market. In all these cases, the associations are taking decisions and engaged in practices which are anti-competitive. The Commission also notes that associations were indulging in issuing circulars and letters of restricting the exhibition of films and taking punitive action against the Informants, in violation of provisions of Section 3(3)(b) of the Act.

7.2 The Commission, therefore, deems it fit that such anti-competitive acts and conduct be penalized which should also act as a deterrent for any other association engaged in taking similar decisions and carrying on similar practices. As has been discussed above, the associations represent the collective intent of the constituent members. Therefore, in effect the constituent members ought to be penalized. The associations were asked to file their financial details and also those of executive members. While the associations have submitted the financial details, executive members have not done so. In such a situation, the Commission has decided to delink the issues against the association and its members. Under the present order, decision has been taken only against the associations and the matter against the members will be disposed of separately.

7.3 As per provisions of section 27(b), penalties for anti-competitive agreements are to be imposed either on turnover or profit. Since the associations are not having turnover of their own out of exploitation of the activities of film distribution and exhibition and are having receipts from members besides some other miscellaneous income and also considering that the associations represent the collective intent of the members and the decisions of the associations are having anti-competitive effects on the market, the Commission finds it appropriate to impose penalties on receipts/income of these associations.

7.4 Looking at the gravity of the allegations, the commission decides to impose a penalty on each of these associations at rate of 10% of the average of their three years total receipts. Since a penalty has been imposed on CCCA, MPA, NIMPA, KFCC along with other associations in case no. 25 and others, in the instant two cases, penalty is imposed only on FDA, Kerala and Telangana Telugu

Film Distributors Association, who were not the respondent parties in the previous cases. The calculation of penalty amount on FDA, Kerala which comes to Rs. 1,27,718/- is given as under.

S. N.	Name of Association	Income/receipts of Three years (in Rs.)			Average of three years receipts/income	Penalty at rate of 10 % of average receipts/income
		2008-09	2009-10	2010-11		
1.	FDA	13,01,101	10,64,179	14,66,279	12,77,186	1,27,718/-

7.5 Telangana Telugu Film Distributors Association has not submitted any details even after issuing repeated notices. In such a situation, after considering quantum of penalty imposed on FDA, Kerala, penalty of Rs. 1,00,000/- is imposed on the association.

7.6 The Commission also directs that the associations should deposit the aforesaid amount within 60 days of receipt of this order from its own account or after collecting it from the members.

7.7 In addition, the Commission also directs all the associations to cease and desist from the following practices and take suitable measures to modify or discussed in this order since they are anti-competitive.

a) The associations should not compel any producer, distributor or exhibitor to become its members as a pre-condition for exhibition of their films in the territories under their control and modify their rules accordingly.

b) The associations should not keep any clause in rules and regulations which makes any discrimination between regional and non-regional films and impose conditions which are discriminatory against non-regional films.

c) The rules of restrictions on the number of screens on the basis of language or the manner in which a particular film is to be exhibited should be done away with.

d) Associations should not put any condition regarding hold back period for release of films through other media like, CD, Satellite etc. These decisions should be left to the concerned parties.

e) The condition of compulsory registration of films as a pre-condition for release of any film and existing rules of association as discussed in the preceding paras of this order on the issue should be dispensed with.

8. The directions in para 7.7 above, should be complied with within a period of three months from the date of receipt of this order.

9. The Commission decides accordingly.

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

Sd/-
Member (GG)

Sd/-
Member (AG)

Sd/-
Member (T)

Sd/-
Member (G)

Certified True Copy

S. P. Gahlaut
23/02/2012

S. P. GAHLAUT
ASSISTANT DIRECTOR
Competition Commission of India
New Delhi