



MARKET STUDY ON THE FILM DISTRIBUTION CHAIN IN INDIA

Key Findings and Observations

14-10-2022

Competition Commission of India

**10th Floor, Office Block - 1, Kidwai Nagar (East),
New Delhi - 110023, India**

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Disclaimer

This Report on the Market Study on Film Distribution Chain in India and the information contained herein is for general purposes only and is based on broad trends and views that have emerged in the stakeholder consultations. The Report relies on surveys, stakeholder interactions, focused group discussions and written submissions made by stakeholders. It is assumed that the information provided during the course of the market study is complete, accurate, and not misleading.

This exercise has been carried out as a part of the advocacy measures of the Commission to ensure competitive outcomes resultant to the Market Study. The views expressed are not binding on the Commission for any legal purpose.

Any comments/feedback should be addressed to market-study@cci.gov.in

Glossary

2D	Two-dimensional
4DX	Four-dimensional film format
AoA	Articles of Association
BCG	Boston Consulting Group
BIF	Broadband India Forum
BJMPA	Bihar and Jharkhand Motion Picture Association
CAGR	Compound Annual Growth Rate
CCCA	Central Circuit Cine Association
CCI	Competition Commission of India
CD	Compact Disk
COMPAT	Competition Appellate Tribunal
CTO	Cinema Theatre Operator
CUTS	Consumer Unity & Trust Society
DCE	Digital Cinema Equipment
DCI	Digital Cinema Initiatives
DG	Director General
DVD	Digital Versatile Disk
EIMPA	Eastern India Motion Pictures Association
EXIM Bank	Export-Import Bank of India
EY	Ernst & Young
FDA	Film Distributors Association
FDC	Film Distributors' Council
FGD	Focus Group Discussion
FICCI	Federation of Indian Chambers of Commerce & Industry
FY	Financial Year
GB	Gigabyte
HEPA	High Efficiency Particulate Air
IDBI	Industrial Development Bank of India
INR	Indian Rupee
IPO	Initial Public Offering
KDM	Key Delivery Message
KFCC	Karnataka Film Chamber of Commerce

M/s	Messrs.
MCA	Ministry of Corporate Affairs
MG	Minimum Guarantee
MoA	Memorandum of Association
OP	Opposite Party
OTT	Over-The-Top
PVBA	PV Basheer Ahmed
PVR	Priya Village Roadshow Ltd.
RBE	Reliance Big Entertainment
SVOD	Subscription-Video-On-Demand
TFPC	Tamil Film Producers Council
TV	Television
TVOD	Transaction-Video-On-Demand
UK	United Kingdom
UPDF	United Producers/Distributors Forum
US	United States of America
USD	United States Dollar
UV	Unilazer Ventures
VCD	Video Compact Disc
VFX	Visual Effects
VoD	Video on demand
VPF	Virtual Print Fee
Vs	Versus

CHAPTER 1

INTRODUCTION

1. On 6th December 2021, the Competition Commission of India (the 'Commission' or 'CCI') launched a market study on the film distribution value chain titled "Market Study on the Film Distribution Chain in India" (the 'study'). The purpose of the study was two-fold. One, to understand the state of competition in the film industry in view of the evolving industry dynamics related to digitization. And two, to identify issues related to competition that can be resolved or mitigated through self-corrective measures to limit the need for Commission's interventions, with a view to encourage the production and dissemination of content and overall well-being of the stakeholders in the ecosystem and address bargaining power imbalances across the value-chain, if any.
2. The study is independent of any proceedings currently pending before the Commission. Broadly, its objectives were to:
 - i. Understand the role played by associations in the Hindi, Tamil, Telugu, and Malayalam film industries.
 - ii. Uncover horizontal and vertical arrangements that exist between different stakeholders in the film distribution value chain, i.e., producers, distributors, and exhibitors, to identify and distinguish between agreements that have the potential to distort competition in the market and those that are pro-competitive and efficiency enhancing.
 - iii. Identify exogenous and endogenous barriers to entry in different segments of the film distribution value chain and evaluate the impact on small independent producers, distributors, and exhibitors.
 - iv. Ascertain revenue-sharing arrangements that may exist as a consequence of the asymmetries in bargaining power between entities, or coordination between participants in the value chain.
 - v. Understand issues related to tying, bundling, and exclusivity in the context of digitization of cinema.
 - vi. Understand the role of multiplexes, Over-The-Top (OTT), television, and other platforms in the exhibition of cinema, and the competition dynamics between exhibitors and upstream players (producers/distributors).
 - vii. Ascertain the effect on competition when different activities pertaining to production, distribution, and exhibition become part of an exclusive arrangement, either between separate entities (that are either vertically or

horizontally related) or offered as a bouquet by entities that are part of the same group.

- viii. Understand the impact of industry practices on the development of cinema in India and its effect on stakeholders.
3. The study employed a combination of desk research and primary research that included focus-group discussions, one-on-one meetings, post-discussion surveys, and written submissions of stakeholders. Sixty-five industry stakeholders and experts participated in the study, including nine exhibitors and their associations, 11 Bollywood producers and their associations, 14 producers from the Tamil, Telugu, and Malayalam film industries, 11 OTT platforms, and six broadcasters and their associations. The primary research provided the basis for culling out issues related to competition. "Respondents" as used in this study refers to different stakeholders that participated in the focus-group discussions, one-on-one meetings, and post-discussion survey, and provided written submissions.
4. The interim observations on the survey, FGDs, and meetings were presented to the Commission on 16th August 2022.
5. This report¹ summarizes the main findings of the study. The findings are based on secondary data analysis, survey responses, and feedback from one-on-one meetings and written submissions from stakeholders. A triangulation exercise was also carried out to ensure the integrity and consistency of data.
6. The report is structured as follows: Chapter 2 outlines the key trends and features of the Indian film distribution value chain. Chapter 3 discusses the key competition issues that have emerged from the study. The observations of the Commission and the recommendations for self-regulation based on the findings of the study are presented in Chapter 4.
7. The issues identified through the course of this market study include those that may, directly or indirectly, have a bearing on competition or may hinder the realisation of the full pro-competitive potential of the film distribution value chain. Some of the issues in specific circumstances may have a potential to contravene the provisions of the Competition Act, 2002 ('Act').

¹ The Esya Centre was the implementation partner for the Competition Commission of India's Market Study on the Film Distribution Chain in India. The ESYA Centre team led by Meghna Bal included Dr. Vikash Gautam, Mohit Chawdhry, and Noyanika Batta. As part of the market study, the Centre collected data through primary research, including interviews and stakeholder discussions, and secondary research, including academic papers, news reports, and company filings. This data has been included in the Market Study. All data used in the study and relied on in the report is provided by the implementation partner.

8. The study provided key insights into conceptual and analytical questions such as the relevant market, assessment of bargaining power of industry constituents, and the objective commercial justifications for certain conduct. These are all relevant for the purpose of competition enforcement under the Act.
9. A range of issues outside the competition arena also came up during the course of the study. However, in view of the mandate of the Commission, the Report does not include findings in relation to non-competition matters.

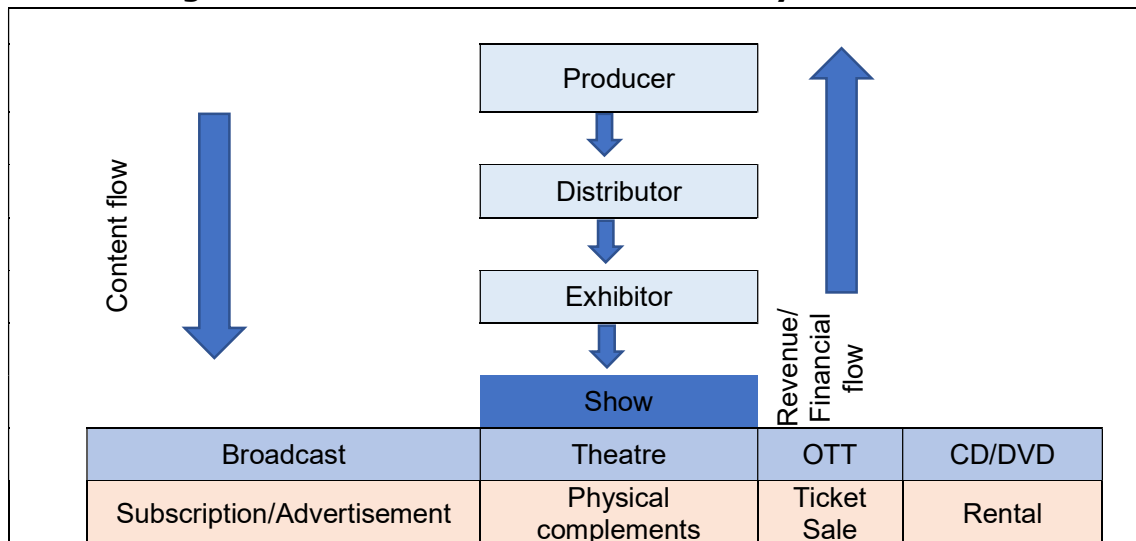
CHAPTER 2

STUDY FINDINGS I: TRENDS AND FEATURES

A. An Overview of the Film Industry and the Value Chain

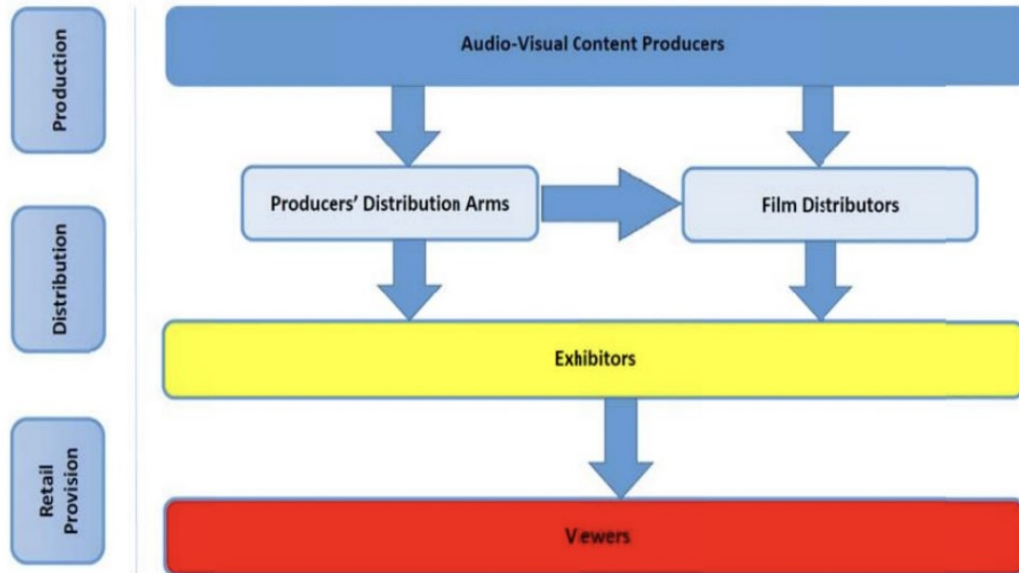
10. Market structure plays an important role in determining the competitive dynamics prevalent in a particular industry. A tripartite value chain for the film industry comprises three segments:
 - i. **Production:** The making of a film generally begins with a story, which is converted into a screenplay.² The screenplay is then “pitched” to a producer. If the producer wishes to pursue the project, he/she typically signs an agreement with the writer. Producers must also cultivate several other aspects of pre-production, such as selecting a director, casting, etc. After this, the movie is shot and the film is sent to post-production, which involves dubbing, adding special effects, and the soundtrack.
 - ii. **Distribution:** Distributors typically market a film and take it to theatres, television broadcasters, and OTT players.
 - iii. **Exhibition:** Exhibitors are stakeholders that enable consumers to view the film product. They can be theatrical, television, and digital.

Figure 1: Overview of the Film Industry Value Chain



² Jehoshua Eliashberg, Anita Elberse, and Mark Leenders, “The Motion Picture Industry: Critical Issues in Practice, Current Research, and New Research Directions”.

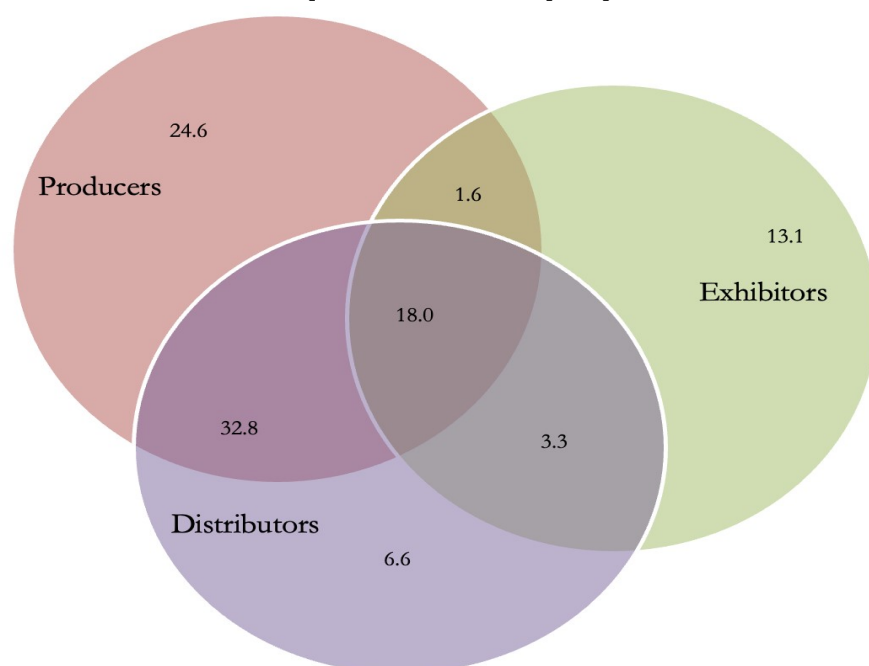
Figure 2: Content Flow in the Theatrical Distribution Value Chain



Source: Respondent submission

11. The level of integration between firms across the value chain is a key component of market structure. Broadly, there are two kinds of integration: horizontal and vertical. In the context of the film distribution value chain, horizontal integration entails a merger or relationship between two or more producers, distributors, or exhibitors. Vertical integration/agreements are agreements between firms at different levels of the production chain, i.e., producer-distributor, producer-exhibitor, and distributor-exhibitor.
12. According to respondents, the film industry in India remains largely fragmented and disintegrated. However, production studios have increasingly set up in-house distribution services. Survey responses reveal that nearly 32.8 per cent of production entities also provide distribution services (Figure 3). The respondents suggest that such vertical integration is motivated by efficiency gain prospects, as bringing distribution in-house reduces costs.

**Figure 3: Percentage of Vertical Integration in the Film Market
(Entities Surveyed)**



Note: This figure presents vertical integration in the Indian film industry value chain across three nodes—production, distribution, and exhibition. The statistics are based on stakeholder consultation. The methodology for the data reflected here is provided in the footnote below.³

13. Vertical integration across production, distribution, and exhibition is uncommon in Bollywood, but common in South Indian film industries. According to the implementation partner's estimates, only 18 per cent of the entities surveyed are actively involved at all three modes of the film value chain (Figure 3). As per respondents, such integration appears to be more common in the southern regions of the country.⁴
14. Vertical integration between exhibitors and other stakeholders is fairly common, as only 13.1 per cent of surveyed entities were involved solely in exhibition. However, the degree of integration is fairly weak, as several entities classified as exhibitors in the survey own one or two small theatres (and are primarily producers), while major exhibition players are involved

³ Vertical integration in the film distribution value chain was studied by first identifying the major players across different segments, i.e., production, exhibition, and distribution. Sixty-one such entities were identified. The annual statements and financial reports of these companies were studied to identify subsidiaries and associated companies operating in the same or different segments of the value chain, including OTT platforms. In total, 93 such subsidiaries/associated companies were captured. Information about companies and inter-linkages obtained from respondents during the FGDs was also included to provide a complete picture of integration across the value chain. The sample of major entities and their subsidiaries is representative of Bollywood and the Telugu and Tamil film industries. This information was tabulated and classified depending on the number of segments a company and its subsidiaries were involved in. This is reflected in the Venn diagram above.

⁴ Arthur De Vany, *Hollywood Economics: How Extreme Uncertainty Shapes the Film Industry* (London and New York: Routledge, 2005).

in producing/distributing only a handful of films each year. According to respondents, in Tamil Nadu, there is considerable vertical integration between distributors and single-screen cinemas. Respondents indicate that close to 70 per cent of single-screen cinemas are vertically integrated with distributors, with 7–10 distributors controlling 80 per cent of integrated single-screen cinemas. However, exceptions notwithstanding, while the overall percentage of exhibition entities involved in production and/or distribution is high, the degree/strength of integration is low.

15. There have been some instances of horizontal integration across production in the recent past, such as mergers between major domestic and international companies and studios. Despite these mergers, the production segment remains largely unconsolidated, with several large studios and smaller producers operating independently of each other. This fragmentation can be attributed to demand-side diversity in the Indian film market, particularly in terms of demographics, genre, and language. The survey respondents confirmed that there is growing demand for more content as well as source diversity (i.e., the kind of producers involved—individuals, studios, etc.) in the Indian film market, particularly with the arrival of online streaming (OTT) platforms.
16. There is considerable horizontal consolidation in the multiplex segment of exhibition, with three major entities accounting for approximately 79 per cent of the total multiplexes in the country.⁵ Figure 4 provides gives a snapshot of the consolidation in the multiplex segment over the years.

Figure 4: Snapshot of Horizontal Integration in the Multiplex

Entities	Details	Year
Carnival Cinemas and Reliance MediaWorks	Acquisition of 88 BIG cinemas from Reliance MediaWorks by Carnival Cinemas	2015
PVR and DLF	Acquisition of 39 DT Cinema screens from DLF by PVR	2015
Cinepolis and DT Cinemas	Acquisition of DT Savitri and DT Saket from DLF by Cinepolis	2016
PVR and Inox	PVR operates 871 screens across 181 properties while Inox operates 675 screens across 160 properties. screens. They would account for approximately 41.78-42.94 percent of the total multiplex screens.	2022

⁵ PVR, “PVR Cinemas, Celebrating 700 Screens Investor Presentation”, *PVR Cinemas*, March 2019, https://static1.pvrcinemas.com/pvrcms/pvrinvestor/PVR_Investor_Presentation_March19.pdf. See also <https://www.plindia.com/resreport/multiplex-24-9-19-pl.pdf..>

17. Prior to the outbreak of the COVID-19 pandemic, in 2019, India's theatrical, TV, and online video service industries generated a gross output of USD 16.5 billion and employed about 8.5 lakh people.⁶ Estimates suggest that the industry may add USD 33.3 billion total gross output and 11.1 lakh jobs over the next five years.⁷ The prospective growth in the film industry is attributed to both demand- and supply-side factors, such as a rise in disposable incomes, a growing propensity to spend on entertainment, an increase in the number of television channels, internet penetration, demand for streaming platforms, and changing consumption patterns.
18. The film entertainment segment contributes significantly to the country's media & entertainment industry, which is expected to grow at a CAGR of 13.7 per cent by 2023. The key drivers of growth include:⁸
- i. **Significant supply and demand:** The film production ecosystem is prolific and the country has a large television subscriber base.
 - ii. **Accessibility of smartphones:** Handheld devices with screen sizes exceeding 6 inches are available in India at about USD 100 or lower,⁹ enhancing accessibility of content.
 - iii. **Inexpensive data:** Due to inexpensive data packs, a wide range of consumers have internet connectivity. For instance, the average price per GB for wireless data is USD 0.1, and Indian wireless subscribers consume 10.4 GB of data monthly. Estimates suggest a strong correlation between data usage and video consumption in India. A high rate of online video consumption, in turn, reflects the rapid increase in the number of video-streaming services.
19. Figure 5 presents the revenue growth potential of three segments—TV, theatres, and OTT—by 2024. While continued growth is expected for the TV and theatrical segments, which are the largest revenue contributors to film exhibition revenues, the demand for OTT platforms is also on the rise in India.

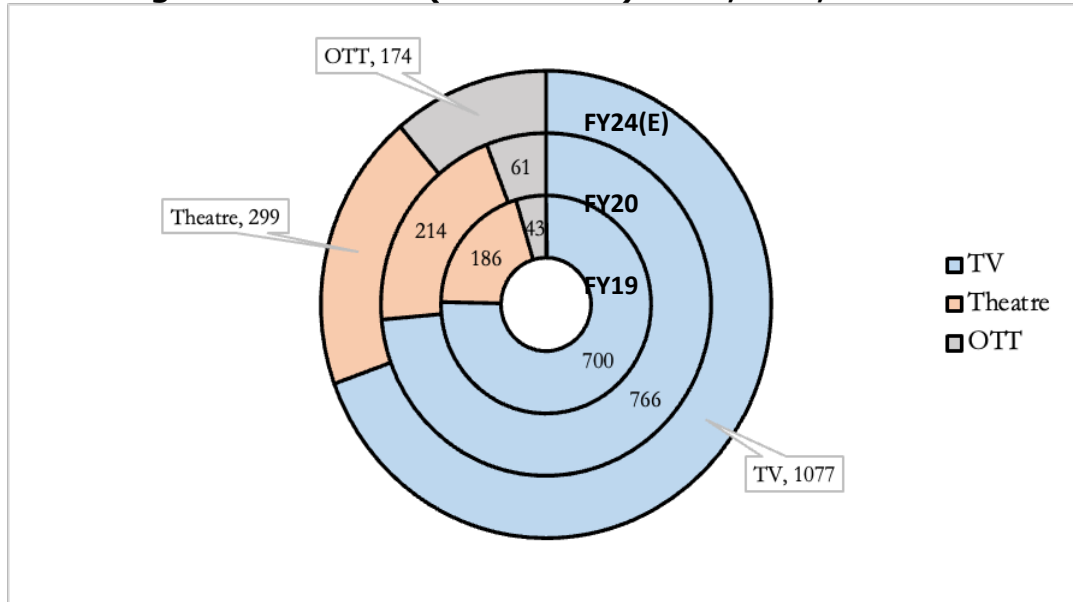
⁶ Deloitte, "Economic Impact of the Film, Television, and Online Video Services Industry in India, 2019", *Deloitte*, May 2020, <https://www2.deloitte.com/content/dam/Deloitte/in/Documents/about-deloitte/in-about-deloitte-economic-impact-of-the-film-television-and-osv-industry-noexp.pdf>.

⁷ Deloitte, "Economic Impact of the Film, Television, and Online Video Services Industry in India, 2019".

⁸ Deloitte, "Economic Impact of the Film, Television, and Online Video Services Industry in India, 2019".

⁹ Illustratively, at the time of writing, the Micromax Canvas Doodle phone was retailing at INR 2,959. For more information, please see: <https://www.91mobiles.com/micromax-canvas-doodle-3-price-in-india>.

Figure 5: Revenue (INR Million) in TV, Film, and OTT



B. Characteristics of the Film Distribution Value Chain

20. The market for films holds an interplay of competitive and monopolistic forces, i.e., films are imperfect substitutes, and each film production value chain has the power of price setting and strategizing. To elucidate, a film has the legal status of a copyright, and in that sense, it is regarded as a monopoly. However, it is grouped with other films, and together, they form an industry or field of economic activity which is competitive. Thus, the value of a movie, as a copyright product, is best viewed as a monopolist maximizing profit within a market where equilibrium is primarily dependent on competitive demand and supply forces. Table 1 lists the key characteristics of the film market and the corresponding implications as a monopolistically competitive market.

Table 1: Key Characteristics of Competition in Film

Feature	Implication
In the film market there is product heterogeneity. Films are produced by competing monopolists with separate identities, brands, logos, patents, quality, and other attributes. Product heterogeneity does not mean that goods are completely different, but rather, that they are different in certain ways.	Product differentiation calls for different advertising, marketing, packaging, and use of trademarks and brand names.
In the film market, there are a fairly large number of players (producers/distributors/exhibitors). Each of these players have a relatively small part of the total market.	Each player has limited individual control over the price facing the consumer.
In the film market, in the long run, there is freedom of entry and exit.	Market decisions (e.g., price setting, advertising) are mostly exclusive of the rivals in the short run. Rivals' actions gain larger weightage with passing time.

C. Multiplexes are Beneficiaries of Institutional Incentives and Account for the Largest Share of Revenue in Theatrical Exhibition

21. Academic literature on the history of the film distribution value chain indicates that multiplexes in India are beneficiaries of liberalization and the concomitant rise of consumerism in the country.¹⁰ Several state governments exempted multiplexes from entertainment tax and ticket price regulation to attract these businesses to their territories.¹¹ Additionally, shopping complexes sought to entice multiplexes to establish their presence within their premises, as the latter were thought to increase footfalls in malls by 40–50 per cent.¹² Thus, they offered multiplexes competitive lease prices.¹³ According to Athique,¹⁴ multiplexes broke the traditional “one-film-per-week model” and adapted show schedules to yield

¹⁰ Athique, Adrian (2009). Leisure capital in the new economy: the rapid rise of the multiplex in India.

¹¹ Hill Douglas and Adrian Athique, “Multiplexes, corporatized leisure and the geography of opportunity in India”, *Inter-Asia Cultural Studies* 14, no. 4 (2013): 600–614, <https://www.tandfonline.com/doi/full/10.1080/14649373.2013.831198?scroll=top&needAccess=true>

¹² Athique, Adrian. ‘Leisure Capital in the New Economy: The Rapid Rise of the Multiplex in India’. *Contemporary South Asia* 17, no. 2 (1 June 2009):123–40.doi:10.1080/09584930902860843.

¹³ Athique, Adrian. ‘Leisure Capital in the New Economy: The Rapid Rise of the Multiplex in India’.

¹⁴ *Supra*

high revenues. Thus, they played a vital role in improving the financial outlook of the film industry.

22. Multiplexes also account for the largest share of theatrical revenue. In 2019, for instance, multiplexes generated INR 61 billion in revenue, whereas single-screens generated INR 53 billion.¹⁵ Multiplexes also seem to be recovering rapidly post COVID; one of the largest chains reported a profit of INR 53.2 crore for Q1 of FY22–23 versus a loss of INR 219.44 crore in the same period the previous year and INR 105.49 crore in Q4 of FY21–22.¹⁶

D. Competition in the Film Industry is Driven by Considerations of Risk Mitigation and Recoupment of Investment

23. Creators and distributors of copyright products such as film focus on profit maximization because their business is inherently risky.
24. There are three factors that make the film business inherently risky:
- i. Non-rivalry and partial excludability of films add a dimension of risk, because the extent of ring-fencing against theft and other leakages of value is limited.
 - ii. Ease of piracy has brought down the transaction costs of sharing/pirating films.¹⁷ For instance, if it is expensive to reproduce and share content, there is less incentive to pirate and share content. Conversely, if the transaction costs of sharing content come down to near zero, as is currently the case, with the ubiquity of digital technology, the incentive for piracy increases.¹⁸
 - iii. Demand for a film is unpredictable, as consumer preferences for content are dynamic.¹⁹ There are limited ways to gauge how a film will perform until it is released. There are also limited formulaic guarantees to success and returns on investment. Illustratively, big budget movies by large studios, with star casts, do not always fair well at the box office (Figure 6 and Figure 7). Thus, producers are creating products (films) for which the market size is both unpredictable and largely unknowable.

¹⁵ FICCI-EY, "The era of consumer A.R.T., India's Media & Entertainment sector", FICCI-EY Report, March 2020, <https://ficci.in/spdocument/23200/FICCI-EY-Report-media-and-entertainment-2020.pdf>

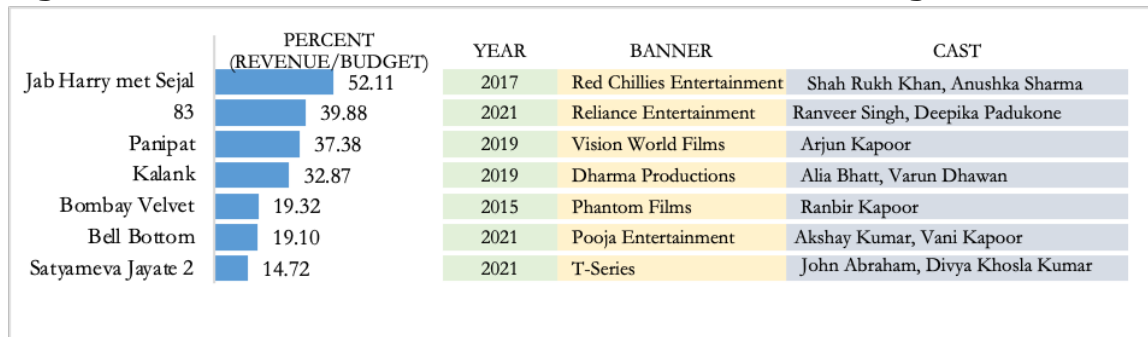
¹⁶ https://www.business-standard.com/article/companies/pvr-posts-rs-53-crore-profit-in-q1-revenue-jumps-83-to-rs-981-4-crore-122072101168_1.html

¹⁷ Varian, Hal R. "Copying and copyright."

¹⁸ Varian, Hal R. "Copying and copyright."

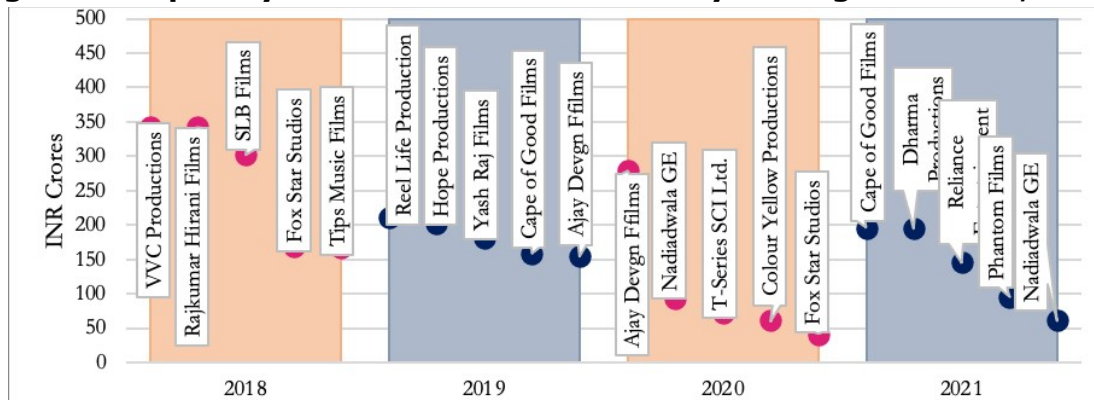
¹⁹ Arthur De Vany, *Hollywood Economics: How Extreme Uncertainty Shapes the Film Industry* (London and New York: Routledge, 2005).

Figure 6: Box Office Collection of Selected Films with High Brand Value



Source: boxofficeindia.com

Figure 7: Top Bollywood Production Houses by Average Revenue, 2018–21



Source: bollywoodhungama.com

25. The risks inherent to the film industry highlighted above drive stakeholders in the industry to focus on two aspects: recoupment of investment and risk mitigation.²⁰ Towards these ends, industry stakeholders focus on models that allow them to maximize revenues to enable them to absorb the shock of any lacklustre performances by a given film.²¹ Some of these business models/strategies (these are not mutually exclusive) are set out below:

- i. **Dynamic pricing** through diverse business models enables stakeholders in the industry to charge consumers in accordance with the value they ascribe to content. Thus, it enables producers, distributors, and exhibitors to come as close to meeting consumers' demands and preferences as possible, while accounting for the risk of the film business.
- ii. **Tiered product offerings** such as the intertemporal price discrimination, i.e., pricing a film ticket higher in the first week than subsequent weeks, may lead to higher revenues for stakeholders in the value chain and

²⁰ Arthur De Vany, *Hollywood Economics: How Extreme Uncertainty Shapes the Film Industry* (London and New York: Routledge, 2005).

²¹ *Ibid.*

consequently, “expand the supply of motion pictures”.²² Beyond inter-temporal dynamic pricing, variable pricing is also available for the same movie, which is determined by the quality of the viewers’ experience. For instance, a film offered in 2D will be cheaper than 4DX. Another example is the variability in pricing based on where an audience member sits in the hall. Quality of experience driven pricing strategies also link to the emergence of premium offerings such as premium and bespoke experiences offered in theatres such the PVR Director’s Cut. Television broadcasters also offer varied pricing for different channel bouquets and a-la-carte offerings. Finally, quality of service-based tiering is also prevalent on OTT services, with prices for subscription packages varying on the basis of device, picture quality, duration, ad support, and type of content offering.

26. Stakeholders in the film industry often rely on complements to cross-subsidize content costs. Bundling offers stakeholders across the value chain to cross-subsidize content offerings by enabling easier recoupment of investment. Consumers benefit from bundling as it enables content producers and distributors to offer greater variety. Information complements such as advertisements offer one means of cross-subsidy for content. Broadcasters will bundle channels and sell them to both advertisers and consumers. Consumers get value for money and variety through a bundle, whereas advertisers get more eyeballs for their ads. Theatres supplement ticket sales with physical complements such as food and beverages. Variability in subscription pricing therefore also acts as a content cross-subsidy for OTT, as do pairings with information complements.
27. **Micro-scheduling:** Dürr et al. suggest that studios coordinate release dates to avoid too many competing movies from being released at the same time.²³ If two similar movies, i.e., sharing a prominent cast member or the same genre, are scheduled release around the same time, exhibitors may consider shifting the original release date to a more opportune period to avoid a competitive clash.²⁴ Conversely, movies with comparably closer substitutes are more likely to be rescheduled.²⁵ The

²² *Ibid.*

²³ Niklas Dürr, Benjamin Engelstätter, and Michael Ward, ‘Strategic Microscheduling of Movies’, Zentrum Für Europäische Wirtschaftsforschung, ZEW Discussion Papers, 2018, <https://www.econstor.eu/bitstream/10419/180388/1/dp17033.pdf>.

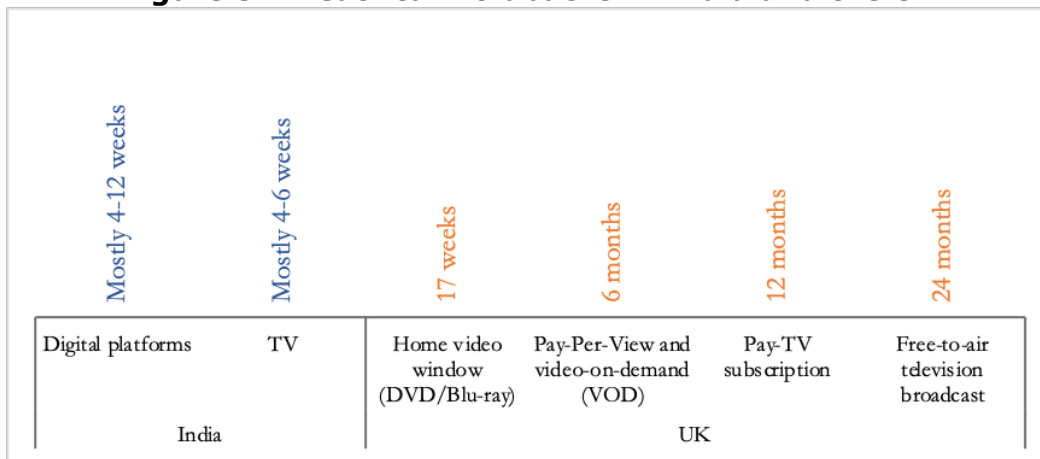
²⁴ Niklas Dürr, Benjamin Engelstätter, and Michael Ward, ‘Strategic Microscheduling of Movies’.

²⁵ The authors of the study relied on an online movie review website to serve as an indicator of quality and also created product niches by bundling movies from the same genre, similar cast profiles, or the same director. In this particular model, consumers exhibited a preference for higher quality movies and treated movies with the same product niche as closer substitutes.

legitimacy of this practice has also been affirmed by CCI in *Shri Kshitiz Arya & Anr. vs. Viacom18 Media Pvt. Ltd & Ors.*²⁶

28. A holdback or window is a clause in an agreement between a producer and an exhibitor for exclusive exploitation rights. Holdbacks involve carving out exclusive temporal periods within specified geographies to enable producers to repeatedly exploit their intellectual property to recoup their investment.²⁷ The holdback acts as an incentive for the exhibitor to take on the risk of showcasing a movie by safeguarding it from competition on other mediums. The terms and conditions of holdbacks are generally standardized across industry.²⁸ Figure 8 showcases the duration of theatrical holdbacks against other mediums in India and the UK.

Figure 8: Theatrical Holdbacks in India and the UK



29. According to Hindi film producers, theatrical holdbacks vary across the nation, depending on the platform, language, as well as long-term commercial considerations. If a film is to go straight to digital than theatre, it would have a different window before it goes on to TV, which is a larger mass platform. Regional producers indicate that a theatrical holdback is typically 30 days, but sometimes, 60–90-day holdbacks are requested against release on digital. Distributors indicate that, prior to COVID, the theatrical window was 8 weeks, but it came down to 4 weeks after COVID. Sometimes, digital platforms will ask for a 30-day holdback before releasing a film on TV. However, a recent news report indicated

²⁶ <https://www.cci.gov.in/sites/default/files/Case%20No.%2003%20of%202018.pdf>

²⁷ Kehoe, Keith, and John Mateer. "The impact of digital technology on the distribution value chain model of independent feature films in the UK", *International Journal on Media Management* 17, no. 2 (2015): 93-108, <https://www.tandfonline.com/doi/full/10.1080/14241277.2015.1055533>

²⁸ Kehoe, Keith, and John Mateer. "The impact of digital technology on the distribution value chain model of independent feature films in the UK" (2015).

that the 2-month theatrical window for releasing films on OTT that existed prior to COVID has now been restored.²⁹

30. Exclusivity is a corollary of holdbacks. Some respondents indicated that exclusivity is necessary for getting exhibitors to invest in content or promoting content. Exclusivity allows stakeholders in the film industry to recoup their investment in a film, be it the cost of production or the cost exhibiting a particular film (as opposed to another). Thus, exclusivity plays an important role in encouraging the creation of film content. Respondents noted that there are broadly two types of exclusivity prevalent in the film industry. The first is content exclusivity, where a producer will make a deal with an exhibitor to show content exclusively on their platform for a fixed period of time. The second is producer exclusivity which, the respondents noted, is uncommon as producers prefer working with different exhibitors for different projects.
31. Specific to the film value chain, existing research shows that both horizontal and vertical integration have benefits for market constituents and the sector.³⁰ Specifically, vertical integration of production, distribution, and exhibition is noted to have been a key driver in the global success of US film studios in the 1990s, as it allowed firms to deploy specific resources across the value chain, resulting in higher-quality service delivery to consumers.³¹ Similarly, horizontal integration allows film companies to reap synergy benefits on account of superior budgeting, planning, and product quality, which is especially evident in exporting advantages.³²

E. Theatres, Television, and OTT are Complementary

32. Both literature and responses in focus group discussions, interviews, and surveys point to a high degree of complementarity amongst theatres, television, and OTT platforms on both the demand side and the supply

²⁹ Mind the Gap: Theatre to OTT Release Window Increased. 29 July 2022, <https://www.hindustantimes.com/entertainment/bollywood/mind-the-gap-theatre-to-ott-release-window-increased-101659096772794.html>.

³⁰ Mark Lorenzen and Arun Florian Taeube, "Breakout from Bollywood?: Internationalization of Indian Film Industry", *DRUID- Danish Research Unit for Industrial Dynamics, DRUID Working Paper No. 07-06* (2017), https://research-api.cbs.dk/ws/portalfiles/portal/59141135/DRUID_Working_Paper_No._07_06.pdf

³¹ Colin Hoskins and Rolf Mirus, "Reasons for U.S. Dominance in the International Trade in Television Programmes", *Media, Culture and Society* (SAGE, London, Newbury Park, Beverly Hills and New Delhi) 10 (1988): 499-515 (while this paper relates primarily to television programming, the authors note that reasons provided for dominance of film would apply equally to other cultural industries, such as feature films), <https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.878.8838&rep=rep1&type=pdf>

³² Dal Yong Jin,, "Transforming the global film industries: Horizontal integration and vertical concentration amid neoliberal globalization", *The International Communication Gazette* 74(5), (2012):405422,<https://study.sagepub.com/sites/default/files/Jin%2C%20D.Y.%20%282012%29.%20Transforming%20the%20global%20film%20industries.pdf>

side. The standard definition of complementarity, as for normal goods and services, does not apply to content (i.e., films) for two reasons: one, consumer interest perishes quickly as new content becomes available; and two, each piece of content generates revenue for the creation of newer content.

33. There are several factors that influence a consumer's choice of medium and consequently point to the demand-side complementarity between different mediums.³³ These include:

i. **Accessibility:** Accessibility of exhibition mediums has multiple dimensions that play an important role in the complementarity of different exhibition mediums. These are:

a. **Proximity:** In terms of physical proximity, TV and OTT are more accessible than cinemas in India, as is a heavily under-screened market. Illustratively, as per a news report from 2017, there are only ten theatres for every 1 million of the population.³⁴ Low theatre density is one reason why consumers may prefer consuming film on mediums located within their homes. In terms of cost, theatres are more expensive than television and OTT. Many television channels and OTT services are free,³⁵ making them more attractive for consumers who may not have enough disposable income to go to the cinema. From a cost perspective, television is the cheapest medium in India.³⁶

b. **Language** is another area where the three mediums complement one another. A vast majority of the population in India does not speak English and prefers to watch content in vernacular languages. A 2019 study suggested that content in languages such as Hindi, Punjabi, Telugu, Tamil, Kannada, and Marathi are generally preferred by consumers.³⁷ Mediums that focus on ensuring linguistic diversity would be better suited to serving consumer needs. There are several television channels offered in a host of Indian languages. In addition, in the past few years, several OTT platforms

³³ CSA, "Study on the consumption modes of audiovisual media services in the Wallonia-Brussels Federation", *Conseil Supérieur De L'Audiovisuel*, https://www.csa.be/map/wp-content/uploads/sites/6/2021/03/CSABe_Results-of-its-study-on-the-forms-of-consumption-of-audiovisual-media_MAP_2020.pdf

³⁴ The Economic Times. 'Cinema Screens in India Woefully Low, Hitting Global Ranking', 18 June 2017. <https://economictimes.indiatimes.com/industry/media/entertainment/cinema-screens-in-india-woefully-low-hitting-global-ranking/articleshow/59202333.cms?from=mdr>.

³⁵ As per information put out by the Telecom Regulatory Authority of India, there are 561 news and non-news free-to-air channels. For more information, please see: https://traai.gov.in/sites/default/files/FTA_channel.pdf.

³⁶ Broadcast Audience Research Council India. "TV Universe Estimates 2020", *Broadcast Audience Research Council India*, 2020, <https://www.barcindia.co.in/whitepaper/barc-india-tv-universe-estimates-2020.pdf>

³⁷ Zinnov, "The Future of Internet Content Consumption in India - Frictionless Experience for Mobile-Only India and Bharat", *Zinnov*, October 11, 2019, <https://www.slideshare.net/zinnov/the-future-of-internet-content-consumption-in-india-zinnov>.

have emerged in India which focus on regional content.³⁸ According to respondents, OTT plays an important role in making regional movies accessible to national audiences.

- ii. The setting within which a consumer wishes to view content also serves as a consideration for complementarity. In this context, television, theatrical films, and OTT platforms each serve differing needs for consumers. For example, television is seen as a family medium and has a high proportion of co-viewing within one's friends and family. According to a report by BCG, approximately 98 per cent of households in India which, on average, comprise 4.25 individuals,³⁹ own a single TV.⁴⁰ The BIF-CUTS International survey also found that 38 per cent of respondent consumers watch television as a family bonding exercise.⁴¹ Recent reports have noted that TV consumption remains strong in the country, and that overall consumption has actually seen an increase. Industry analysts attribute this to a strong culture of collective viewing in India.

In contrast, OTT content is predominantly viewed by individual users over their smartphones.⁴² While some argue that the trend is reversing,⁴³ it is only a small subset of premium users within the bracket of households that use television for private viewing and streaming, as there are reportedly only 10 million smart television connections in the country. Many of these may be in the same household or in offices. Going to the cinema is considered an outdoor entertainment activity with family and friends. Theatrical exhibitors also stated that they faced greater competition from outdoor entertainment options such as amusement parks and restaurants than from OTT platforms, which involves the consumption of entertainment in a more private setting. They noted that they were not in the same market as OTT.

- iii. **Temporality:** One respondent highlighted temporality as another important factor where different mediums play a complementary role. Both television and theatre are push-based mediums, meaning the consumer

³⁸ Javed Farooqui, "Regional OTTs On The Rise As Native Audiences Demand Local Language Content," *Exchange4media*, August 3, 2021, <https://www.exchange4media.com/digital-news/regional-platformsdriving-the-second-ott-wave-in-india-114698.html>.

³⁹ Ad Gully, 'BARC India 2018 Survey Analyses Impact of Co-Viewing on TV Viewership', 13 October 2018. <https://www.adgully.com/barc-india-2018-survey-analyses-impact-of-co-viewing-on-tv-viewership-81022.html>.

⁴⁰ BCG-CII, "Blockbuster Script for the New Decade: Way Forward for Indian Media and Entertainment Industry", *BCG-CII*, December 2021, <https://web-assets.bcg.com/7b/a8/1eff85904e408c18fb8284a299f9/blockbuster-script-for-the-new-decade.pdf>.

⁴¹ Kulkarni, Amol, Sidharth Narayan, and Vidushi Sinha. 'Towards Effective Choice: A Nation-Wide Survey of Indian TV Consumers'.

⁴² BCG-CII, "Blockbuster Script for the New Decade: Way Forward for Indian Media and Entertainment Industry", *BCG-CII*, December 2021.

⁴³ Divya Dixit, "How OTT Viewership Has Evolved from Single Viewing to Family Experience," *The Financial Express*, April 16, 2022, <https://www.financialexpress.com/brandwagon/how-ott-viewership-has-evolved-from-single-viewing-to-family-experience/2492959/>

does not control the timing or type of content shown. OTT, on the other hand, is pull-based, meaning the consumer can choose what they want to watch and when they want to watch it. Consumers with a recording function on their television set-top box can record a movie and watch it later. OTT presents a useful fallback option for consumers who do not have the time to go to the theatre or miss a movie on television because it is aired at an inconvenient hour, forgo to record it, or do not have a set-top box with recording capabilities.

- iv. **Type of Content:** Respondents added that consumer choice may also be driven by the typology of content available through different mediums. For example, consumers may prefer to watch smaller-budget or niche content over OTT platforms while preferring theatres and television for major releases.

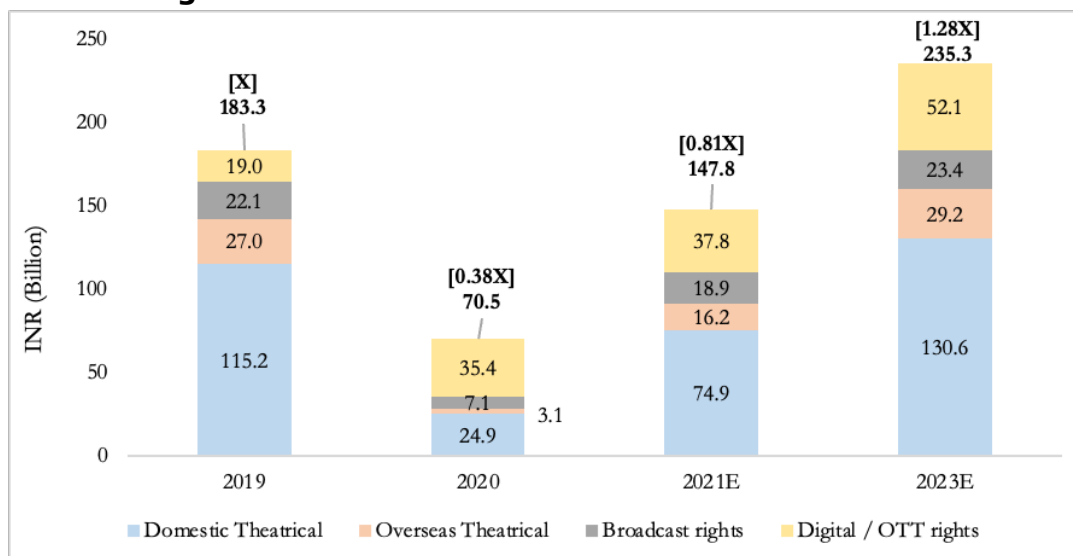
34. In general, it appears that television is considered an ideal medium for co-viewing within a private setting, whereas going to the cinema is considered an outdoor entertainment activity with family and friends, and OTT platforms are more suited for private, individual consumption. This also appears to be corroborated by the fact that more traditional forms of viewing content continue to exist alongside OTT platforms.

35. There is considerable complementarity amidst the different exhibition mediums for suppliers of content, i.e., producers, as well:

- i. **Supplementary Income When One form of Exhibition Receives Downside Shock or is Unavailable to the Producer:** In an inter-temporal setting with diminishing consumer interest for a film, sufficient revenues generated by OTTs, when theatrical exhibition takes a downside shock (i.e., the COVID pandemic), supplements the shortfall in revenues from theatrical exhibition and consequently, keeps continuous content creation intact (Figure 9). This makes more content consumption through theatrical exhibition at a later date possible (when the shock subsides). Therefore, the OTT and theatrical exhibition are inter-temporal complements. The case of movies such as *Drive*, released in 2019, further exemplifies the inter-temporal complementarity between various theatrical exhibition and OTTs. The movie was originally intended for theatrical release, but due to production/post-production technical delay, was released directly on digital.⁴⁴ This helped the producer/production houses observe reduced costs that may otherwise have accrued due to delay.

⁴⁴ Times of India, "Here's why 'Drive' got demoted from a theatrical release to a digital platform", *Times of India*, September 20, 2019, <https://timesofindia.indiatimes.com/entertainment/hindi/bollywood/news/heres-why-drive-got-demoted-from-a-theatrical-release-to-a-digital-platform/articleshow/71223069.cms>

Figure 9: Gross Revenue for Films across Platforms



Source: [EY FICCI Report \(2022\)](#)

- ii. **Recoupment of Investment:** The advent of a new medium for the consumption of content, i.e., OTT, consequently provides producers with additional avenue for exploitation of content and, concomitantly, recoupment of production investment (Figure 10). Respondents corroborated this position, noting that any producer in the market makes a film for all mediums, be it theatre, television, OTT, or any other medium, where exploitation is possible. Another respondent noted that the only way producers are able to get their content to “lakhs of people” is through exploitation on multiple mediums.

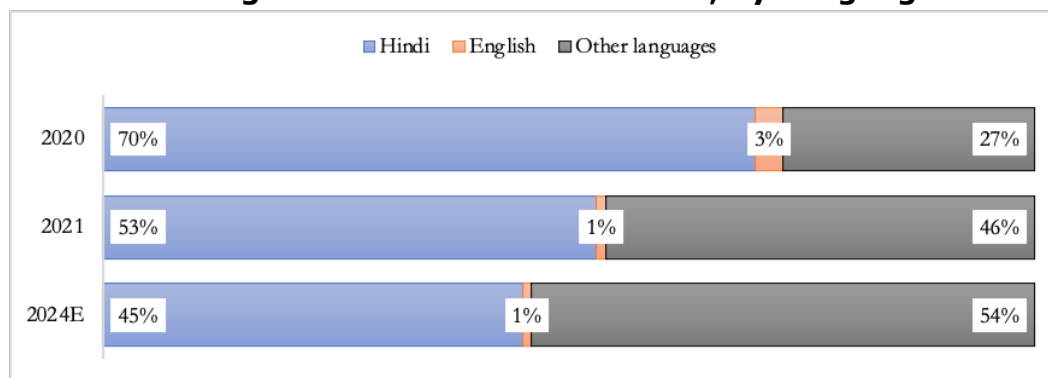
Figure 10: A Film’s Life Cycle Across Mediums

MOVIE	Year	Budget (Rs. Crores)	Indian Box office collection	Foreign Box office collection	Window period for OTT (months)	OTT platform	OTT Rights Worth (Rs. Crores)	Window period for TV (months)	TV	TV Rights Worth, Rs. Crores
DEAR ZINDAGI	2016	46	95	41	5	Netflix	35	5	Zee	22
TOILET: EK PREM KATHA	2017	18	186.4	125	5	Netflix	25	4	Zee	25
ARTICLE 15	2019	30	77.6	13.78	2	Netflix, Zee5	35	3	Zee	10
THAPPAD	2020	24	36	8	2	Amazon...	5	4	Zee	5
RRR	2022	400	857	200	3	Netflix, Zee5	325	3	Zee	300

Source: Author estimates based on media reports.

- iii. **Extent of Film Exploitability:** The extent of exploitability of a film across different mediums, however, varies from case to case, further supporting the case for supply-side complementarity in the film distribution value chain. The extent of film exploitability is dependent on several factors:
 - a. **Cost of Release:** Producers usually incur significant costs when they release a film in theatres, namely, promotion and marketing, virtual print fee, etc. While these costs vary from film to film, respondents indicated that they account for a considerable proportion of the budget for smaller films. One respondent shared an example where the budget of a movie was INR 35 crores, but the cost of releasing it in theatres was coming to around INR 45 crores. In such instances, where theatrically releasing a movie doubles the amount of money a movie has to make just for the producer to break even on the project and producers are unable to afford such costs, it may make limited commercial sense to opt for a theatrical release.
 - b. **Type of Content:** Niche content typically draws smaller audiences than blockbuster or mass-driven films. There are chances that niche films may not be allotted many screens, affecting their visibility and potential returns. In such cases, producers may look to releasing the film over OTT platforms and/or television. However, the considerations for purchasing rights to films are different for TV and OTT as well. For instance, television channels do not typically take films that have not had a successful release in theatres. Some respondents also indicated that television channels consider whether an OTT has purchased the rights to a film as an indication for investment. TV channels' decisions may also be linked to the history of the leading actors' films, according to some respondents. Overall, television depends significantly on signalling value from releases on other mediums. This pattern does not appear to be as prevalent for OTT platforms which, according to respondents, target diversity when selecting content (Figure 11).
- iv. **Theatrical, TV, and OTT Rights are Separate:** Television and OTT platforms are both parallel streams for producers to exploit their content, i.e., while both serve as a mode of more private entertainment consumption, they operate in different markets. According to respondents, the rights for OTT and television are sold separately.

Figure 11: OTT Titles Produced, by Language



Source: [FICCI-EY 2022](#)

F. Corporatization is Generally Pro-Competitive

36. Respondents largely provided positive feedback about the corporatization of the film industry, indicating that it has introduced several improvements in business. Corporatization enabled greater efficiencies in revenue collection and recovery and marketing. It bolstered incomes for professionals in the sector and made finance more accessible. One stakeholder indicated that, while actors prefer independent producers over corporates, they accord greater preference to deals where independent producers are affiliated with a corporate, so that financing is not a problem and there is a degree of dependability. As a result, many corporates play a more active role in distribution than in production. Independent producers indicated that their cohorts should strive towards greater corporatization to harness some of the efficiencies it proffers.
37. Corporatization is limited in the regional film production industries. Most of the South Indian respondents indicated that producers are largely independent and, therefore, must work to find partners to release their films.
38. Experts and analyst respondents pointed out that corporatization ensured an increase in the quality of pictures and enhanced the ability of the industry to take more cinema to Tier 2 and Tier 3 towns.
39. Distributors indicated that corporatization has improved processes and transparency in the industry to some extent. They also noted that it has driven up the value of films and, concomitantly, remuneration for actors. Finally, they highlighted that corporatization prompted an increase in the supply of content because of the need to feed the multiple content pipelines, i.e., theatres, broadcast, and digital.

CHAPTER 3

STUDY FINDINGS II: COMPETITION ISSUES

A. Overview

40. A total of 35 cases and 34 orders⁴⁵ were reviewed for this study. Twenty-four of these cases involved associations, seven cases involved issues related to digital cinema, and five pertained to a miscellaneous set of issues arising in relation to different aspects of movie releases. Figure 12 presents the most common form of anti-competitive conduct in descending order for each set of cases, from a preliminary assessment. A brief summary of these cases is presented below. This section explores some of the issues in these cases that were raised as competition concerns by respondents through the course of the study.

Figure 12: Preliminary Instances of Anti-Competitive Conduct

	Detail	Frequency
Cases related to associations	Bans, boycotts or refusal to screen films	10
	Prohibition on working with non-members	9
	Price fixation	7
	Mandatory registration of films	6
	Discrimination against non-regional films	6
	Holdback restrictions	5
	Revenue sharing	4
	Mandatory membership	3
	Withholding payments	3
Cases related to digital cinema	Restraining theatres from dealing with other DCE providers	5
	Limiting and controlling the supply of films in India	4
	Prohibition on release of movies in theatres non using DCI equipment	2
	Limiting exhibitor choice to choose DCE servers and projectors	2
	Forcing producers to release films in theatres using particular DCE	2
	Preventing exhibitors from availing of DCE services from outside the State	1
	Charging substantially higher fees for release, compared to other states	1
	Lack of exit options in contractual agreements	1
	Restricting the supply of DCE to exhibitors	1
	Unlawfully terminating the agreement for installation of DCE in a theatre	1
	Continued VPF charge even after the sunset period	1
	Compelling DCE SPs to offer VPF rates at commercially unviable rates	1
	Restricting the right to have access to the market by giving a poor rating to a movie	1
Miscellaneous Cases	Distributor asking theatres to contract for two films as a bundle	1
	Discrimination in the grant of entertainment tax exemption	1
	Limiting/controlling the supply of movies for exhibition (refusal to deal)	1
	Depriving exhibition rights by limiting the number of screens for a dubbed movie	1

⁴⁵ Cases were clubbed in one instance.

B. Bargaining Power in Revenue-Sharing Arrangements

41. Copyright products such as films are not markets in themselves because they rely on several complements such as distribution, exhibition, and marketing to realize value.⁴⁶ Thus, while a producer may have a statutory monopoly over a movie, (s)he cannot have a monopoly on the market for that movie. The reliance on product and service complements plays a prominent role in bargaining power dynamics in the sector as it underpins the manner in which financial arrangements between different actors are structured.
42. Competition issues regarding revenue sharing between producers/distributors and exhibitors have come before CCI in four cases.⁴⁷ In *FICCI Multiplex Association of India ('FICCI') vs United Producers/Distributors Forum ('UPDF')* and *Cinemax vs Film Distributors Association ('FDA')*, producers/distributors associations came together to bargain with multiplexes for a larger share from box office collections. CCI found that UPDF engaged in cartel-like behaviour to make exhibitors accede to their demands. In the other case, Cinemax alleged that FDA is acting as a cartel to decide the rates at which Malayalam films will be provided for exhibition. Further, Cinemax argued that it will lead to absence of competition among distributors, drive it out of the market with other Malayalam film exhibitors, and harm consumers who will have to pay higher prices. CCI found that FDA's conduct in unilaterally raising prices violates Sections 3(1), 3(3)(a), and 3(3)(b) of the Competition Act.
43. In the matter of *Unilazer Ventures Private Limited ('Unilazer') vs. PVR Ltd. & Ors ('PVR-O')*, the issue of non-negotiable standard revenue-sharing agreements was raised as an issue by the Informant producer against the OP multiplexes.⁴⁸ CCI noted that the Informant was unable to demonstrate that the revenue-sharing arrangement between them was a function of anti-competitive conduct by the OP.
44. The placement of a stakeholder in the film distribution value chain has important considerations for bargaining power. Illustratively, there are many more producers than exhibitors, as is evinced by the fact that three multiplexes account for 79 per cent of the multiplex screens in the

⁴⁶ US Department of Justice & Federal Trade Commission. "Antitrust Guidelines for the Licensing of Intellectual Property" (2016): 7. Available at: https://www.ftc.gov/system/files/documents/public_statements/1049793/ip_guidelines_2017.pdf

⁴⁷ In the fourth case, *PV Basheer Ahmed vs Film Distributors Association*, revenue sharing only arose as an ancillary issue to the dispute, which related to the OP Distributor Association suspending the Informant, PV Basheer Ahmed's, membership because he acted in contravention of its directions.

⁴⁸ *Unilazer Ventures Private Limited vs. PVR Ltd. & Ors*, <https://www.cci.gov.in/antitrust/orders/details/181/0>

country.⁴⁹ Respondents also indicated that, out of the 1,100 single-screen theatres in the country for Hindi, only 254 generated revenue. Concentration in theatrical exhibition leaves fewer channels for monetization for producers which, to some extent, gives downstream players greater bargaining power, as they control entry to these channels. Illustratively, scholars note that the deficit in theatre screens post-independence enabled existing exhibitors to exploit their positions to charge higher rates to distributors that were facing a production surplus.⁵⁰ Respondents indicate that a production surplus and the relative deficit in screen count characterize the film distribution value chain in India, with a consequent impact on competition dynamics. Respondents indicate that the arrival of OTT has reduced the asymmetry in bargaining power between producers and exhibitors to some extent. However, as theatres account for the largest proportion of revenue for a film (see Figure 9), bargaining power considerations can lean in their favour.

45. **Producers/Distributors and Multiplexes:** Revenue sharing between multiplexes and distributors typically follows a sliding scale arrangement. Under this arrangement, distributors and multiplexes agree on the minimum playing time for a movie and the share of box office receipts for either party. The share of distributors/producers progressively reduces in favour of the exhibitor.⁵¹ As Figure 13 indicates, Hindi film distributors only get a higher share of revenue than exhibitors if a movie is very successful in its first week of release.⁵²
46. Some Indian producers argued that sliding scale arrangements, where the producer's percentage drops drastically in the second and third week of a movie, adversely affects certain types of content, such as regional language films. Such arrangements presume that the largest audience for a film only comes in the first week. The stakeholders highlighted that word-of-mouth for regional language or niche films builds slowly. Thus, such films may have a much larger audience in its second or third week than its first week of release.

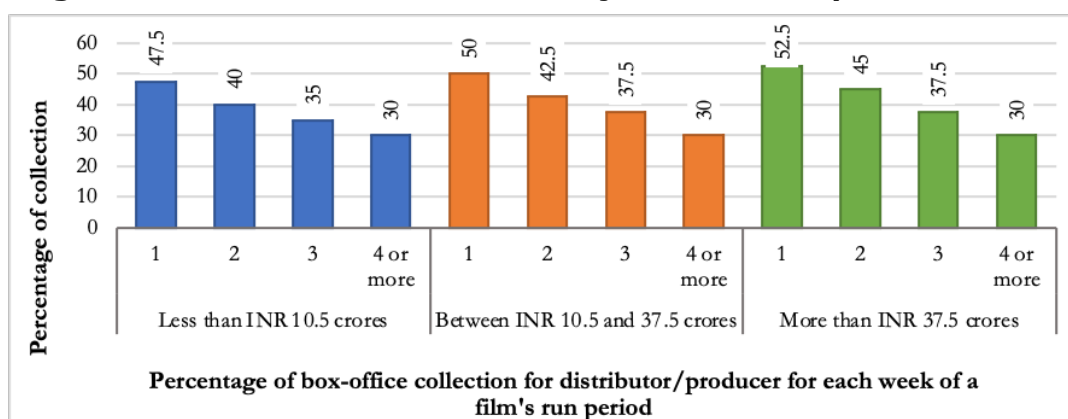
⁴⁹ PVR, "PVR Cinemas, Celebrating 700 Screens Investor Presentation", *PVR Cinemas*, March 2019, https://static1.pvrcinemas.com/pvrcms/pvrinvestor/PVR_Investor_Presentation_March19.pdf

⁵⁰ Hill Douglas and Adrian Athique, "Multiplexes, corporatized leisure and the geography of opportunity in India", *Inter-Asia Cultural Studies* 14, no. 4 (2013): 600–614, <https://www.tandfonline.com/doi/full/10.1080/14649373.2013.831198?scroll=top&needAccess=true>

⁵¹ Baranchuk, Nina, Seethu Seetharaman, and Andrei Strijnev. 'Revenue Sharing Vertical Contracts in the Movie Industry: A Theoretical Analysis'. *Review of Marketing Science* 17, no. 1 (2019): 81–116. doi:10.1515/roms-2019-0059.

⁵² Baranchuk, Nina, Seethu Seetharaman, and Andrei Strijnev. 'Revenue Sharing Vertical Contracts in the Movie Industry: A Theoretical Analysis'.

Figure 13: Distributor's Share in Major Hindi Multiplex Collection



Note: This figure outlines the percentage of box office collection for a Hindi film producer/distributor for each week during a film's run period. If a movie makes less than INR 10.5 crores, producers will get 47.5 per cent in the first week (concomitantly, the multiplex will get 52.5 per cent), and their share will decrease for each subsequent week that the movie remains in theatres. The rest of the data in the figure can be interpreted similarly.

47. From consultation with various stakeholders, emerged that multiplexes enjoy considerable market power in the film distribution value chain. Recent reports indicate that certain multiplexes can raise prices considerably—a strong indication of market power. Illustratively, a report from July 2022 revealed that one multiplex chain raised its prices by 23 per cent.⁵³ Respondents corroborated the view about multiplexes enjoying considerable market power. They noted that this was largely so because multiplexes account for a majority of theatrical revenues. In 2019, for instance, multiplexes generated INR 61 billion in revenue, whereas single-screens generated INR 53 billion.⁵⁴
48. During the course of the study, it emerged that multiplexes have significant bargaining power over producers/distributors:
 - i. The relatively low percentage of revenue shared in the first week of box office release exemplifies the leverage that multiplexes have over Hindi producers/distributors in India (Figure 13). Hindi producers/distributors get around 50 per cent⁵⁵ of box office revenues in the first week of release, which is much lower than what producers/distributors get in the US. Multiplexes also have other sources of revenue, such as food and beverage and advertisements, which, according to respondents, account for 42.5 per cent of their revenue. Producers, on the other hand, rely

⁵³ Haidar, Faizan. 'PVR Raises Ticket Prices by up to 23%, Says CEO'. The Economic Times, 27 July 2022. <https://economictimes.indiatimes.com/industry/media/entertainment/media/pvr-raises-ticket-prices-by-up-to-23-says-ceo/articleshow/93167746.cms>.

⁵⁴ FICCI-EY, "The era of consumer A.R.T., India's Media & Entertainment sector", FICCI-EY Report, March 2020, <https://ficci.in/spdocument/23200/FICCI-EY-Report-media-and-entertainment2020.pdf>

⁵⁵ Please see *MAI vs UPDF*.

entirely on content sales for revenue, whether they be through rights sales to satellite or OTT, or box office collections. It is also important to note that exploitation across all mediums of exhibition is not guaranteed for producers. For instance, if a movie does not do well in theatres, it is unlikely to be picked up by television channels. Thus, even though they are completely dependent on box office revenues, producers only get a higher share of box office collections than multiplexes in the first of week of a film's release on the relatively infrequent occasions that movies are successful. This is despite the fact that multiplexes have multiple other sources of revenue.

- ii. Some regional producers corroborated that they too have limited negotiating power with multiplexes. Telugu film producers indicated that they can only call the shots when they have a big star attached to their film, but this just accounts for 10 per cent of the productions. Tamil film producers indicated that there are very few multiplexes in their state.
 - iii. According to stakeholders, a further indicator of asymmetry in bargaining power between multiplexes and upstream players is that the latter must pay for all in-theatre promotions, in addition to out-of-theatre promotions for movies showcased. Stakeholders note that promotional costs for theatrical releases pose considerable barriers to entry for smaller producers.
49. Producer respondents highlighted that the revenue-sharing terms with multiplexes are effectively non-negotiable. Some stakeholders also indicated that multiplexes have complete discretion over the number of screens, shows, and locations given to a movie. According to submissions from respondents, this leads to certain films getting a very large number of screens, whereas the screen allocation for several other films can be sub-optimal. Other stakeholders noted that multiplexes go so far as telling producers to refrain from dealing with other theatres, which raises considerable concerns for competition. Other stakeholders submitted that multiplexes have the ability to drop a movie from their listings if they feel like it is not performing. This cutting from the schedule can be as quick as the afternoon of the day of release. Moreover, some producers indicated that movies that were first released on OTT during the pandemic were refused a subsequent theatrical release. Smaller producers indicated that multiplexes ask them for minimum guarantees (in addition to virtual print fee and marketing costs) to release their movies in their theatres, which raises concerns about barriers to entry. Some larger producers did not have the same experience. At the same time, it is important to note that all stakeholders in the ecosystem gauge their investment in a film based on a calculation of risk. They may ask for greater up-front investment,

such as a minimum guarantee, to place the picture in a hall because of the apprehension that the film will not draw adequate audiences and may, consequentially, present a trade-off, where a more profitable film could come in. Where such situations arise, on a case-by-case basis, it can be seen whether the conduct of the multiplex operates as a restraint of trade. It must also be noted that the arrival of OTT has brought some relief as it gives producers a possible separate route to sell their film and recoup their investment. However, there are no guarantees that every film made will be picked up. These decisions are commercial in nature and best left to the discretion of industry stakeholders.

50. Stakeholders expressed concerns about how consolidation in the multiplex segment may prompt further anti-competitive conduct on the part of the latter against stakeholders in the value chain. They noted that it can lead to reduced consumer choice and higher prices for consumers, which seems to be an emerging trend given the recent instance of a ticket price increment by the largest multiplex chain cited above. Other respondents noted that even big budget films and large producers/distributors would have limited options to negotiate terms with multiplexes. Telugu film producers indicated that they have been unable to negotiate better terms with multiplexes despite rises in ticket prices. One respondent indicated that consolidation in the multiplex sector may even prompt some producers to step away from making films and gravitate towards web series or other forms of programming, where there is less risk. Conversely, multiplexes indicated that consolidation will permit them to add more screens.⁵⁶
51. To summarize, the stakeholder's consultations in the value chain indicate that multiplexes enjoy considerable bargaining power against upstream players. Respondents have indicated that deal terms are non-negotiable, and the lack of flexibility can make recoupment of investment in films untenable in certain instances. In addition, rather than standard templates, arrangements between multiplexes and producers must be accommodating of the type of content being showcased, so that smaller projects which attract larger crowds in subsequent weeks can also be remunerative for producers. Multiplexes may also consider granting fairer terms to producers in terms of promotions by either sharing the costs of promotion or refraining from charging them for in-theatre promotion. In addition, there should not be any instances where multiplexes tell producers to refrain from giving content to a particular theatre.

⁵⁶ D'Souza, Sharleen. 'PVR-Inox Merger: We Want to Roll out 200 Screens a Year, Says Bijli & Jain', 28 March 2022. https://www.business-standard.com/article/companies/pvr-inox-merger-we-want-to-roll-out-200-screens-a-year-says-bijli-jain-122032700860_1.html.

52. **Producers and Distributors:** There are broadly three kinds of revenue-sharing arrangements between producers and distributors. The first is a minimum guarantee (MG), where the distributor guarantees a specific sum to the producer, which is payable in instalments. These arrangements enable producers to minimize their risk while affording distributors a larger cut of downstream revenues. MG arrangements are more common in regional film sub-segments in southern India. Respondents suggested that some producers prefer this option. The distributor takes on greater risk in MG arrangements; however, it is not necessary that this is a function of unequal bargaining power in favour of the producer. For instance, the distributor might give the producer an MG to cover the costs of production, and therefore, may have a stake in the movie. The distributor may be taking a calculated risk on a movie if it has a star cast or a big director attached to it. At the same time, stakeholders indicated that if the distributor has given a fee up-front as an advance to fund production and the film does not recoup its value during release, distributors may face some difficulty recovering their investment. In such instances, producers are either required to offer a better deal to distributors in the next film cycle, seek out another distributor for funding, or pay interest on the funds owed.
53. The second arrangement between distributors and producers is a commission agreement, where the producer gives the distributor a commission or fee for distributing its movie. The degree of risk in commission agreements is more equally divided between the producer and distributor in such arrangements. Respondents indicated that larger production houses and distributors commonly enter into such arrangements.
54. As stated earlier, there is significant consolidation of production and distribution, largely due to the efficiencies proffered by such an arrangement. However, some respondents note that the creation of in-house distribution verticals by major producers and studios has impacted the ability of independent distributors to purchase and distribute films. Respondents highlighted that the capital required to acquire films produced by large studios in major markets is too high for most independent distributors. As a result, these distributors largely operate in smaller film circuits of the country, such as Assam, Odisha, and West Bengal.⁵⁷ Further, despite these issues, independent distributors remain an integral part of the film value chain. They are required by smaller independent producers who do not have their own distribution verticals.

⁵⁷ Arthur De Vany, *Hollywood Economics: How Extreme Uncertainty Shapes the Film Industry* (London and New York: Routledge, 2005).

Moreover, several independent distributors provide last-mile connectivity in Tier 2 and Tier 3 cities. Hence, even larger producers (that have their own distribution verticals) must work with independent distributors to showcase their films in smaller cities to maximize film viewership. Further, large producers may opt for independent distributors if they expect to release a small number of films (1–3) in a year. Conversely, where four or more films are expected to be released, in-house distribution appears to be the preferred channel due to its cost savings. Overall, discussions with the respondents indicate that the bargaining power between distributors and producers is fairly balanced.

55. Some respondents indicated that, in Tamil Nadu, where there is a nexus between distributors and exhibitors, there is limited scope for producers to negotiate on revenue-sharing arrangements, and this can sometimes serve as a barrier to entry. As mentioned earlier, in Tamil Nadu, although a majority of the theatres (60–70 per cent) are single screens, 80 per cent of these screens deal through only 7–10 distributors. Respondents noted that, in such situations, if producers are unable to secure a deal with a distributor, that producer cannot access theatres, because the distributor serves as a gatekeeper to theatres in that area. Respondents indicate that such situations are particularly problematic for independent producers.
56. However, as mentioned earlier, it is also important to note that distributors and single-screens may be allotting screens based on their own risk considerations. Moreover, there may be efficiency gains that the small number of distributors afford producers, as there are mostly single-screens in Tamil Nadu. Specifically, it could be expensive for producers to contract with each single-screen individually, and the transaction costs of locating and negotiating with each exhibitor separately could be high. The small number of distributors bring down transaction costs, as producers only have to deal with a handful of players. At the same time, however, deal terms should be fair and negotiable and not unilaterally decided by distributors and exhibitors. Such cases can only be decided on a case-by-case basis.
57. In April 2021, the Tamil Film Producers Council established a Release Regulation Committee to “de-clutter release and ensure that small-budget films get adequate screen time”.⁵⁸ As per a news report, the rules only permit one big release along with two or three small-budget movies.⁵⁹ In *XYZ vs. Tamil Film Producers Council & Ors.*, the findings in the Investigation Report stated that the “voluntary regulation of release of

⁵⁸<https://www.thehindubusinessline.com/news/variety/small-film-producers-finding-it-tough-to-get-screen-time/article25719182.ece>

⁵⁹<https://www.thehindubusinessline.com/news/variety/small-film-producers-finding-it-tough-to-get-screen-time/article25719182.ece>

movies by the producers does not raise competition concerns”.⁶⁰ However, the Council relaxed the rules to allow producers to release any number of movies during the 2021 Christmas and Pongal seasons. Bigger pictures get more screens, leaving small- to medium-budget films out.⁶¹ It is likely that the situation is temporary, given the backlog of pictures created by the pandemic. Thus, this situation must be evaluated on a case-by-case basis, especially as there seems to be a mechanism in place to give smaller budget movies a fair shot at getting into theatres in Tamil Nadu.

C. Lack of Transparency in Box Office Collections for Theatrical Exhibition of Films

58. As per the study, the revenue-sharing terms between producers/distributors and single-screens favour the former. The single-screen theatre revenue shares are capped at the cost of rental/hire and there is a 50–50 split for films that do not do well. The study further indicated that there is also a fixed hire model, where the single-screen pays the distributor a certain amount for giving it the movie. Though these arrangements seem asymmetric, the respondents indicated that they are kept so because of the lack of transparency with many single-screen theatres. The fixed hire model, for instance, is for theatres where distributors have no visibility on how long a movie runs for or what the collections are at the box office. According to respondents, out of a total of 1,300 single-screen theatres that showcase Hindi cinema, only 254 contribute to revenue collection. With the remainder, which only account for 3–4 per cent of total revenue, there is a lack of transparency, which is then priced into the arrangement between the distributor and the theatre.
59. Producers corroborated the position about a lack of transparency about box office collections in theatrical exhibition. Numbers are disputed because of the erratic and non-systematized format of reporting. They get either handwritten reports through fax, or the numbers are communicated on the phone.
60. Some stakeholders cited indicate that some producers have an incentive to announce inflated box office numbers to show that their movie did well.⁶² Some multiplexes indicate that reporting from their side is automatically generated.⁶³ As per the study, box office collections are obscured by the lack of a uniform, industry-wide reporting system.

⁶⁰ <https://www.cci.gov.in/antitrust/orders/details/690/0>

⁶¹ <https://www.thehindubusinessline.com/news/variety/small-film-producers-finding-it-tough-to-get-screen-time/article25719182.ece>

⁶² Jha, Amit Upadhyaya, Nidheesh M. K. ,Lata. 'Why Indian Box Office Collections Depend on Who You Ask'.

⁶³ *Ibid.*

61. Some of the respondents noted that, globally, the film industry relies on monitoring tools that track and accurately measure box office receipts. However, the system has not taken hold in India due to limited impetus on the part of certain stakeholders to adopt the system. A news report from 2015 noted that one cinema chain was introducing a system to carry out its box office reporting and that the system had been in use in India since 2014. The ubiquitous adoption of box office monitoring systems would introduce much-needed transparency in box office collections. Consequently, it would mitigate information asymmetries that translate into better terms for revenue-sharing arrangements between stakeholders and the disputes that accompany them. As such, stakeholders should commit to set a date for the universal adoption of such a system.

D. Issues Related to Competition in Digital Cinema

62. Digital cinema was introduced to overcome the inefficiencies of analog projectors and physical film prints. Physical film prints were expensive and non-durable and only allowed for limited release of a film. Conversely, the digitization of cinema offered a way for producers to have wider releases, concomitantly enabling smaller cinemas to partake in first releases and provide greater access of films to consumers.
63. According to some of the respondents, another problem with physical film-based distribution was that it made it difficult for the producer to monitor the release. As such, producers would sell their films to distributors for an up-front payment and then share revenue accrued at the box office in a 50–50 split. Producers had no way of monitoring the run period (how long their film ran at a theatre), particularly in remote parts of the country. For example, if distributors/cinema theatre owners indicated that a film only ran for 2–3 days, producers had no means of verifying these claims. Thus, digitization also helped mitigate under-reporting of box office returns. However, this position contradicts the feedback from several production and distribution stakeholders that indicate that there is limited transparency in the relay of box-office receipts.
64. According to the study, in digital cinema, there are two broad standards. The first is DCI. "DCI was established in 2002 as a joint venture between Disney, Fox, Paramount, Sony Pictures Entertainment, Universal and Warner Bros. DCI's primary purpose was to establish and document voluntary technical specifications for an open architecture for digital cinema that ensures a uniform and high level of technical performance, reliability and quality control. As per the DCI specifications, each DCI member company may independently decide the extent to which it will adhere to these specifications for a digital cinema system. No member

company is forced to comply with DCI specifications and there is no agreement among the constituent members of DCI that they will do so in licensing their content to exhibitors”.⁶⁴ DCI requires the projection of movies in 2K or 4K and has strict security standards for its content.⁶⁵ The second is e-cinema. According to respondents, e-cinema is everything that is not DCI. E-cinema has lower content resolution and security standards than DCI and focuses more on cost-efficiency.⁶⁶ While e-cinema may not be as qualitative as DCI, it still offers improvement over the experience with pre-digital film projection systems.⁶⁷ Moreover, one DCE service provider indicated that its e-cinema systems were offering security that was somewhat comparable to DCI. For a breakdown of the differences between e-cinema and DCI, please see Figure 14.

Figure: 14: Digital Cinema Standards

Standard	DCI	Non-DCI or E-Cinema
Equipment Specifications	Specs for projectors and servers	No specs for equipment
Content Security standards	There are security requirements	There are no security requirements
Compliance requirements	Compliance test necessary for equipment to pass DCI standard	No requirement for any compliance
Share of Theatres	40%	60%

65. Respondents indicated that digitization also presented a solution to prevent the leakage of film prints, which was a common practice prior to its advent. While digitization may have played a mitigating role in this practice, there are still instances of leakage. The Commission in a case did go into the aspects of online piracy of cinema emanating from exhibition through digital equipment, prevention of which was offered as a defense in the proceedings before it.

⁶⁴ M/s. K Sera Sera Digital Cinema Pvt. Ltd. vs. Digital Cinema Initiatives. LLC. & Ors. April 22, 2015, https://www.cci.gov.in/sites/default/files/302015_0.pdf

⁶⁵ Digital Cinema System Specification, V1.3 June 27, 2018, <https://glenwing.github.io/docs/DCI-1.3.pdf>

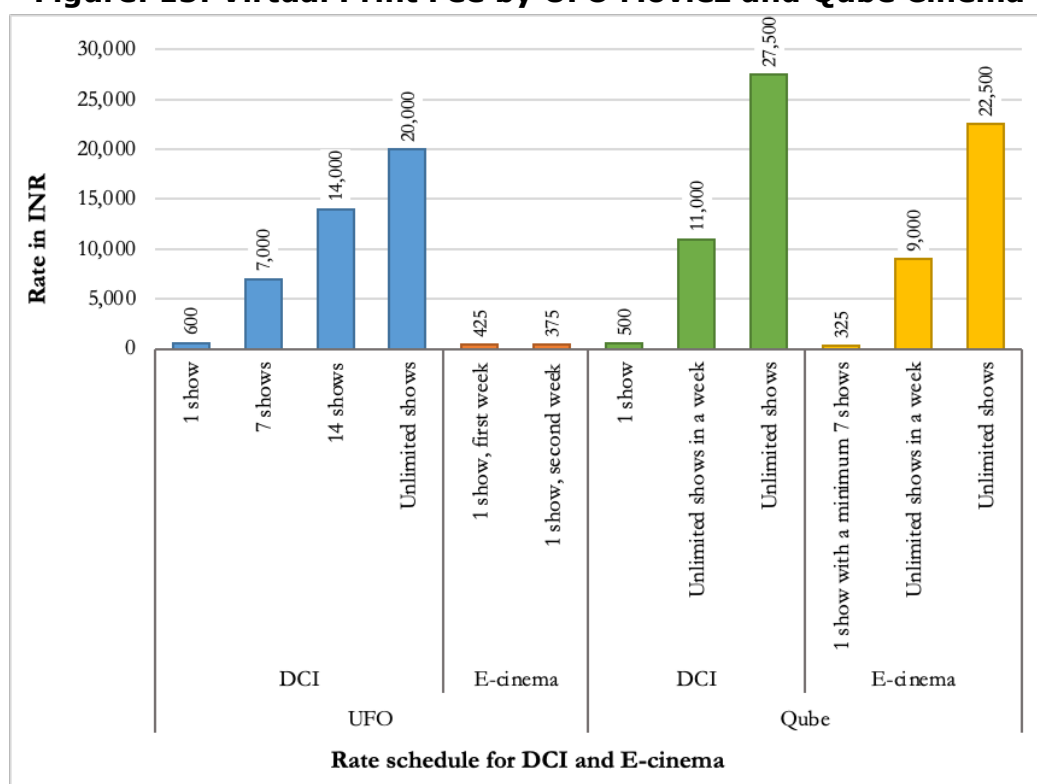
⁶⁶ The Times of India. 'Mumbai, the Capital of Digital Cinema', 22 August 2009. <https://timesofindia.indiatimes.com/city/mumbai/mumbai-the-capital-of-digital-cinema/articleshow/4920917.cms>.

⁶⁷ Jennifer Davis and Jeremy Sternhagen, 'Enthusiast's Guide to Digital Cinema', June 10, 2017, <https://silo.tips/download/enthusiasts-guide-to-digital-cinema>.

66. Seven cases related to the digitization of cinema have come before CCI.⁶⁸ An analysis of key competitive issues raised by some of these cases, that were also brought out in discussions with stakeholders, are as follows:

67. **Virtual Print Fee (VPF):** VPF is a subsidy that producers/distributors pay to enable exhibitors to cover the cost of converting their analog projectors into digital ones. Stakeholder discussions brought out some degree of variability in VPF rates across service providers. However, as per the study, the range is broadly between INR 20,000 and 27,500 for an unlimited number of shows per property. Figure 15 presents the rate schedule for VPF by two of the larger players in the market, UFO Moviez and Qube Cinema, for the Hindi film industry. Stakeholders also suggested that the rates are different for regional films.

Figure: 15: Virtual Print Fee by UFO Moviez and Qube Cinema



⁶⁸ These are: *K Sera Sera Digital Cinema Pvt. Ltd. Vs. NBC Universal Media Distribution & Ors* (Case No. 24 of 2015), *K Sera Sera Digital Cinema Pvt. Ltd. Vs. Digital Cinema Initiatives LLC & Ors.* (Case 30 of 2015), *Eskay Video Pvt. Ltd. Vs. Real Image Media Technologies Pvt. Ltd. and Ors.* (Case No. 57 of 2016), *K Sera Sera Digital Cinema Ltd. Vs. Pen India Ltd. & Ors.* (Case No. 97 of 2016), *Mr. Arjun Vs. Viacom & Ors.* (Case No. 57 of 2017), *XYZ vs. Tamil Film Producers Council and Ors.* (Case No. 07 of 2018), and *Unilazer Ventures vs. PVR Ltd. & Ors.* (Case No. 10 of 2019).

68. VPF played a key role in ushering in digitization of cinema in India. However, there was considerable resistance on the part of both producers and exhibitors to switch to digital despite the purported efficiency gains. Table 3 summarizes the major concerns.

Table 2: Concerns of Stakeholders About Digital Cinema

Exhibitors	Producers/Distributors
Lack of trust in new technology: Analog projectors were a trusted, century-old technology, whereas digital projectors were relatively nascent and untested.	Piracy: Did not trust a third party with their content. Lack of incentive to switch: No incentive for uptake, as downstream players were not switching to digital projectors.
Lack of financial incentive to switch: Producers bore the cost of physical print so there was no rationale for investing in digital projection equipment.	
No clear business case: There was no indication of how it would help grow their business.	
Smaller cinemas could not afford DCE equipment.	

69. Digital cinema players were able to overcome industry resistance to digitization on the basis of two deals with industry stakeholders. The first was establishing a nexus with smaller cinemas that had an irregular supply of content. Certain digital cinema players provided these cinemas with projectors and servers and shouldered the responsibility of serving as a content pipeline to the latter. If the cinemas used the content and the equipment, they would have to pay the DCE provider INR 250. After striking such deals with about 40–50 cinemas in smaller towns, the DCE providers went to producers with a similar deal, asking for a per show fee if their content was showcased in these halls. This rate formed the basis of the virtual print fee (VPF), which effectively operates as a digital projection equipment subsidy for theatre owners. In this way, DCE service providers enabled smaller cinemas to compete with theatres in larger metros while also opening up new theatrical avenues for producers.
70. The other breakthrough came through Hollywood studios, which had collaborated to develop a digital cinema standard known as Digital Cinema Initiatives (DCI). According to respondents, the digitization of cinema was important for Hollywood studios, as it mitigated piracy and enhanced video quality. To incentivize the uptake of the DCI standard, Hollywood studios came up with a program where a producer would pay a VPF to a digital cinema service provider to subsidize the cost of equipment in the theatre.

In exchange for a sunset clause, Hollywood studios agreed to pay a higher VPF (approximately USD 500) than what domestic producers were paying for non-DCI digital cinema. Two business models are followed by digital cinema players:

71. Outright Sale: Digital Cinema Equipment (DCE) is bought outright by the theatre. This can be a prohibitively expensive option, and as a result, very few theatres avail of it. The average cost of DCE is approximately INR 30 lakhs per screen.⁶⁹ Under this model, the purchasing cinema charges VPF from producers either directly or through the DCE provider.
 - i. **Lease:** The DCE provider leases equipment to a cinema theatre operator for an annual fee. To make up the cost of equipment, DCEs also enter into agreements with the lessee cinemas for advertising and virtual print fee, where they retain a majority of the revenues generated under these. Some stakeholders indicated that DCEs retain the entire amount under the lease model.
72. VPF has featured as an issue of contention in several cases before CCI as well. In *Unilazer Ventures ('Unilazer') vs PVR Ltd. & Ors ('PVR-O')*, Unilazer alleged that PVR-O, which comprised major multiplex chains and their primary industry association, continued to charge VPF despite the expiry of a sunset period for such charges. PVR-O contended that it had made significant investments in equipment and also incur an annual maintenance charge for the same. It further highlighted that digitization significantly brought down the cost of film distribution and mitigated piracy to a considerable extent. CCI noted that there was no evidence to show that PVR-O colluded with other multiplexes to impose VPF on Unilazer. CCI also noted that there was evidence that PVR-O “appeared to be willing to mutually negotiate the concerns of” Unilazer.
73. Producer discontent with VPF has also led to boycotts in the film industry. In *XYZ ('XYZ') vs Tamil Film Producers Council ('TFPC')*, XYZ alleged that TFPC engaged in the boycott of production of Tamil and Telugu films as a protest against VPF charges. Pursuant to various meetings between a committee formed by TFPC and two prominent DCE providers, and the intervention of the State Government, the DCE providers agreed to offer a discount of 18–23 per cent (depending upon the shelf life of the film) on the VPF. CCI held that the impugned conduct of TFPC in issuing boycott calls to members violated the provisions of Section 3(1) read with Section 3(3)(b) of the Competition Act and accordingly, issued an order asking TFPC to cease and desist from any such conduct in the future.

⁶⁹ *Unilazer Ventures vs. PVR Ltd. & Ors.* (Case No. 10 of 2019) <http://www.cci.gov.in/sites/default/files/11-of-2020.pdf>

74. Despite the outcome of the cases related to VPF before CCI, respondents contend that VPF has anti-competitive effects in terms of creation of barrier to entry for producers seeking theatrical exhibition for their films and considerable increase in the cost of theatrical exhibition. According to stakeholders, the average spending on VPF is about INR 3–6 crores, which can be prohibitive for small-budget films. One stakeholder remarked that several producers are motivated to go directly to OTTs to avoid paying VPF. The stakeholder cited the example of the movie *Jersey*, where the combined cost of theatrical promotion and VPF was coming to around 45 crores and just the lead actor's fees was coming to INR 31 crores.⁷⁰ In such an instance, it made limited sense for the producer to release the movie in theatres when it could recoup its investment by selling the movie to an OTT platform. However, the movie in the immediate instance was released in theatres and went on OTT a month after its theatrical release.⁷¹ A likely reason for this, as one report indicates, is that the lead actor told the makers of the film that he would take a pay cut to stop the movie from going directly to digital.⁷² Another producer indicated that his films enjoy wider releases abroad because there is no VPF. Respondents suggest that there have also been instances of refusal to deal in the context of VPF. Some producers also alleged instances of downstream arrangements between DCE providers and theatres when it came to VPF charges. They indicated that their films were refused entry into theatres if they refused to pay a certain VPF amount. Some other producers indicated that, if VPF is not paid up-front, release of their movie is blocked.
75. Some stakeholders expressed displeasure with VPF when Hollywood studios do not have to pay this fee because of a sunset clause they had with DCE providers. Hindi film producers acknowledged that, when DCE was first introduced, most domestic production houses did not have the foresight to sign an agreement which offered them the same terms as Hollywood studios. However, some stakeholders highlighted that, if Hollywood studios release films in local languages, they are required to pay VPF. Moreover, according to respondents, English Hollywood movies only make up about 15 per cent of the total film market in India. There may not be a competitive advantage for such films because they make up a small percentage of releases. Some producers argue that sunset clauses in VPF contracts were effectively negated by other provisions that compelled exhibitors to upgrade their digital equipment. The requirement

⁷⁰ WION. 'Jersey: Shahid Kapoor Ready to Take a Pay Cut to Avoid OTT Release?' WION, 31 December 2021. <https://www.wionews.com/entertainment/bollywood/news-jersey-shahid-kapoor-ready-to-take-a-pay-cut-to-avoid-ott-release-441386>.

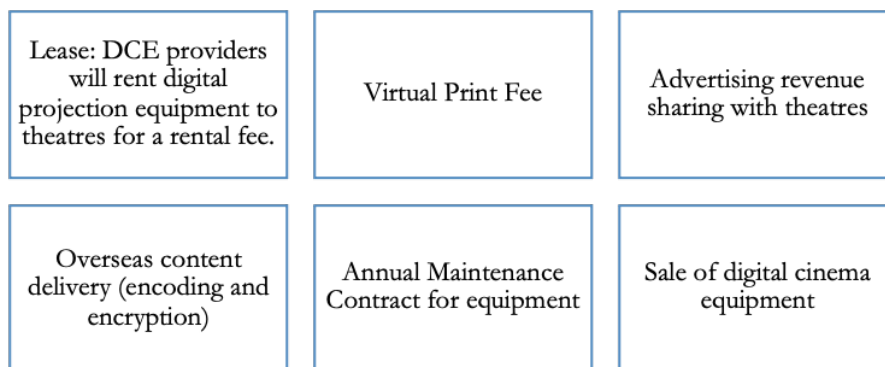
⁷¹ Rajpal, Roktim. 'Jersey Gets a Release Date on Netflix: All You Need to Know'. NDTV, 17 May 2022. <https://gadgets360.com/entertainment/news/jersey-netflix-ott-release-date-time-shahid-kapoor-mrunal-thakur-cast-watch-online-2983579>.

⁷² WION. 'Jersey: Shahid Kapoor Ready to Take a Pay Cut to Avoid OTT Release?'

for upgrades prompted the purchase or hire of new equipment and therefore, renewed the case for the continuance of VPF payments.

76. Respondents suggest that VPF is an important source of revenue for DCE providers and cinemas. However, DCE providers have six sources of revenue, as indicated in Figure 16. The modality of these revenue models varies from deal to deal and cinema to cinema. DCE providers noted that, in some circumstances where theatres own the DCE equipment, the DCE provider retains approximately 10–25 per cent of the VPF. This is to cover the fees for agreements for content servicing and advertising that DCE providers enter into with these cinemas. However, where cinemas lease digital projection equipment, the DCE provider retains about 90 per cent of the VPF. This implies that approximately 65–80 per cent of VPF is purely the lease value of DCE, which many stakeholders regard as exorbitant. If the VPF for a single movie works out to a few crores, this more than makes up for the cost of equipment given to theatres. In such cases, it is questionable whether the continued collection of VPF is warranted.

Figure 16: Sources of Revenue for DCE Providers



77. At the behest of distributors, some major multiplex chains now do not go through DCE providers for VPF and negotiate independently with distributors. Some producers and distributors have entered into an agreement with multiplexes for a sunset clause on VPF that will come into effect in 2024. They note, however, that the two most prominent DCE providers are refusing to negotiate a similar deal.
78. The Commission noted in the Unilazer case that discussing the appropriate amount of VPF and till what date it should be permitted does not fall within its domain. However, if VPF has an appreciable adverse effect on the market, or was the outcome of some concerted activity, the Commission could delve into the matter. The study has found that VPF leads to several anti-competitive outcomes, particularly for smaller producers in the ecosystem. It is unreasonable to expect producers to foot the cost of

equipment for cinemas endlessly, in addition to paying for all promotion costs for a movie, along with bearing the sunk cost of film production as well. Moreover, VPF does not seem to serve as a lifeline for smaller theatres, as a majority of it is taken by the DCE provider in arrangements with the former. As multiplexes have agreed to stop charging VPF from 2024 onwards, other stakeholders in the industry should follow suit. As such, it is recommended that industry stakeholders come together and negotiate the introduction of sunset date for all VPF charges, whether they are levied by theatres or DCE providers.

79. There have been cases related to exclusive dealing in digital cinema in the past dealt by CCI. As regards this issue, respondents indicated that, while major multiplexes deal with all DCEs and therefore house their individual servers at their premises, most other cinemas have exclusive deals with DCE providers. The reason for this arrangement is that a majority of cinemas opt for the lease model, under which they are required to share both virtual print fee and advertising revenue with the DCE provider to cover the cost of the DCE. Respondents also indicated that it is not possible for a producer to deal with a third-party DCE provider when attempting to screen a movie at a cinema that has an exclusive contract with another DCE provider. Specifically, respondents indicated that certain distribution services in the nature of post-production are bundled with the DCE service provided to a theatre, leaving no scope for availing such services from third parties. Thus, if a producer is dealing with a certain theatre, it must, in such instances, go through the DCE provider that the theatre has an exclusive contract with; it cannot go through a third-party DCE. The only exception to this rule is with certain multiplexes that do not enter into exclusive deals with DCE providers.
80. The existence of exclusive deals in digital cinema do not seem to be anti-competitive per se. Some respondents pointed out that, while these are prevalent, there is enough work for all players in the ecosystem. Thus, exclusive deals should be considered in the larger context of anti-competitive effects on a case-by-case basis.
81. According to the study, the issues of tying and bundling, as dealt with by CCI in cases in the past did not pose any competition concerns. Respondents corroborated that Hollywood studios do not give their movies to non-DCI cinemas because of the risk of piracy. One stakeholder indicated that, while it is virtually impossible to pirate films on the DCI system, it was relatively easy to do so on e-cinema systems. Another reason why Hollywood studios insist on DCI is the enhanced image quality it offers, corroborating CCI's findings. Thus, the issues of tying and

bundling as dealt with in the aforementioned cases did not pose any competition concerns.

E. Anti-Competitive Conduct by Associations

82. Anti-competitive conduct by associations was the most prevalent issue in the CCI cases examined for this study. Out of the 35 cases examined, 24 alleged anti-competitive conduct by associations. In these cases, associations have been found to engage in anti-competitive conduct, such as requiring members to deal only with other members of the association, setting restrictive holdback periods,⁷³ banning and boycotting films, and setting restrictive terms in their Memorandum of Association (MoA) and Articles of Association (AoA), among other things.⁷⁴ These have been listed in Figure 17.

Figure 17: Anti-Competitive Conduct by Film Associations

Mandatory membership of associations The CCI found anti-competitive conduct in all three cases.	Prohibition on members of associations working with non-members The CCI found anti-competitive conduct in all nine cases.	Registration as a pre-condition for exhibition The CCI found anti-competitive conduct in all five cases.	Holdbacks The CCI found anti-competitive conduct in all five cases.
Discriminatory treatment of non-regional films The CCI found anti-competitive conduct in all six cases.	Withholding payments The CCI found anti-competitive conduct in two out of three cases.	Bans and boycotts The CCI found anti-competitive conduct in seven out of ten cases.	Price fixing The CCI found anti-competitive conduct in four out of five cases.

83. However, the study indicated that overall anti-competitive actions by associations had decreased. Several respondents indicated that the main role of associations is to engage in advocacy with the government and protect the business interests of members. In addition, some of these associations also help with dispute resolution to an extent. Respondents

⁷³ There have been five cases involving holdbacks before CCI. In each case, CCI found the party instituting the holdback guilty of anti-competitive conduct. In *Reliance Big Entertainment ('RBE') vs Karnataka Film Chamber of Commerce ('KFCC')*, RBE alleged that KFCC compels distributors to accept holdback restrictions for periods ranging from a few months to a few years, by providing an undertaking to this effect. They said that a breach of such conditions sometimes entails penalties, bans, or distribution of a certain percentage of the income on the basis of the prevalent realizable ratio. RBE provided examples of how the membership forms of various film trade associations facilitate such a practice. CCI observed that a long holdback period could potentially prevent a producer-distributor from recovering their costs and can cause losses. CCI also held that such holdbacks led to a restriction on the supply of films on media other than theatres and violated Section 3(3)(b) of the Act. CCI made similar observations in the matter of *Eros Ltd. vs CCCA & Ors.* In *Cinergy vs. Telangana*, CCI held that associations should not put any condition regarding holdback period for the release of films through other media, such as like CD, satellite, etc. These decisions should be left to the concerned parties. It is important to note that holdbacks negotiated between parties are acceptable, but not acceptable when they are unreasonable and imposed by an association or a group of associations that are not parties to a transaction.

⁷⁴ Drishti Parnami, "Competition Issues In The Indian Film Industry", *NLU Delhi LLM Dissertation*, 2016, <http://14.139.58.147:8080/jspui/bitstream/123456789/233/1/35LLM15.pdf>.

also indicated that these associations do not usually interfere with the commercial or business decisions of the members. Broadly, industry associations focused on ensuring the welfare of their members by securing their interests.⁷⁵ Some of the experts also revealed that membership to associations is on a voluntary basis and that members' activities are not restricted in any manner.

84. In terms of reduction of anti-competitive conduct on specific issues, stakeholders gave feedback on discriminatory treatment of non-regional films. Respondents generally believe that the issue is uncommon now. Some of the respondents said that they have never faced an issue in releasing dubbed films and added that nowadays, it is usually down to the economics (i.e., perceived business potential of a film). They indicated that this used to be a common practice earlier in Karnataka, where there were restrictions on dubbing Tamil or other regional language films in Kannada, clarifying that the practice no longer continues. Discriminatory treatment against non-regional or dubbed films also seems to be guided by the action of the local government of a place. For example, one of the respondents added that Tamil Nadu imposes a local body tax on dubbed films, which has a negative effect on this segment of films. In general, stakeholder discussions indicated that, while dubbed films may earlier have faced issues regarding their release, these issues have simmered down in recent years. At the same time, the study revealed that certain anti-competitive conduct is still resorted to.
85. Bans and boycotts are a prevalent form of anti-competitive conduct found against associations.⁷⁶ On this issue, industry experts put forward three parallel stances. One group of stakeholders highlighted that boycotts are no longer a common phenomenon and that they have not heard of it taking place in recent years. They also pointed out that, while some associations had problems earlier regarding dubbed films, this is not a prevalent concern anymore. Another set of industry stakeholders indicated that, at the downstream level, there are instances where cinema chains do not exhibit a producer's film unless screen dates or times have been closed with other chains as well. However, there was no clarity on whether this conduct was through an association or some other group of individual entities. Another group of stakeholders revealed three concerning

⁷⁵ Drishti Parnami, "Competition Issues in The Indian Film Industry".

⁷⁶ Cases where CCI found that associations engaged in bans and boycotts include *Reliance Big Entertainment and Ors. v Karnataka Film Chamber of Commerce and Ors.* (Case No. 25 of 2010); *Reliance Big Entertainment Pvt. Ltd v Tamil Nadu Film Exhibitors' Association* (Case No. 78 of 2011); *Kerala Cine Exhibitors' Association v Kerala Film Exhibitors' Federation and Ors.* (Case No. 45 of 2012); *Raaj Kamal International v Tamil Nadu Theatre Owners' Association* (Case No. 01 of 2013); *PV Basheer Ahmed v Film Distributors' Association, Kerala* (Case No. 32 of 2013); In Re: *Shri T. Vijayakumar v Association of Malayalam Movie Artists and Ors.* (Case No. 98 of 2014); and *XYZ v Tamil Film Producers' Council and Ors.* (Case No. 07 of 2018).

instances regarding associations' conduct: (A) Content creators are sometimes threatened with boycotts by theatres if they opt for an OTT release for their film. Citing the example of the actor Dulquer Salmaan,⁷⁷ the Film Exhibitors United Organisation of Kerala, an apex body of theatre exhibitors in the state, boycotted the actor and his production house after he released his movie *Salute* on an OTT platform. The theatre owners noted that Salmaan had violated an agreement with them. The movie was originally slated to be released in theatres on January 14, but the release was postponed due to a spike in COVID cases.⁷⁸ (B) Telugu cine artistes' association threatened non-cooperation if a demand for wage hike due to COVID-19 was not met. (C) Some exhibitors in the Telugu film industry tried to boycott one of actor Nani's films, although no formal boycott was announced.⁷⁹ A few respondents also referred to such conduct by producers' associations without providing further specifics. (D) Thus, it appears that bans and boycotts, though on the decrease, are still prevalent in certain segments of the industry.

- 86. Prohibition on members of associations working with non-members:** Preventing members from working with non-members is another major form of anti-competitive conduct that associations have been found to engage in.⁸⁰ Some of the industry expert respondents stated that there are no restrictions on such engagements and that no strictures are passed to this effect. However, other respondents pointed out that a few artistes' associations require producers to hire only their members for a film, even if there are qualified people for those jobs outside of the

⁷⁷ Entertainment Bureau, "Dulquer Salmaan Banned By Kerala Theatre Owners After Salute Goes To OTT," *News18*, March 15, 2022, <https://www.news18.com/news/movies/dulquer-salmaan-banned-by-kerala-theatre-owners-after-salute-goes-to-ott-4878398.html>.

⁷⁸ Express News Service, "Following Salute's OTT release, theatre owners decide to boycott Dulquer Salmaan movies", *The New Indian Express*, 16 March 2022, <https://www.newindianexpress.com/entertainment/malayalam/2022/mar/16/following-salutes-ott-release-theatre-owners-decide-to-boycott-dulquer-salmaan-movies-2430697.html>

⁷⁹ TNN, "Producers' Guild Supports Nani; Call Statements Made Against Tuck Jagadish Makers During Exhibitors' Meet 'Insulting,'" *The Times of India*, August 23, 2021, <https://timesofindia.indiatimes.com/entertainment/telugu/movies/news/producers-guild-supports-nani-call-statements-made-against-tuck-jagadish-makers-during-the-exhibitors-meet-insulting/articleshow/85562877.cms>; Express News Service, "TFCC Slams Tuck Jagadish Producers Over OTT Release," *The New Indian Express*, August 21, 2021, <https://www.newindianexpress.com/entertainment/telugu/2021/aug/21/tfcc-slams-tuck-jagadish-producers-over-ott-release-2347722.html>.

⁸⁰ Cases where CCI found such conduct are *Reliance Big Entertainment and Ors. v Karnataka Film Chamber of Commerce and Ors.* (Case No. 25 of 2010); *International Media Ltd. v Central Cine Circuit Association Indore* (Case No. 52 of 2010) and *Sunshine Pictures Pvt. Ltd. v Motion Pictures' Association* (Case No. 56 of 2010); *UTV Software Communications Ltd. v. Motion Pictures' Association* (Case No. 09 of 2011); *Manju Tharad v EIMPA and Ors.* (Case No. 17 of 2011); *Cinergy v Telangana Telugu Film Distributors' Association and Ors.* (Case No. 56 of 2011); *Ashtavinayak Cine Pictures Ltd. v PVR Pictures Ltd., Northern India Motion Pictures' Association and Ors.* (Case No. 71 of 2011); *M/s Crown Theatre v Kerala Film Exhibitors' Federation* (Case No. 16 of 2014); *Vipul Shah v All India Film Employee Confederation and Ors.* (Case No. 19 of 2014); and *Indian Motion Picture Producers' Association v Federation of Western India Cine Employees and Ors.* (Case No. 45 of 2017).

association. They noted that vigilance checks and shoot disruptions still occur. Another respondent said that they check whether the entities they are working with are association members, mainly as a precaution against questions related to non-members and operational disclosures. In the Telugu film industry, some respondents noted that certain cine-artists' associations require them to work with members; however, union membership is prohibitively expensive, raising concerns about barriers to entry. Thus, prohibition on members of associations working with non-members also appears to be a prevalent issue.

F. Issue Related to Online Booking Platforms

87. Some stakeholders raised concerns about the concentration of ticket purchases on one platform. They noted that this platform charges a 10 per cent commission fee, which raises the prices of tickets and deters audiences from watching movies in halls. Other stakeholders contended, however, that these platforms bring down transaction costs considerably by aggregating screens and providing a single point for purchasing tickets.

CHAPTER 4

KEY OBSERVATIONS AND WAY FORWARD

88. This chapter presents the observations of the Commission on the issues that emerged in the study. The Commission is mindful of the fact that filmmaking, from the conception of an idea to the making of a film and its exhibition in myriad forms, is a complex and arduous process. Further, the final product, i.e., a movie, is an embodiment of multiple rights, which do not necessarily rest with the same person. Thus, when a plethora of processes and rights are involved, complexities increase, as do the clash of interests asserting competing rights. The outcome of the assertion of rights by these competing interests across the film distribution value chain is determined by bargaining power across the value chain. Bargaining power imbalances make competition dynamics in the film industry complex, and any competition issue has to be assessed by recognizing such imbalances and their impact not just on the contracting parties but the market as a whole.
89. It is the mandate of the Commission to ensure that the film industry and its constituents work in a manner that promotes the principles of fair competition, which essentially requires attenuating bargaining power imbalances. In its more than a decade of existence, the Commission has enforced competition law to address some of the issues of the industry, particularly the boycotts resorted to by various associations in the film industry. It has also been observed that, despite competing interests of the stakeholders in the film distribution value chain, often, mutual discussions and negotiations can result in common good. With technology-driven process becoming an integral part of filmmaking and the dissemination of cinema, newer conflicts are arising and there is considerable complexity in reconciling these considerations.
90. In such a scenario, the Commission, while being fully committed to address these issues within the scheme of the Competition Act, 2002 through the enforcement route, is nevertheless of the view that there exists vast potential for the film production, distribution, and exhibition market and other ancillary markets to adopt self-corrective mechanisms. For instance, during the study, it was heartening to note that some broad consensus has been arrived on the issue of holdback period, i.e., release of films on OTT after they have been exhibited in the cinema.
91. As the study reveals, there is a significant potential for cinema in this country, and it does not appear that one medium of exhibition will supplant the other, as there seems to be sufficient space for all mediums

to co-exist and cater to different classes of consumers, based on their diverse preferences. Going forward, simultaneity of exhibition mediums will be the norm.

92. The Commission also notes the constructive role that various associations/federations representing various stakeholders at the regional/national level could play in arriving at a workable solution that balances the interests of the parties. A cohesive film industry, with the regional and the Hindi film industry competing on merits, can indeed catapult Indian cinema to a well-deserved and rightful place on the world map. These associations, rather than being a selective club or a caucus, can be inclusive, with a participatory approach, enabling clarity and certainty in decision making and in balancing of interests. The membership of these associations and office bearers should be broad-based and representative although, as the study reflects, this may not often be the case. Though the composition of an association is an area best left untouched by the Commission, the Commission recognizes that associations with fair practices are the fulcrum of the film industry and ensure well-functioning markets.
93. It has also been observed by the Commission that these may have as its member's persons/entities performing diverse activities in the value chain, some of which may be intertwined, e.g., production, distribution, and exhibition under one banner. Thus, these associations do not comprise players purely in a horizontal setting. This posits challenges for greater coordination not amongst the members *inter se*, but between associations too, either on the horizontal plane or the vertical chain. However, negotiations and settlements arrived at should not be in the nature of anti-competitive arrangements that fall foul of the provisions of the Act.
94. The Commission acknowledges that competition dynamics in the film industry are complex. The business of film is inherently risky for three key reasons. *Firstly*, films are non-rivalrous and partially excludable, which makes it difficult to ring-fence against theft and leakages. *Secondly*, the advent of digital technology has brought down the cost of pirating film content and sharing it; the lower the cost of pirating content, the lower the price consumers are willing to pay for it. *Thirdly*, producers effectively create a product, i.e., a film, for which demand is largely unknowable and unpredictable. There are limited ways of ensuring the success of a film. Star casts do not guarantee a hit, and there are considerable variances in the manner in which studios generate the most revenue year-on-year. A consequence of the riskiness of the film business is that stakeholders in the industry must focus on strategies that maximize revenue and allow for the recoupment of investment to offset bad performances and other

exogenous and endogenous shocks. These strategies include consolidation; exclusivity or holding back movies from other platforms for a certain period to incentivize exhibitors to take risks on the movie and allow producers adequate time to monetize their film on a particular platform; tiering; micro-scheduling movies so that too many similar films are not released at the same time; and bundling. There is considerable complexity in reconciling these considerations within the scheme of the Competition Act, 2002.

95. The Commission acknowledges that industry stakeholders may be better placed to resolve the issues related to competition in the film distribution value chain, as there are multiple dynamics at play. It is in this context that the Commission has relied on the findings from this study to devise a charter of self-regulation for stakeholders in the industry to follow in order to minimize future interventions and encourage the development of a thriving film industry with minimum friction. In the following paragraphs, major competition-related issues that have emerged from the study are discussed.

A. Bargaining Power Imbalance Between Multiplexes and Upstream Players

96. Multiplexes appear to have considerable bargaining power against Hindi film producers and distributors and, to some extent, Telugu film producers, as they are, to a large extent, a concentrated set of entities that account for a majority of the revenue generation in theatrical exhibition. The asymmetry in bargaining power between multiplexes and producers is stated to exist in many forms, as has been highlighted in this study:
- i. Producers currently bear all costs for the promotion of a movie inside theatres as well as externally. These promotion costs are in addition to the virtual print fees that such producers have to pay to subsidize the cost of an exhibitor's equipment. Thus, producers end up incurring all promotion expenses for a movie as well as for theatre equipment.
 - ii. Producers have stated that in India they get a considerably lower proportion of the box office collections in the first week of a movie's release despite being completely reliant on this revenue to recoup investment. On the other hand, theatres also have revenue from other sources, such as food and beverages and advertisements. This is in sharp contrast to international best practice, where producers get a considerably larger share of the box office collections in the first week. Exhibitors agree to this condition because they earn a considerable amount of revenue from other streams, such as food and beverage.

97. The Commission notes that newer avenues of exhibition such as OTT are becoming an important medium for the exhibition of cinema. OTTs can even serve as a useful complement for producers (to showcase their art) that have lesser bargaining power against theatrical exhibitors. However, OTTs may not be an effective alternative medium for certain theatrical exhibitions, either in terms of experience or revenue potential. Moreover, there are no guarantees that a film will be picked up by an OTT service, as these decisions are solely based on commercial considerations. Theatrical exhibition still stands out as the most valuable channel for producers to disseminate their content. Further, stakeholders view theatrical viewing as outdoor entertainment.
98. Stakeholders indicate that the outsized bargaining power of multiplexes against upstream players in Hindi and certain regional segments translate into certain kinds of anti-competitive conduct. They note that contracts are non-negotiable and come in standard templates. Thus, competition at the exhibitor's level is too weak to compete away poor terms of trade that the producers encounter from multiplexes. Stakeholders also stated that agreements with multiplexes follow a sliding scale arrangement, where the producer's share of box office revenues decreases incrementally each week that the movie is in halls. This, according to stakeholders, can be particularly detrimental for regional language films and other niche content for which the audience builds up over a period of time. Thus, they may have greater audience numbers in the second or third week after release rather than the first. Stakeholders also indicated that, at times, multiplexes may tell them not to exhibit films in theatres, which is a clear restraint of trade. Stakeholders noted that increased consolidation in the multiplex segment may exacerbate existing anti-competitive conduct and unfair trade practices.

Recommendations for Self-Regulation

99. Thus, with regard to prevailing practices in deal-making between multiplexes and producers, the Commission makes the following recommendations:
- i. Standard templates for contracting between the producers and exhibitors may be avoided. In place of standard templates, arrangements between multiplexes and producers may be tailor-made, accommodating the type of content being showcased, so that smaller projects which attract larger crowds in subsequent weeks can also be remunerative for producers. An alternative to sliding scale arrangements in this context can be aggregate agreements, where multiplexes and producers share the aggregate

revenues generated by a film based on a pre-negotiated percentage split between the parties.

- ii. Fair and reasonable terms to producers for promotions, by sharing the costs of promotion, may be considered by multiplexes.
- iii. Deal-making by multiplexes should be negotiable rather than multiplexes deciding terms unilaterally to upstream players.
- iv. Multiplexes should refrain from any restraint on trade in exhibition that may impinge on producers' freedom of trade.

B. Lack of Transparency in Box Office Revenue Collections

100. Stakeholders have stated that the arrangements between a majority of theatres and upstream players are governed by a lack of transparency in box office collections, though some distributors have highlighted that, due to lack of recourse to box office collection data, they are constrained to enter asymmetric arrangements with a vast majority of single-screens. The system of reporting is considerably informal, with some respondents indicating that numbers are either conveyed through phone or handwritten figures are faxed over. They also highlighted that there is considerable resistance on the part of theatres to introduce box office monitoring systems. A 2016 news report indicated that there is considerable discrepancy in the public reporting of box office collections.⁸¹ Some industry stakeholders indicate that some producers have an incentive to announce inflated box office numbers to show that their movie did well. Others indicate that there is no transparency.⁸² Some multiplexes indicate that reporting from their side is automatically generated. What emanates from the report is that box office collections are obscured by the lack of a uniform, industry-wide reporting system. The Commission notes that the problem of transparency in box office collection reporting is similar to the problem of underreporting of television subscriber numbers that existed in the television broadcasting industry before the introduction of digital addressable systems. The Commission observes that a box office collection monitoring system could be in place to address the problem.

Recommendations for Self-Regulation

101. Globally, the film industry relies on monitoring tools that track and accurately measure box office receipts. However, the system does not

⁸¹ Jha, Amit Upadhyaya, Nidheesh M. K., Lata. 'Why Indian Box Office Collections Depend on Who You Ask'.

⁸² Jha, Amit Upadhyaya, Nidheesh M. K., Lata. 'Why Indian Box Office Collections Depend on Who You Ask'.

seem to have taken hold in India. Therefore, the Commission recommends:

- i. Adoption of box office monitoring systems. This system should be able to generate, record, and maintain ticketing logs and reports, and the data collected by such a system should not be alterable by any stakeholder. It might be challenging for lower-tier cinemas to adopt such systems. Stakeholders are encouraged to come together and put forward a system of box office collection monitoring that is cost-effective in order to encourage ubiquitous adoption.
- ii. Producers should empanel independent auditors to check such monitoring systems and ensure that they are working properly and not being tampered with.

The introduction of a standardized box office collection monitoring system would go a long way towards mitigating information asymmetries and possibly translating these into fair and reasonable terms for revenue-sharing arrangements and mitigate disputes. As such, stakeholders should commit to set a date for the universal adoption of such a system.

C. Virtual Print Fee

102. During the course of the study, VPF emerged as a thorny issue and has been dealt with by the Commission in a few past cases. The benefits of digitization cannot be understated. Discussions with stakeholder's highlight how digital cinema has enhanced the cinematic experience for consumers not only in large urban centres, but in Tier 2 and Tier 3 cities as well. It is also evident that digitization would not have been possible without VPF, as there was considerable resistance in the ecosystem to switch to digital equipment prior to its introduction. DCE service providers also shared their perspectives regarding the necessity of VPF to their business model.
103. However, several respondents indicate that VPF operates as a considerable barrier to entry for producers wishing to exhibit their movies theatrically. The impact is particularly acute for smaller producers. Moreover, several stakeholders indicated that VPF is often central to restraining trade in the industry. According to respondents, DCE providers deny movies a theatrical release if the VPF is not paid up-front or producers attempt to negotiate on the VPF rate. Stakeholders have reported that Hollywood studios no longer pay VPF for English movies because of a sunset clause in their initial agreements with DCE service providers. It is, however, to be noted that Hollywood studios do have to pay VPF for the exhibition of Hindi movies. They also pointed out that a sunset clause for VPF is being negotiated between certain distributors and multiplexes.

104. To reiterate, the Commission noted in one case that discussing the appropriate amount of VPF or the date till it should be permitted does not fall within its domain. However, if the VPF has an appreciable adverse effect on the market or was the outcome of some concerted activity, the Commission could delve into the matter. The study has found that VPF may lead to several anti-competitive outcomes, namely, limiting the supply of movies, instances of refusals to deal, and creating barriers to entry. Moreover, it is unreasonable to expect producers to bear the cost of equipment for cinemas in perpetuity in addition to paying for all promotion and production costs for a movie. Additionally, it is unclear to what extent VPF gives smaller theatres a lifeline, as most of the VPF collected in relation to such theatres is taken by the DCE provider.

Recommendations for Self-Regulation

105. The Commission recommends that Industry stakeholders may come together and negotiate the introduction of a sunset date for all VPF charges.

- i. VPF paid to multiplexes may be phased out first. VPF for single-screens may be phased out more gradually, given their dependence on a VPF-driven lease model for digital cinema equipment.
- ii. Till the VPF sunset is decided and implemented, the DCE providers and producer may come together and negotiate mutually acceptable VPF charges to ensure that there are no limitations or disruptions in the exhibition of films, in the larger interest of all stakeholders including consumers of cinema.

D. Anti-Competitive Conduct by Associations

106. Overall, stakeholders in the Hindi film industry indicated that there are no overt anti-competitive pressures that associations exert in their ecosystem. This may be attributed to the multiple cases of competition enforcement in such cases over the years that have led to market discipline. However, the stakeholders pointed that, in some quarters of the industry, certain types of anti-competitive conduct, such as bans and boycotts and prohibitions on working with non-members, are still being carried out by associations. It is well established that such conduct by associations is patently anti-competitive and should not be resorted to when a dispute arises.

Recommendations for Self-Regulation

- i. The Commission recommends the following: Associations must refrain from engaging in bans and boycotts and prohibiting industry from working with non-members. In addition, associations should not engage in any of the other conduct that has previously been found to be anti-competitive by the Commission.
- ii. Associations must consider how alternate dispute resolution mechanisms such as mediation can be institutionalized to address any disagreement between stakeholders.
- iii. Associations are advised to conduct events educating their respective members about the awareness of competition law and the consequent need for competition compliance.

E. Exclusive Dealing in Digital Cinema

107. It emerged in the study that exclusive dealing is a prevalent practice in digital cinema. With the exception of certain multiplexes, most theatres have exclusive deals with DCE service providers, which results in tying and bundling of services. Respondents noted that, when a producer is dealing with a cinema that has an exclusive deal with one DCE service provider, it is not possible to engage third-party service providers in respect of other activities. While this appears to be standard practice, it must be noted that, where such arrangements operate as restraints of trade or limit choice to the producer's detriment, such conduct may tend to harm competition. The Commission observes that, in the absence of competition, the film industry, which thrives on innovation, will lose compared to foreign films, which use technology extensively to provide the best experience to cine-goers.

Recommendations for Self-Regulation

108. Agreements that are entered into between DCE service providers must ensure that leveraging, if any, should not be to the detriment of other service providers and block entry of newer entities. The exclusive tie-up arrangements and even bundling may have some inherent advantages, but overall, it should not become a tool for benefitting a few at the cost of other stakeholders.
109. The Commission, thus, recommends that agreements that DCE service providers enter into with exhibitors or producers as the case may be, should have scope for negotiations to reduce bargaining power imbalance. Independent producers and single-screen exhibitors should not be

constrained by their dependence on the bottleneck facility of DCE providers. Freedom of trade of this constituent of the ecosystem is equally important, and the rent-seeking attempts by DCE providers may not allow competition to emerge in the various aspects of filmmaking.

110. In this regard, it would be apposite to avoid long-term agreements and one-sided onerous clauses, especially those pertaining to revenue sharing and termination, where the weaker party of the two will have to settle for less or forced to be in a bilateral relationship for a considerable period of time without having an opportunity to explore other alternatives in offer.

Conclusion

111. The Commission places on record its appreciation for all the stakeholders and experts who came forward and provided their immensely valuable insights into the working of various segments in the film industry during the course of the study. The study highlights some of the key competition issues in the film production and distribution chain, the competition posed by newer technologies in cinema, the role of associations in strengthening the negotiating framework to reduce friction in the larger interests of the industry, the need for making digitization pervasive, the superior bargaining power imbalance bottlenecks that exist at various levels, unequal distribution of risks through unequal revenue-sharing arrangements and barriers created through excessive and unrelated tying and bundling arrangements, etc. The Commission, through this study, whilst recognizing existing problems, has also implored stakeholders to arrive at an amicable solution and, in this regard, suggested some broad measures that can be adopted through self-regulations. This will likely ease the burden on the enforcement machinery which, at best, should be the last recourse. Wherever anti-competitive concerns remain unaddressed at any level in the distribution chain, the Commission will endeavour for corrective actions within the framework of the law. The Commission earnestly hopes that anti-competitive practices will be contained by the constituents in the best interest of all, thus limiting regulatory interference.
