



CASE STUDY 15

NOVEMBER 2013

## UTV Software Communications Limited v. Motion Pictures Association\* (Anti-competitive Agreements)

### Forum:

Competition Commission of India<sup>1</sup>

### Legislative Provisions Referred:

1. Section 3- 'Anti-competitive agreements'
2. Section 4- 'Abuse of dominant position'

### Parties to the Case:

1. UTV Software Communications Ltd., Mumbai- Informant
2. Motion Pictures Association, Delhi- Opposite Party<sup>2</sup>

### Facts of the Case:

The Informant, a company registered under the Companies Act, 1956 is a producer, title holder and distributor of feature films, while the Opposite Party is engaged in the business of production, distribution and exhibition of films. It was alleged by the Informant that OP indulged in anti-competitive practices and violated section 3 of the Competition Act, as it forced its members to sign a Producer Distributor Certificate and an Acquiring form, both having unreasonable terms and conditions in the form of unreasonable hold-backs, no flexibility in accepting the terms and conditions specified in the form, limit the supply and distribution of films and denial of market access. Thus, the Informant alleged that the OP indulged in abusing its dominant position in violation of Section 4 of the Competition Act, 2002<sup>3</sup>.

### Main Issues:

1. Whether OP is an 'enterprise' within the meaning of section 2(h) of the Act and if yes,

can its acts and conducts be said to be violative of provision of Section 4 of the Act, as has been alleged by the Informant?

**Informant-** The OP was covered under the definition of 'enterprise' u/s 2(h) of the Act and was a self-reliant organisation, its members being profit making entities. The informant alleged that there were similar complaints against the OP whereby other members' also alleged that their trade and business was hampered and these were brought to the notice of the Commission.

**CCI-** The OP was not an 'enterprise' u/s 2(h) of the Act, as was observed by the Commission in Case No. 25 of 2010<sup>4</sup>, order dated 16.02.2012, which involved the OP and other associations. The Commission observed in that case that to qualify as an enterprise, it is required that any person or department of the Government is, or has been, engaged in any activity, relating to production, storage, supply, distribution etc. or the provision of services of any kind, or in investment etc. it held that, once an association is not an enterprise, its conduct cannot be examined u/s 4 of the Act. Applying the same in the instant matter, activities of the OP were not a subject-matter u/s 4<sup>5</sup>.

2. Whether the rules and regulations, acts and conduct of MPA are a subject-matter of examination u/s 3 of the Act and are anti-competitive in nature?

### **DG-** Findings on violation of section 3:

OP made registration compulsory to smoothly run business in the territory, under the garb of voluntary membership. Also, members were not allowed to deal with non-members as per the Memorandum and

\*UTV Software Communications Ltd. v. Motion Pictures Association, Case No. 09/2011, available at, <http://www.cci.gov.in/May2011/OrderOfCommission/092011Main.pdf>, last accessed on 20/10/2013.

<sup>1</sup> Hereinafter referred to as 'CCI'.

<sup>2</sup> Hereinafter referred to as 'OP'.

<sup>3</sup> Hereinafter referred to as 'the Act'.

<sup>4</sup> Available at,

[http://www.cci.gov.in/May2011/OrderOfCommission/25-2010%20\(Majority%20Order\)%20feb%202012.pdf](http://www.cci.gov.in/May2011/OrderOfCommission/25-2010%20(Majority%20Order)%20feb%202012.pdf)

<sup>5</sup> According to section 4(1) of the Act, 'No enterprise or group shall abuse its dominant position'. Hence, only acts of an 'enterprise' can be subjected to examination u/s 4.

Articles of Association, thus making survival in the industry impossible without becoming a member of the OP association. In case the terms and conditions were not complied with, the OP issued penalty or revoked registration of the members. There were many circulars issued by the OP, which were produced by the DG, to support the contention. The OP restricted the supply and distribution of films by limiting the time for broadcast and invoked these restrictions by forcing the Informant to sign declarations and affidavits. It was also alleged that the OP placed conditions on screening of films, reserved rights of dispute settlement through arbitration, imposed conditions on selling Video/CD rights and pressurised the producer/distributor of the film for payment to the member distributor by refusing to register the film.

Thus, the DG concluded violations of Section 3 as the activities of the OP restricted supply of services through collective intent of its members.

**Informant-** The OP governed and dominated the distribution and exhibition of films in the territory by virtue of a cartel and its activities of refusing registration, controlling release of films in the territory etc. amounted to abuse of dominance.

**OP-** The OP submitted that its membership was voluntary and there were many distributors who were not its members, but doing film business. It was only concerned with dues recoverable and payable to its members. The rules and regulations were only to protect its members against encroachment over their rights and safeguard against multiple distribution rights. Also, it alleged that UTV did not have locus standi to file the information, being its member. It also claimed that the DG did not carry independent investigation of the matter.

**CCI-** On lines of Case No. 25 of 2010, the Commission observed that the rules, regulations and byelaws of the OP were trade practices carried on by an association and manifested collective decisions of its members, u/s 3(3) of the Act. However, the case was not covered u/s 3(4), as there was no vertical agreement between the OP and Informant. It was observed that the findings in earlier related cases No. 25, 52 and 56 also applied to the instant matter. The Commission in these cases observed that the rules of Motion Pictures Association and others restricting their members not to deal with non-members, making registration compulsory, imposing unfair hold-back periods etc. were anti-competitive and violate section 3(3) of the Act. Following the findings in the above mentioned cases, it

was observed in the instant matter that the OP violated section 3(3) by causing appreciable effect on competition in terms of section 19(3) of the Act.

Thus, in the instant case, it was held that the association indulged in anti-competitive practices. The 'cease and desist' order passed in earlier related Case No. 25 of 2010, applied in the instant case too. CCI did not impose penalty in the instant case keeping in view that penalties have been imposed on OP by CCI in earlier Case No. 25 of 2010. Proceedings against the members of the OP were to taken up separately.

#### **Separate and Dissenting Order:**

In a separate order<sup>6</sup> passed in this case, it was observed that the OP indulged in gross abuse of dominant position by imposing anti-competitive terms and conditions, violating section 4 of the Act. No penalty was imposed as the OP had already been penalised in earlier related cases 25, 52 and 56. In a dissenting order<sup>7</sup>, it was observed that the OP has indulged in anti-competitive practices by denying market access to the producers and boycotting them, and have therefore violated section 4(2)(b)(i) of the Competition Act. A 'cease and desist' order which was passed in earlier related cases No. 25, 52 and 56 would continue and no further penalty was levied in the present case. However, it was held that there was an absence of an 'association of enterprises', as there was only one entity in the area and an entity cannot enter into an agreement with itself, therefore, the provisions of Section 3 were not attracted in this case.

#### **Analysis of the Main Order:**

Several similar complaints were received from Eros International Media, FICCI Multiplex Association, etc. after which the CCI ordered the associations to amend their Memorandum of Association, rules, regulations, Articles of Association, as they were anti-competitive and against efficient functioning of markets. It was also directed by the CCI, that the associations should not dictate terms of release of films, thereby limiting and controlling supply and distributions of films. This observation by the CCI benefitted several other players alleging anti-competitiveness by associations such as the OP etc.

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<sup>6</sup> Order passed by S.N Dhingra, available at, <http://www.cci.gov.in/May2011/OrderOfCommission/092011separate.pdf>.

<sup>7</sup> Order passed by R. Prasad, available at, <http://www.cci.gov.in/May2011/OrderOfCommission/092011dissenting.pdf>.