



CASE STUDY 22

JANUARY 2014

Mr Sajjan Khaitan v. Eastern India Motion Picture Association & ors* (The Case of Inter-language Dubbing in Films and Television Series)

Forum:

Competition Commission of India¹

Legislative Provisions Referred:

The Competition Act²

1. Section 2 (h) –Enterprise
2. Section 3 –Anticompetitive Agreement
3. Section 19(1)(a) –Inquiry into certain agreements and dominant position of enterprise.

Parties to the Case:

1. Mr Sajjan Khaitan, Prop. M/s Heart Video- Informant.
2. Eastern India Motion Picture Association (EIMPA) – Opposite Party 1.
3. Co-ordination Committee of Artist and Technicians of West Bengal Film and Television Industry– Opposite Party 2.
4. M/s Channel 10 –Opposite Party 3.
5. CTVN Plus –Opposite Party 4.

Facts of the Case:

The informant filed a case with CCI under section 19(1)(a) of the Act alleging that the opposite parties (OPs) (1 to 4) have violated the provisions of the Act namely under Section 3(3)(b) read with Section 3(1) of the Act since OPs limit and control the distribution and exhibition of dubbed TV serials in their areas of operations.

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

Serials. Accordingly, the said serial was dubbed by the informant. Thereupon, the informant entered into an agreement for time slot on revenue sharing basis with OP 3 and OP 4 and telecast was scheduled to take place on 19.02.2011 and accordingly advertisements were placed through print media and television. However, a day before the scheduled telecast, OP 3 & 4 received letters from OP 1&2 respectively directing them to withdraw/stop the telecast of the said serial in the interest of healthy growth of film and television industry in West Bengal, failing which OP 3&4 will face non-cooperation from both the associations (OP 1&2).

It was also mentioned therein that the convention of restricting the telecast of Bengali dubbed National programs in Kolkata was prevailing for the last 13 years (from 1997 onwards). Fearing the repercussions OP 3&4 informed the informant that they would be stopping the said telecast. Hence the said petition was filed before CCI, which in turn considered the matter having a prima facie contravention by OPs and called for Director General's (DG) investigation.

Issues Raised and Observations thereupon:

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

* Mr. Sajjan Khaitan v. Eastern India Motion Picture Association & Ors. Case No. 16/2011. Decided on: 09/08/2012. Available on: <http://www.cci.gov.in/May2011/OrderOfCommission/162011.pdf>

. Last accessed on 22/01/2014.

¹ Hereinafter referred to as 'CCI'.

² Hereinafter referred to as 'the Act'.

and its findings concluded violation of the provisions of the Act.³

Thereafter the Commission called upon for written submissions from the OPs and laid down following issues for the determination of the case.

Issue 1: Whether OP 1 and OP 2 imposed/attempted to impose restrictions on the telecast of dubbed serial 'Mahabharata'?

The DG's report and submission made by the OPs stated that when the fact of the dubbed series were bought into the knowledge of OP 1&2, a resolution was passed and letters were issued to OP 3&4 requesting them to stop the telecast of the dubbed serial. This was done to stop withering away of the prestigious and internationally acclaimed Bengali Film and Television Industry, thereby creating job for artistes, workers and allied people associated with this Industry.

As the telecast was started as scheduled, another set of letter were issued to OP 3&4 along with the informant warning them to withdraw/stop the telecast or otherwise they will face non-cooperation from the association and consequences like demonstrations, agitation and strikes. And thereafter OP 3&4 informed the informant, their refusal to telecast the dubbed series stating constant agitation and dominating attitude of OP 1&2.

Therefore based upon the above admitted submissions by OPs and findings of DG, the Commission observed that OP 1 and OP 2 respectively and jointly asserted pressure on OP 3 & OP 4 to withdraw/stop the telecast. Further they imposed restriction for the telecast by calling agitation and demonstration against OP 3 & OP 4 and declaring non-cooperation by the association with reference to any other telecast by OP 3 & OP 4.

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

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

dominance.⁴ However, the Commission referred to its earlier decided case⁵ wherein it held that "*Eastern India Picture Association or other film associations as named in those cases do not qualify to be 'enterprise' since they are not engaged in any activity enumerated in section 2 (h) of the Act.*" And consequently, as OP 1&2 are out of the purview Section 2(h) of the Act, the Commission held that OP 1&2 cannot be subjected to abuse of dominance as laid under Section 4 of the Act.

Although with reference to anti-competitive agreements, the Commission found that both OP 1&2 were subject to enquiry under section 3(3) of the Act, as they comprise of associations whose members are engaged in production, distribution and exhibition of films. CCI noted that OP 2 is taking decisions relating to production, distributions and exhibitions on behalf of the members, who are engaged in the similar or identical business of production, distribution and exhibition of films. Any decision taken by OP 2 reflects collective intent of the members such as OP 1. CCI accordingly held that giving call of boycott of a competing member amounted to depriving the Informant, the due opportunity of fair and free competition in the market.

CCI also referred to rule 12 of registration rules of OP 1, which prohibited registration of dubbed films, unless the original is produced in any of the languages specified in bye-laws. CCI observed that given to the said rule, there is a restriction on the registration and exhibition of the films of other languages, if dubbed in Bengali, in the territories under the control of Eastern India Association. Therefore, CCI held that the said rule 12 goes against the spirit of competition.

Dissenting Order⁶:

The dissenting order observed that the definition of relevant market for the instant case has been not been identified correctly. The relevant market can be determined either with reference to relevant product market or relevant geographic market or with

⁴ Mr. Sajjan Khaitan v. Eastern India Motion Picture Association & Ors. Case No. 16/2011. Decided on: 09/08/2012. Para 7.2.1. Page 29. Available on:

<http://www.cci.gov.in/May2011/OrderOfCommission/162011.pdf> . Last accessed on: 27/01/2014.

⁵ Reliance Big Entertainment Limited v Eastern India Motion Picture Association & Ors., Case No. 25/2010. Decided on 16/02/2012. Available on: [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). Last accessed on: 27/01/2014.

⁶ Source Available on: <http://www.cci.gov.in/May2011/OrderOfCommission/162011D.pdf> Last accessed on: 27/01/2014.

³ Para 5.3. Supra note (*).

reference to both. Thus as per the definition of the relevant market, it must refer to some product or service which is regarded as interchangeable or substitutable by the consumers by reason of characteristics of the product or services, its price or intended use.

Moreover according to the said opinion, since the agitation was against only OP 3&4, relevant market can only be considered as that of broadcasting of T.V. serials. It was noted that as OP 1 was not active in the relevant market, the question of agreement among members of OP 1 association or among the different unions forming OP 2 would not arise. As the Act, does not take into its fold coercive actions taken by non-players or labour unions or worker unions, affecting the various facets of product or service market affecting production, distribution or supply of goods or services, the dissenting order observed that there lies no case before CCI.

Decision of the Commission (Majority Order):

CCI while considering the preliminary objections by OPs upon the definition of 'relevant market' in the instant case, noted that the earlier indicator that the OPs are involved in economic activities in the same relevant market and they had entered into an agreement which finds foul with the provisions of section-3 of the Competition Act, cannot be invoked in this case. It rendered its opinion for expanding the tenability for identifying factors and indicators while ascertaining abuse or dominance under the Act.

In the lights of the above mentioned issues and observations thereupon, CCI held that the act of imposing restrictions on the free and unrestricted distribution and exhibition of non-Bengali TV serials, dubbed in Bengali language was anticompetitive in nature. This conduct of OP 1&2 limiting and controlling the supply of serials dubbed in Bengali language was held to be in violation of Section 3(3) (b) read with Section 3(1) of the Act. Further CCI directed them to cease and desist from the said conduct however no penalty for the said conduct was imposed on either OP 1&2. As the Commission already imposed penalty on OP 1 in the case of 25 of 2010, and proceedings against the executive committee members were under progress, it didn't deemed fit to impose penalty on OP 1&2. OP 3&4 were considered operating under the influence of OP 2 and therefore no specific directions were imposed on them.

Analysis of the Order:

Following this order many state's film and television industry associations held protest against telecast of dubbed serials since it affects local language culture, craft and artists. An expert committee to ascertain the economic unviability rendered by dubbing was formed thereafter by CCI which submitted its report favouring dubbing.⁷ It states that the arguments against dubbing are centred around 'collective emotions' rather than on 'objective standards'. In the present era of information technology, all the popular programmes are available on Internet or by way of pirated CD/DVDs. In such a scenario it is very difficult to assess as to how the telecast of a legally licensed dubbed version of a serial could have affected the local industry.

Moreover this case has established a paradigm approach for ascertaining factors/indicators violating the provisions under the Act. CCI held that non-indulgence in economic activity can be construed to weed out possibility of invoking Section 4 of the Act, as the entity would not come under the definition of enterprise in the Act. However with reference to Section 3 of the Act; any agreement which causes appreciable adverse effect on the competition can be reviewed accordingly.

As already mentioned it has been observed that practice of restricting language dubbing other has been prevailing for the last 13 years, however so, it was the first time that such practice was questioned under the Act, questionably augmenting the need for advocacy and awareness about the Act across sectors and industries.

Prepared by: Molshree Bhatnagar, CIRC

⁷ Murlidhara Khajane, 'It's all about bread and butter', The Hindu, January 23 2014, Bangalore. Available on: <http://www.thehindu.com/features/cinema/its-all-about-bread-and-butter/article5610047.ece>. Last accessed on: 27/01/2014.