



COMPETITION COMMISSION OF INDIA
Case No. 07 of 2018

In Re:

XYZ

Informant

And

Tamil Film Producers Council

**Address: 606, Anna Salai, Film
Chamber Compound, Thousand
Lights West, Thousand Lights
Chennai, Tamil Nadu - 600006**

Opposite Party No. 1

Office Bearers of TFPC

**Address: 606, Anna Salai, Film
Chamber Compound, Thousand
Lights West, Thousand Lights
Chennai, Tamil Nadu – 600006**

Opposite Party No. 2

Executive Committee of TFPC

**Address: 606, Anna Salai, Film
Chamber Compound, Thousand
Lights West, Thousand Lights
Chennai, Tamil Nadu - 600006**

Opposite Party No. 3

Telugu Film Chamber of Commerce

**Address: Dr. D. Ramanaidu
Building, Film Nagar, Jubilee Hills
Hyderabad - 500096**

Opposite Party No. 4

Office Bearers of TFCC

**Address: Dr. D. Ramanaidu
Building, Film Nagar, Jubilee Hills
Hyderabad - 500096**

Opposite Party No. 5



Executive Committee of TFCC

**Address: Dr. D. Ramanaidu
Building, Film Nagar, Jubilee Hills
Hyderabad - 500096**

Opposite Party No. 6

CORAM

**Mr. Ashok Kumar Gupta
Chairperson**

**Ms. Sangeeta Verma
Member**

**Mr. Bhagwant Singh Bishnoi
Member**

Appearances:

For the Informant	Ms. Aishwarya Gopalakrishnan and Ms. Gayatri Pradhan, Advocates
For the Opposite Party No. 1	Mr. Aaditya Vijaykumar and Mr. Aneesh Sadhwani, Advocates
For the Opposite Party No. 4	Mr. Vaibhav R Venkatesh, Advocate along with Mr. K L Damodar Prasad, Secretary of TFCC

Order under Section 27 of the Competition Act, 2002

1. The present Information has been filed against Tamil Film Producers Council (TFPC) ('OP-1), its office bearers (OP-2) and Executive Committee (OP-3), and Telugu Film Chambers of Commerce (TFCC) (OP-4), its office bearers (OP-5), and Executive Committee (OP-6), alleging *inter alia* contravention



of the provisions of Section 3(3)(b) and 3(4)(d) of the Competition Act, 2002 (the 'Act'). The Informant has sought confidentiality over its identity.

2. Facts, as stated in the Information may be briefly noted.
3. OP-1, set up on 18.07.1979, is an association of film producers operating in the State of Tamil Nadu and has a membership of approximately 1500 Tamil film producers. OP-2 and OP-3 are the office bearers and Executive Committee of OP-1, respectively.
4. OP-4 is an association of Telugu film producers, exhibitors, studio artists and distributors with a membership of approximately 1729 producers, 660 distributors, 2068 exhibitors and 194 studio technicians. OP-5 and OP-6 are the office bearers and Executive Committee of OP-4, respectively.
5. In nutshell, the Informant is essentially aggrieved of the impugned conduct of OPs, as detailed in the Information and to be elaborated in the later part of this order, in collectively boycotting the production, supply, exhibition, distribution and technical development of Tamil and Telugu films in the State of Tamil Nadu as also for allegedly refusing to deal with several stakeholders in the film industry in Tamil Nadu. In the month of December, 2017, OP-4 is stated to have spearheaded a protest in respect of alleged high Virtual Print Fee (VPF) charged by the Digital Cinema Service Providers/Digital Service Providers (DCSPs/ DSPs) and called for an absolute industry wide ban on release of films from 01.03.2018. Subsequently a Joint Action Committee (JAC) of the Southern Indian Film Industry comprising *inter alia* OP-1 and OP-4 was constituted to resolve concerns primarily relating to VPF whereupon JAC issued a letter dated 01.02.2018 to Qube Cinema Technologies Pvt. Ltd. (Qube) requiring it and other digital service providers to meet with JAC and negotiate on concerns and issues and also stipulated that in case issues were not resolved prior to 07.02.2018, the entire South Indian Film Industry would stop screening films from 01.03.2018. The



demands of JAC included deduction/ abolition of VPF levied by digital service providers. Even while negotiating with digital service providers, OP-1 and OP-4 continued to issue press notes/ releases emphasising their decision to go on an indefinite strike to boycott/ ban not only screening of films in all theatres in Tamil Nadu from 01.03.2018 but also stop all production, shooting, promotional events, in the event their demands were not met. Amidst these discussions, around mid-February 2018, JAC issued a note to all South Indian Film Exhibitors, by way of which the JAC banned theatre operators/ exhibitors from entering into/ renewing agreements with digital service providers, until further communication from JAC. Pursuant to various meetings and in order to conclude the stalemate between film producers and digital service providers, in the first week of March, Qube and UFO (digital service providers) were compelled to offer a discount of 18%-23% on VPF, which was subsequently accepted by JAC, and specifically by OP-4. OP-1, however, stuck to its unreasonable claim of abolition of VPF and pressurised producers to halt shooting, production and release of their films. Consequently, and in derogation of its previous agreement on the discounted VPF rates (as part of JAC), OP-1 boycotted digital service providers and theatre operators, holding the entire film industry in Tamil Nadu hostage.

6. Subsequently, the Informant filed additional Information dated 11.04.2018 whereby *inter alia* certain recent alleged coercive practices adopted by OP-1 were sought to be highlighted, in attempting to introduce certain DSPs of its own choosing, thereby severely distorting competition in the market. It was alleged that theater owners/ operators have valid and subsisting contracts with existing DSPs and by coercing them to deal with a DSP of its own choice, OP-1 has further obstructed the ability of theatre owners/ operators to resume business operations.



7. Based on the above averments and allegations, the Informant has filed the instant Information alleging contravention of the provisions of Section 3(3)(b) and 3(4)(d) of the Act.
8. Having considered the Information/ the other material on record, the Commission decided to hold preliminary conference with the parties. Post-preliminary conference, the Informant further provided certain additional Information dated 18.05.2018 whereby it was pointed out that the collective boycott/ ban on Tamil and Telugu films in Tamil Nadu was ultimately lifted on 17.04.2018, post-intervention by the State Government, and after a lapse of 48 days (in case of Tamil films) after its initiation at the beginning of March 2018. In this regard, it was highlighted that the President of OP-1, Mr. Vishal Krishna, held a press conference following the tripartite meeting between the State Government, producers and DSPs on 17.04.2018. The press conference *inter alia* is stated to provide an overview of the collective boycott/ ban resorted to by OPs, the purpose of such boycott and their intention to regulate release size as well as price of movie tickets. Pursuant to the above, it has been pointed out that Mr. Vishal, in his press conference, explicitly stated that OP-1 has formed a “release regularization committee”, which will schedule the release date of Tamil films up to March 2019. It was submitted that imposition of such restrictions arbitrarily negate any form of commercial freedom of producers in independently choosing a release date in line with each producer’s commercial strategy. This severely hampers the competitive forces operating in the film industry in Tamil Nadu, thereby resulting in limiting/restricting the supply of films, in turn negating the freedom of choice for the theatres to choose a film, in direct contravention of Section 3(3)(b) read with Section 3(3)(1) of the Act.
9. The Commission considered the Information/ additional Information(s) and other material available on record besides hearing the parties during preliminary conference and *vide* its order dated 25.06.2018 *prima facie*



opined that the call of collective boycott not to release new movies in the State of Tamil Nadu restricted supply of new movies in the State of Tamil Nadu and thus not only affected exhibitors and producers but also affected different craft members of the film industry such as spot boys, junior artists, light-men, cameramen, models, fighters, dancers, sound engineers/ designers, art directors, artists, *etc.* This conduct, coupled with the conduct of OP-1 to control the release of Tamil films through release regulation committee, was *prima facie* noted as appearing to be in contravention of the provisions of the Section 3(3)(b) read with Section 3(1) of the Act. Further, the Commission also observed that the conduct of OPs in not allowing the exhibitors to deal with DSPs of their choice *prima facie* appeared to limit or control the provision of services of DSPs is violation of Section 3(3)(b) read with Section 3(1) of the Act. Accordingly, the Commission directed the Director General (DG) to cause an investigation to be made into the matter under the provisions of Section 26(1) of the Act.

Investigation by the DG

10. To examine the allegations, the DG analysed the film industry, film release process, arrangement with theatre operators and agreement of DSPs with producers *etc.* The DG further gathered information from OP-1, OP-4, Informant and third parties involved in the matter. The DG also collected circulars, letter, press releases and e-mails which indicated that OP-1 had decided to call a strike of Tamil movie producers during March-April, 2018.
11. Further, the DG collected minutes of meetings of OP-4 which indicated that participating producers took a collective decision to stop work and go on strike against what they termed as high VPF charges levied by Qube and UFO. It was found during investigation that OP-4 held strike in Andhra Pradesh and Telangana from 02.03.2018 to 07.03.2018.



12. A brief summary of the issues identified by the DG for investigation and his findings thereon, is noted below:

Issue (a)

Whether OP-1 and OP-4, being associations, took a decision to stop production of movies in Tamil Nadu and/ or Andhra Pradesh – Telangana or banning the release of new Tamil and Telugu films, thereby limiting or controlling production, supply, markets, technical development, investment or provision of services in the Tamil and Telugu films industries and whether their conduct is a violation of provisions of Section 3(3)(b) read with Section 3(1) of the Act.

Findings:

The DG noted that OP-1/OP-4 are association of enterprises. With respect to the above issues, the DG investigated and noted that *vide* circular dated 18.02.2018, OP-1 directed that no new films will be released from 01.03.2018. Further, *vide* another circular dated 09.03.2018, OP-1 decided that all shooting and post-production work of films to be stopped from 16.03.2018. Thereafter, a letter dated 30.03.2018 was issued by the office bearers of OP-1, wherein they requested for cooperation from OP-4 in the ongoing strike called by OP-1 and to refrain from releasing its movies in Tamil Nadu. The DG also noted that OP-1 also sent an e-mail dated 30.03.2018 to Kerala Chambers of Commerce requesting their cooperation in the strike. Thereafter, the DG collected minutes of meetings of OP-4, wherein it observed that participating producers took a collective decision to stop work and go on strike against what they termed as high VPF charges of Qube and UFO.

On the basis of the evidence/ materials/ statements of parties, the DG concluded that OP-1 and OP-4 had violated the provisions of Section 3(3)(b) read with Section 3(1) of the Act.



Issue (b)

Whether OP-1 has restricted competition among producers of Tamil language movies by forming a Release Regulation Committee which decided the release dates of movies, thereby violating provisions of Section 3(3)(b) of the Act.

Findings:

The DG noted that regulation of release dates ensures fair treatment to all producers and is an efficient way of allocating the theatres so as to exploit the full potential of their movie. Therefore, the said Committee is designed to be fair and did not raise competition concerns.

Issue (c)

If it is found that OP-1 and/ or OP-4 associations have violated the provisions of the Act, who are persons responsible under Section 48 of the Act for such decision or conduct.

Findings:

As the DG found that OP-1 and OP-4 violated the provisions of Section 3(3)(b) read with Section 3(1) of the Act, it identified persons who were responsible for the conduct of business of a company/ association and were liable for contravention of the provisions of the Act.

13. Accordingly, based on the evidence/ material on record/ statement of parties, the DG observed that OP-1 and OP-4 violated the provisions of Section 3(3)(b) of the Act read with Section 3(1) of the Act. However, the DG did not find any contravention of provision of Section 3(4)(d) of the Act by the OPs. Also, as regards the allegations of the Informant that OP-1 forced the exhibitors to deal with DSPs chosen by OP-1, the same were not found to be substantiated during investigation. In this regard, the DG recorded that the Informant did not produce any material or document to support such



allegations. The DG also categorically recorded that projectors of different DSPs are not interoperable and considering that around 80% of the theaters in the State of Tamil Nadu employ Qube/ UFO equipment, it was noted as unlikely that such restriction was viable.

14. The Commission, after considering the investigation report of the DG, *vide* its order dated 15.10.2019 decided to forward an electronic copy thereof to the Informant, OP-1 and OP-4 for filing their respective objections/ suggestions thereto, if any, The Commission also directed to forward an electronic copy of the investigation report to the persons as identified by the DG for the purposes of Section 48 of the Act with directions to file their respective objections/ suggestions, if any.
15. The Informant, OP-1 and OP-4 submitted their respective objections/ suggestions on DG report.

Objections/ suggestions of the Informant

16. The Informant agreed with the assessment undertaken by the DG and also with the findings recorded in the Investigation Report to the extent that the DG concluded that OP-1 and OP-4 violated the provisions of the Act. However, it challenged findings of the DG such as its assessment of the importance of VPF, not appreciating that OP-1 has directed its members to only deal with a particular class of film exhibitors/theatre owners is in violation of Section 3(4)(d) of the Act, observation in relation to the Release Regulation Committee *etc.* Besides, it also made submissions relating to individual penalty.

Objections/ suggestions of OP-1

17. OP-1 in its submissions stated that the observations/ findings made in the DG Report cannot be deduced from the fact set out in the DG Report nor are the findings of the DG a natural *sequitur* to the stated facts. It submitted that protest against anti-competitive behavior of Qube and UFO cannot be stated



as anti-competitive. Further it submitted that the strike was voluntary and only 100 members out of 1,200 regular members and 2,000 associates members of OP-1 participated in the strike and even during strike, movies continued to be released which clearly showed that the strike did not hinder production, post-production or process of release of movies, nor was of any particular consequence.

18. OP-1 has further submitted that in April 2018, the State Government intervened and the DSPs agreed to reduce the fee by 35% on 17.04.2018. However, when the Commission passed an order dated 25.06.2018 directing investigation, Qube and UFO strategically increased their rates from October 2018 onwards.
19. OP-1 has also submitted that the findings of the DG have not been arrived at in consonance with the provisions of Section 3 (1), Section 3(3) or Section 19(3) of the Act as firstly there was no written agreement between OP-1 or OP-4 or any other association of film producers. Secondly, the DG Report does not show or even reflect that there were any entry barriers for new players during the entire period of the strike and finally there is no evidence of foreclosure of competition by hindering entry into the market as Qube and UFO still continue in the market being completely unaffected with their market share still 80% of the theatres and seating in Tamil Nadu, Andhra Pradesh and Telangana.

Objections/ suggestions of OP-4

20. OP-4 in its preliminary reply has submitted that the allegations against OP-4 are in pursuant to the alleged letter signed by the joint Action Committee dated 28.02.2018 which was signed by one Shri P. Kiran in his capacity as a convenor. It is further submitted that Shri P. Kiran was never summoned for investigation nor was he inquired by the DG and only the earlier Secretary of OP-4 namely Shri Ramdas who has neither issued nor executed that letter was summoned by the DG.



21. It is further submitted by OP-4 that DG has failed to examine or investigate the other members of the so-called joint Action Committee, the Tamil Nadu Film Exhibitors Association and the Tamil Nadu Theatre and Multiplex Owners Association. All these parties ought to have been examined on oath in order to arrive at the truth but the DG decided to pick and choose two people only. In addition, OP-4 has also submitted that the present Information is proxy and sponsored litigation at the behest of DSPs such as QUBE or UFO.

Analysis

22. The Commission has perused the Information/ additional Information(s), DG Report and the objections/ suggestions thereto filed by the parties as also rejoinder/ written submissions filed by the parties. The matter was set down for final hearing for 09.03.2021 and the parties were allowed to appear before the Commission for making their respective submissions *vide* order dated 28.01.2021.

23. At the outset, it is appropriate to note that the learned counsel(s) appearing on behalf of the Informant sought adjournment on the scheduled date of final hearing citing non-availability of the learned senior counsel and prayed the Commission to re-schedule the oral hearing to 13.04.2021 or 19.04.2021 or any other later date. Having considered the application, the Commission *vide* order dated 09.03.2021 noted that date of final hearing in the present matter was fixed well in advance *vide* order dated 28.01.2021 and as such only the present matter was listed for hearing before the Commission for that day. In these circumstances, the request for adjournment was rejected and the learned counsel(s) appearing on behalf of the Informant were requested to make submissions. However, no submissions were advanced by the learned counsel(s) appearing on behalf of the Informant despite being duly authorised by the Informant. Be that as it may, suffice to note that proceedings before the Commission are inquisitorial in nature and remedies issued are *in rem* and



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as such, though any member of the public can bring any anti-competitive behaviour to the notice of the Commission by filing an Information as per the provisions of the Act and the Regulations framed thereunder, the scope and level of participation of the Informant has to be clearly appreciated in light of the statutory architecture and judicial pronouncements. In this regard, it is instructing to note that after bringing the alleged anti-competitive conduct to the notice of the Commission, the statutory mechanism would work as provided under the Act and during the subsequent inquiry/ investigation process, if any, by very nature of the things, the role of the Informant would be confined to such assistance, as may be required by the Commission or the Office of the Director General, as the case may be. In such proceedings, it would be wholly out of scheme of the Act if the Informant is allowed to consider itself as *dominus litis* in such *in rem* proceedings. Thus, the role of the Informant during inquiry and investigation stage is merely that of an information provider and in this truncated role of the Informant under the scheme of the Act, the Commission is satisfied that sufficient opportunity had already been accorded to the Informant to make its submissions on the DG Report in writing as well as an opportunity to advance oral arguments. Besides, it is observed that *vide* order dated 09.03.2021, the Commission *inter alia* allowed the Informant to file its written submissions. The same have since been filed by the Informant on 23.03.2021.

24. The Commission now proceeds to examine the matter on merits. From the records, it appears that the gravamen of the Information essentially emanates out of the alleged conduct of Tamil Film Producers Council and Telugu Film Chamber of Commerce, for collectively boycotting the production, supply, exhibition, distribution and technical development of Tamil and Telugu Films in the State of Tamil Nadu, as also for alleged refusal to deal with several stakeholders in the film industry in Tamil Nadu.



25. For proper appreciation of the issue involved in this case, it would be apposite to note the contours of transmission, distribution and exhibition of films through digital mode.
26. In this regard, it is observed from the Information that transmission of films through digitisation process involves installation of a digital film server and a projector in each theatre by a digital service provider which operates the technology to convert/ digitise the film content into a proprietary format and delivers such digitised content to their servers in theatres for playback. Further, an agreement is entered into between a DSP and producer of a film entailing scope of services provided and the costs for the same. The services provided by the DSPs include content encoding and encryption into multiple formats and conversion to a Digital Cinema Package (DCP). This process is known as “mastering”. The DCP is subsequently dispatched either physically or by satellite to theatres. The DSP also issues licenses, referred to as Key Delivery Messages (KDMs), which allow for playback on the equipment in a particular theatre for a given period as instructed by the producer/ distributor. At this point, the producer/ distributor decides on the nature of licenses to be taken for each of the screens based on the prevailing rate card and is of the following types: (a) flat or unlimited license; (b) weekly license with reducing amounts per week; and (c) pay by show. The amounts charged by the DSPs are commonly known as Virtual Print Fee. At the end of the playback period, the DSP retrieves and provides playback logs to the producer/ distributor for final invoicing.
27. As per the Information, in the Month of December 2017, OP-4 protested against alleged high VPF charged by the DSPs and called for an absolute industry-wide ban on release of films from 01.03.2018. Subsequently, a Joint Action Committee of the Southern Indian Film Industry, comprising OP-1 and OP-4 along with other associations related to film industry in southern states including South Indian Film Chamber of Commerce, Kerala Film



Chamber of Commerce, Karnataka Film Chamber of Commerce and Telangana State Film Chamber of Commerce, was constituted to resolve concerns primarily relating to VPF.

28. It has been submitted by the Informant that during February and March 2018, several meetings took place between DSPs and JAC to break the impasse between producers and distributors. However, OP-1 and OP-4 continued to emphasise their demands and decided to go on an indefinite strike to boycott/ ban not only screening of films in all theatres in Tamil Nadu from 01.03.2018 but also stop all production, shooting and promotional events.
29. Further, the Informant alleged that amidst the discussions between the DSPs and JAC around mid-February 2018, JAC had issued a note to all South Indian Film exhibitors, banning theatre operators/ exhibitors from entering into/ renewing agreements with DSPs. OP-4 also issued a press release dated 17.02.2018 showcasing its solidarity and cooperation with JAC and its agenda.
30. The Informant stated that pursuant to various meetings between JAC and DSPs, Qube and UFO (prominent DSPs) agreed to offer a discount of 18%-23% (depending upon the shelf life of films) on the VPF. However, OP-1 stuck to its claim for abolition of VPF. It is alleged that in order to arm-twist the DSPs into acceding to its demand, OP-1 pressurized its members to halt shooting, production and release of their films. Consequently, OP-1 boycotted the DSPs and theatre operators.
31. By way of its letter dated 30.03.2018, OP-1 pressurized OP-4 to support their indefinite boycott and to refrain from releasing Telugu films in Tamil Nadu until resolution of issues with the DSPs. It was further stated that by way of a statement dated 05.03.2018, OP-1 also highlighted that its decision not to



release any new films from 01.03.2018 was also on account of the theatre owner's/ operator's unwillingness to support their demands.

32. It is alleged that despite having agreed to the discounted VPF rates, OP-4 derogated from the JAC decision arrived after long deliberations and expressed its solidarity with OP-1 by re-initiating the boycott and agreeing not to release any Telugu films in Tamil Nadu. The Informant also alleged that OP-1 coerced OP-4 to change its position from the earlier one of having agreed to the suggestions of DSPs and also theatre owners/ operators to bear the costs of releasing films in digital form.
33. It was averred that by banning the release of new Tamil (effective 01.03.2018) and Telugu films (effective 09.04.2018), OPs mandated a refusal to deal on part of film producers in respect of theatre operators, who had been significantly constrained in their business operations and were suffering substantial losses with each passing day. Further, OPs also forced producers and theatre owners/ operators to refuse to deal with the DSPs.
34. The Informant further alleged that the OPs foreclosed business opportunities for all stakeholders operating at different levels in the film industry in Tamil Nadu, engaged in production, supply, distribution, exhibition, from film producers to individual technicians, assistants, *etc.*, who are solely dependent on the industry for earning their livelihood.
35. The Informant also alleged that by requiring DSPs to offer their services at commercially unviable rates, the act of OPs will drive DSPs out of the market and consequently their superior technology. This will adversely impact the digitisation of the Indian film industry, thereby resulting in retardation of significant technical development.



36. The Informant stated that the actions of the OPs to organise an indefinite and collective boycott of the film industry in Tamil Nadu was in clear violation of the provisions of the Act. Their conduct was restricting the availability of upcoming Tamil and Telugu films and depriving the consumers from watching the same, for an indefinite period of time. Further, the Informant alleged that OP-1 was leveraging its unique position as the sole representative body in Tamil Nadu to assert its demands on the entire industry and consequently, arm twist all the other players in film industry.
37. From the background of the events leading upto the impugned actions as adumbrated *supra*, it is observed that the transmission of films through digitization process brought in its wake a new set of players in the value chain and distribution ecosystem *i.e.* digital service providers and consequent dispute/ disagreement on the virtual print fee to be charged by such service providers from the producers. From the sequence of events and chronology, it is abundantly clear that the parties were at dispute over the issues, triggering the impugned actions.
38. Before examining the impugned conduct intrinsically on merits, it is appropriate to highlight the role of trade associations and the legitimate contours *i.e.* the parameters and the perimeter within which they may legitimately espouse the cause of their respective members.
39. No doubt trade associations play an important role in promoting both the interests of their members and the industries they serve and their efforts can contribute to improving the quality, variety, and availability of products and services in the marketplace. However, because the members of trade associations typically are competitors, the varied activities that associations conduct if transgress the boundaries of law, may fall foul of the law regulating competition in the market. Anyone who participates in association activities or attends association meetings, whether an association member, an association executive, a manager, or a staff employee, must be highly



sensitive to the anti-trust risks involved in such participation, and must adhere to safe-guards designed to meet those risks. Although the anti-trust laws are not an impediment to appropriate association activity, trade associations and their members must be fully aware of the types of conduct these laws proscribe when carrying out an association's programs and activities. The anti-trust issues that association activities may present relate to agreements that fix prices or pricing terms, agreements to control or limit production or capacity, allocation of customers or markets, group boycott or refusal to deal, abuse of dominant position *etc.* Under the Indian competition law, trade associations face potential risks under Section 3 of the Act for entering into any agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition within India. Further, under section 4 of the Act, trade associations may face scrutiny for abuse of dominant position. Using the collective power by the trade association to boycott a competitor, a supplier, or a customer *etc.*, may potentially contravene the provisions of the Act. Besides, an agreement among competing sellers under the aegis of trade association jointly setting the prices of their products or services is the most serious and egregious violation of the Act and such price fixing related activities pose the most severe threat to trade associations.

40. Impugned conduct of OP Associations (OP-1 and OP-4), if examined in the aforesaid backdrop of permissible boundaries of legitimate conduct of trade associations, would *ex facie* appear to transgress the perimeter within which trade associations can legitimately espouse the cause of their respective members. In the instant case, it is evident that the impugned conduct of OP Associations was actuated for bargaining better commercial terms for their members and as such was within the contours of the prohibited zone of the competition law, being an action relatable to commercial matters. In this



background, the Commission proceeds to examine as to whether such conduct violated the provisions of Section 3 of the Act.

41. Before proceeding any further in the matter, it would be apposite to note the dates and events relating to the strike call given by the players including OP-1 and OP-4. The same is reproduced from the DG Report hereunder:

06.02.2015	OP-1 letter requesting Qube to waive mastering charges
23.02.2015	Qube letter allowing three changes after mastering without cost
13.06.2015	OP-1 letter requesting Qube to reduce VPF charges
05.08.2015	Qube proposal on VPF charges
29.02.2016	OP-1 letter requesting Qube to revise the proposal
18.03.2016	Qube revised proposal to OP1
06.04.2017	OP-1 email from new office bearers requesting reduction in VPF
13.04.2017	Qube response with revised VPF rates
13.12.2017	Telugu Film Chamber of Commerce (TFCC) i.e. OP-4 announced an industry-wide shut down from March 1, 2018, to protest against high fees charged by DSPs like Qube and UFO
31.01.2018	<ul style="list-style-type: none">• Joint meeting held in the Film Chamber, Film Nagar, Hyderabad• Members from Telugu Film Chamber of Commerce, Telangana State Film Chamber of Commerce, South Indian Film Chamber of Commerce, Tamil Film Producers Council, Karnataka Film Chamber of Commerce, Kerala Film Chamber of Commerce, and Kerala Distributors Association attended the meeting.• Unanimous resolution passed in the meeting as under:<ol style="list-style-type: none">(1) Forming a Joint Action Committee (JAC) with the Members from all six film chambers, Sri D. Suresh Babu as Chairman and Sri P. Kiran as Convener of the JAC.(2) Invite Qube and UFO on 07-02-2018 for discussion on:<ol style="list-style-type: none">a) VPF



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	<p>b) 8 Minutes advertisement</p> <p>c) Free screening of Trailers with each Film</p> <p>(3) In Andhra Pradesh and Telangana States, the screening of films will be stopped indefinitely from 01.03.2018. In Tamil Nadu, Karnataka and Kerala States, the screening of films will be stopped only on 01.03.2018 and further course of action will be as per the decision taken in the meetings with members of Tamil Nadu, Karnataka and Kerala Film Chambers.</p>
01.02.2018	<p>Sh. P Kiran, Convener, JAC and President of TFCC wrote letter to Qube and UFO mentioning that:</p> <ul style="list-style-type: none">• All trade bodies of five South Indian states have formed JAC to negotiate/ resolve the dispute with the DSPs.• Requested them to meet at Hyderabad to resolve and dissolve all the causes of strike before 07.02.2018• a unanimous decision was taken by the South Indian Film Industry, to stop screening of films from 01.03.2018 if DSPs did not resolve the issues by 07.02.2018.
07.02.2018	First meeting of JAC with DSPs
16.02.2018	Second meeting of JAC with DSPs
23.02.2018	Third meeting of JAC with DSPs
01.03.2018	<ul style="list-style-type: none">• Negotiations with DSPs failed• South Indian film industries decided that no movies will be released from 01.03.2018.• At this point, Telangana entertainment minister T. Srinivas Yadav intervened and assured that he will arrange another meeting to solve the crisis.• the DSPs were charging Rs 22,500 per screen from the producers. However, for a Hollywood film, the cost was Rs 10,000 for the film's lifetime (till the movie is in theatres).
02.03.2018	Malayalam and Kannada film industries backed out of the strike and decided on trying to resolve the issue amicably.



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04.03.2018	Fifth meeting of JAC with DSPs. JAC accepted the offer of DSPs and withdrew the strike
06.03.2018	<ul style="list-style-type: none">• Theatre owners in Telangana and Andhra Pradesh called off their strike with immediate effect.• The representatives of Telugu cinema met the DSPs and arrived at a mutually agreed VPF rate.
08.03.2018	<ul style="list-style-type: none">• Telugu Film Chamber of Commerce called off strike• Qube and UFO reduced their charges by around 20 per cent, to which Telugu film producers gave their nod.
10.03.2018	<ul style="list-style-type: none">• TFPC issued a press release with five important demands directed at revamping the entire system.<ol style="list-style-type: none">1. The producers will no longer pay Virtual Print Fee to the DSPs.2. Theatre association should reduce ticket prices depending on the film's budget.3. Online ticketing fee should be reduced.4. Selling or buying movie tickets to be computerized.5. Release of films should be regularized according to the demand and budget.
16.03.2018	<ul style="list-style-type: none">• TFPC announced that no film shooting, post-production work or promotional events could take place starting March 16.• Theatre owners' association decided to demand a reduction in the entertainment tax levied by the state government, by announcing a strike. (Apparently, states like Kerala have only Goods and Services Tax (GST) and zero per cent entertainment tax on tickets. However, in Tamil Nadu, the government charges an 8 per cent local body tax in addition to the GST and theatre charges. This ranges between 18 and 28 per cent, based on the ticket rates.)
20.03.2018	TFPC issued a statement saying that four movies including Thalapathy 62, Mr. Chandramouli, Nadodigal 2 and Kanna Kanna Kollaiyadithaal were given special permission due to



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	genuine reasons.
10.04.2018	OP-1 entered into agreement with new DSPs namely Aerox, K Sera Sera and Microplex for E-Cinema and mastering
17.04.2018	Meeting between OP-1 and DSPs convened by state government. DSPs agreed to reduce E-Cinema VPF rates for 6 months
18.04.2018	Strike called off by OP-1

42. Now, it would be appropriate to excerpt from the Investigation Report the summary of findings in respect of the purported strike call of film producers given by OP Associations (OP-1 and OP-4) in the month of March and April 2018 whereby film production was alleged to be stopped in the region, as per the Informant. The same is quoted below:

It is found that OP-1 and OP-4 along with producers' associations of Kerala and Karnataka, formed a Joint Action Committee (JAC) in the beginning of the year 2018, to negotiate with DSPs namely Qube and UFO for reduction in VPF charges. The JAC held five meetings with Qube/ UFO on 07.02.2018, 16.02.2018, 23.02.2018, 28.02.2018 and 04.03.2018. Finally, Qube/ UFO agreed to reduce VPF charges by 18-23% on E-Cinema but no reduction on D-Cinema. All, except OP-1, agreed to the rates.

OP-1 called a strike of Tamil producers from 02.03.2018 [sic- 01.03.2018], demanding abolition of VPF charge and other concessions from Qube/UFO. The strike continued till 17.04.2018, when the state government held a meeting with the two sides, and Qube/UFO agreed to further reduce VPF charges on Tamil movies, provisionally for 6 months.

Investigation has collected circulars, letters, press releases and



email issued by OP-1, which prove that it called a strike of Tamil producers. OP-1 also requested other associations to join the strike.

Based on the material collected, Investigation has concluded that OP-1 being an association, took a decision which limited or controlled the production, supply, markets, investment or provision of services in Tamil cinema, thus violating provisions of Section 3(3)(b) r/w Sec 3(1) of the Act.

In respect of OP-4, Investigation found that its then President Sh. P. Kiran, was convener of JAC. Investigation has collected minutes of meetings of OP-4 wherein it is observed that the participating producers took a collective decision to call a strike of Telugu movie producers and the strike happened from 02.03.2018 to 07.03.2018. Telugu movies started releasing from 08.03.2018, however, OP-1 requested OP-4 vide a letter dated 30.03.2018 to stop releasing Telugu movies in the state of Tamil Nadu and thereafter release of Telugu movies stopped in Tamil Nadu.....Based on material collected and discussion above, Investigation concluded that OP-4 being an association, took a decision which limited or controlled the production, supply, markets, investment or provision of services in Tamil cinema, thus violating provisions of Section 3(3)(b) r/w Sec 3(1) of the Act.

It is found that OP-1 had constituted a Release Regulation Committee (RRC) comprising 9 producer-members to decide the release dates of Tamil movies. The said RRC functioned from 11.02.2018 to 21.12.2018. Between this period too, during festivals the producers were free to release their movies as they decided. A producer whose movie was listed for release date, would not be on the RRC. Sh. Varaaki also stated during his deposition that the RRC is required for efficient regulation of movie release. Investigation has



concluded that the voluntary regulation of release of movies by the producers does not raise competition concerns.

43. From the conspectus of events as highlighted in the Information, it appears that the dispute essentially centered around virtual print fee to be charged by digital service providers and the relevant stakeholders *i.e.* producers/ DSPs/ associations engaged in various efforts to resolve the same. In this process, various communications and correspondences were exchanged between the parties. Besides, various meetings were also convened to break the impasse. It appears that as no mutually agreed outcome could be reached, OP Associations decided not to release movies from 01.03.2018. Finally, it appears that after the intervention of the State Government, a meeting was convened between the relevant stakeholders on 17.04.2018 whereupon the digital service providers agreed to reduce the rates for a period of 6 months and accordingly, the strike call was called off by OP-1 on 18.04.2018.
44. On a careful perusal of the events and the nature of dispute as also the eventual settlements arrived at between the digital service providers and the different producer associations, the Commission is of the opinion that the parties were trying to negotiate the commercial disputes for better terms. No doubt, right to form associations is a recognized right under our constitutional scheme, yet the same cannot be stretched in a manner so as to contravene the provisions of other laws.
45. In the factual matrix of the present case and undisputed sequence of events, the Commission notes that there was festering dispute amongst the parties since 2015 and the negotiations continued for a long period of time culminating into OP-1 Association deciding to issue a strike call of Tamil movie producers during March-April 2018. Similarly, OP-4 Association also took a collective decision to stop work and go on strike against what was perceived as high VPF charges of Qube and UFO.



46. On a careful examination of the impugned conduct, the Commission is of the considered opinion that there can be no doubt about the role of trade associations in furthering and espousing the cause of their respective members, yet it is beyond any pale of doubt that such conduct cannot transgress into commercial thicket whereby collective decisions are taken which result, directly or indirectly, in determination of prices. Similarly, if the impugned conduct limits or controls the value chain or results in sharing of market. Such conducts are presumed to have appreciate adverse effect on competition by virtue of the provisions contained in Section 3(3) of the Act and unless rebutted, fall foul of the provisions of Section 3(1) thereof.
47. To elaborate the aforesaid scheme, it is also apposite to detail the statutory architecture governing and regulating such conduct under the scheme of the Act. In terms of the provisions contained in Section 3(1) of the Act, no enterprise or association of enterprises or person or association of persons can enter into any agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition within India. Section 3(2) of the Act declares that any agreement entered into in contravention of the provisions contained in sub-section (1) shall be void. Further, by virtue of the presumption contained in sub-section (3), any agreement entered into between enterprises or associations of enterprises or persons or associations of persons or between any person and enterprise or practice carried on, or decision taken by, any association of enterprises or association of persons, including cartels, engaged in identical or similar trade of goods or provision of services, which- (a) directly or indirectly determines purchase or sale prices; (b) limits or controls production, supply, markets, technical development, investment or provision of services; (c) shares the market or source of production or provision of services by way of allocation of geographical area of market, or type of goods or services, or number of customers in the market or any other similar way; or (d) directly or indirectly



results in bid rigging or collusive bidding, shall be presumed to have an appreciable adverse effect on competition.

48. In case of agreements as listed in Section 3(3) (a) to (d) of the Act, once it is established that such an agreement exists, it will be presumed that the agreement has an appreciable adverse effect on competition; the onus to rebut the presumption would lie upon the parties.
49. From the circulars, letters, press releases and e-mails that have been issued by OP-1 and collected during investigation by the DG as detailed earlier in this order, it is evident that not only OP-1 issued a strike call of Tamil Producers but even it exhorted other associations to join the strike call. In fact, the Honorary Secretary of OP-1 admitted on oath that the association decided to hold a strike.
50. As regards OP-4, from the investigation report, it is revealed that the then President of this association was convener of JAC. From the minutes of meetings of OP-4, it is noticed that the participating producers took a collective decision to issue a call for strike of Telugu movie producers and the strike happened during 02.03.2018 to 07.03.2018. When Telugu movies started releasing from 08.03.2018, OP-1 requested OP-4 to stop releasing such movies in the State of Tamil Nadu whereafter release of Telugu movies stopped in Tamil Nadu. The Honorary Secretary of OP-4 also stated on oath that the association decided to hold a strike.
51. No doubt, the association might have exercised its right to protest as per the constitutionally guaranteed freedoms, yet it is axiomatic to note that such rights are not absolute and can be subjected to reasonable restrictions. If the impugned conduct violates any statute, the necessary consequences have to follow. On a careful consideration of the material on record, the Commission is of the considered opinion that OP-1 and OP-4 being associations and took



the impugned decisions which limited and controlled the production, supply, markets, investments and provision of services in Tamil Cinema. Such conducts are presumed to have appreciable adverse effect on competition by virtue of the statutory presumption engrafted in Section 3(3)(b) of the Act and unless rebutted, such conducts shall fall foul the provisions of Section 3(1) of the Act.

52. As pointed out previously, in the instant case, the impugned conduct of OP Associations was actuated for bargaining better commercial terms for their members and as such was within the contours of the prohibited zone of the competition law, being an action relatable to commercial activities. In this background, having examined the material on record and the pleas advanced by the appearing parties, the Commission is of the opinion that the impugned conduct falls within the ambit and discipline of Section 3(3) of the Act and thereby, is presumed to have appreciable adverse effect on competition by virtue of statutory presumption.
53. In the present case, from the material on record and replies filed by OP Associations, it emerges that 100 members out of 3200 members of OP-1 and 100 members out of about 5,000 members of OP-4 participated in the strike. Malayalam and Kannada film industries backed out of the strike after one day *i.e.* on 02.03.2018 and decided on trying to resolve the issue amicably. Telugu Film Chamber of Commerce called off strike on 08.03.2018 when Qube and UFO reduced their charges by around 20 per cent. Further Qube and UFO increased their VPF from October 2018 onwards which was reduced by 35% in April 2018, on intervention of the State Government.
54. Having examined the history of disputes between the parties which have been festering since beginning of 2015, the Commission is of the opinion that the impugned boycott calls were culmination of unsuccessful resolution of such disputes which were eventually resolved through intervention of State. As pointed out previously, issuance of strike and boycott calls by trade



associations are captured within the framework of competition law which prohibits anti-competitive agreements.

55. However, the Commission is of the considered opinion that the statutory presumption could not be dislodged by the OP Associations (OP-1 and OP-4) as it cannot be said that the impugned conduct was not even *likely* to cause appreciable adverse effect on competition in the markets. It is important to notice the statutory embargo laid down in Section 3(1) of the Act, which is discharging provision, that forbids anti-competitive agreements which *cause* or are *likely to cause* appreciable adverse effect on competition. From the pleas raised by these OPs and as noted in the preceding paras, the Commission is not satisfied that the statutory presumption has been rebutted in any manner as no benefits through the impugned conduct has been shown which might have accrued to the consumers or otherwise improved the distribution or production chain in any manner whatsoever, in terms of the factors enumerated in Section 19(3) of the Act. Be that as it may, from the pleas raised by the associations, the Commission can only be persuaded to consider the same in mitigation while crafting remedies and quantifying penalties.

ORDER

56. In view of the foregoing, the Commission is of the opinion that the impugned conduct of OP Associations (OP-1 and OP-4) in issuing boycott calls to their respective members have violated the provisions of Section 3(1) of the Act read with Section 3(3)(b) thereof, as detailed in this order. Accordingly, OP-1 and OP-4 alongwith their respective office bearers are hereby directed to cease and desist from indulging in future in the conduct which has been found to violate the provisions of the Act.

57. Considering the nature/ duration of and level of participation in the strike/



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boycott call as also considering the submissions that movies continued to be released during the period of strike, on a holistic and comprehensive assessment, the Commission refrains from imposing any monetary penalty upon the associations with a firm warning that any such future conduct would be construed as recidivism with attendant aggravated consequences.

58. OP Associations are directed to ensure that the platform of trade associations is not utilized for anti-competitive behavior and they are advised to conduct events educating their respective members about the awareness of competition law and the consequent need for competition compliance.
59. Before parting with this order, the Commission notes that OP-4 earlier moved seven non-speaking miscellaneous applications all dated 20.11.2020, without mentioning any provision of law whereunder such applications have been moved or making out a case for seeking prayers made thereunder. It is noted that *vide* the said applications, OP-4 sought diverse reliefs *viz.* cross-examination of the Informant, Director General, Joint Director General; eschewing the oral evidences of Shri M. Ramdas (erstwhile Secretary of OP-4); allow and permit OP-4 to lead in oral evidence through examination of witnesses; allow and permit OP-4 to lead in documentary evidence through marking of exhibits; disclosure of the identity of the Informant; serving interrogatories upon the Informant; and issuance of subpoena along with notice to produce and admit to QUBE, UFO, PXD (digital service providers).
60. On perusal of these applications and records, the Commission notes that a copy of the DG Report was duly forwarded to and served upon OP-4, yet instead of filings its detailed response thereon alongwith the requisite documents and evidences, it chose to file only a purported “preliminary reply statement” alongwith various miscellaneous applications without disclosing even the provisions of the Act or the Regulations whereunder they have been made and that too without assigning any reason whatsoever, much less making out a case for grant of such applications. Be that as it may, in light of



the order proposed by the Commission, no further or other orders or directions are required to be passed on these applications and the same stand disposed of accordingly.

61. The Secretary is directed to communicate to the parties, accordingly.

**Sd/-
Ashok Kumar Gupta
(Chairperson)**

**Sd/-
Sangeeta Verma
(Member)**

**Sd/-
Bhagwant Singh Bishnoi
(Member)**

**New Delhi
Date: 22/06/2021**