



**COMPETITION COMMISSION OF INDIA**

**Case No. 09 of 2022**

**In Re:**

**Asianet Digital Network (P) Ltd.  
(Through its Managing Director)  
Having its office at: 2A, 2nd floor  
Carnival Technopark, Techno Park  
Trivandrum - 695581**

**Informant**

**And**

**Star India Private Limited  
Star House Urmi Estate  
95 Ganpatrao Kadam Marg  
Lower Parel (West), Mumbai - 400013**

**Opposite Party No.1**

**Disney Broadcasting (India) Limited  
First Floor, Building Number 14  
Solitaire Corporate Park, Guru Hatgovindji Marg  
Chakala, Andheri East,  
Mumbai -400093**

**Opposite Party No. 2**

**Asianet Star Communications Private Limited  
Star House, Urmi Estate  
95 Ganpatrao Kadam Marg Lower Parel (W)  
Mumbai- 400013**

**Opposite Party No. 3**

**Order under Section 33 of the Competition Act, 2002**

1. The present order shall govern the disposal of interim relief prayer made by the Informant *vide* para 14.5 of the Information filed on 31.01.2022 - and a subsequent request dated 22.02.2022 for urgent listing for preliminary conference and for adjudication of interim relief prayers made in the Information - seeking interim relief in terms of the provisions contained in Section 33 of the Competition Act, 2002 (“**the Act**”) against the arrayed Opposite Parties. *Vide* a separate order of even date passed under Section 26(1) of the Act, the Commission *prima facie* noted a case of contravention of the provisions of Section 4



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of the Act against the Opposite Parties, as detailed therein, and ordered the Director General (“DG”) to cause an investigation to be made into the matter.

2. By way of background, it is noted that the present Information has been filed by Asianet Digital Network (P) Ltd. (**‘the Informant’/‘ADNPL’**) under Section 19(1)(a) of the Competition Act, 2002 (**‘the Act’**) against Star India (P) Ltd. (**‘Opposite Party No. 1’/ ‘OP-1’/ ‘SIPL’**), Disney Broadcasting (India) Limited (**‘Opposite Party No. 2’/ ‘OP-2’/ ‘Disney’**) and Asianet Star Communications Private Limited (**‘Opposite Party No. 3’/ ‘OP-3’/ ‘Asianet Star’**) (collectively referred to as **‘the OPs’**), alleging *inter alia* contravention of the provisions of Sections 4 of the Act.
3. The Informant is stated to be a Multi System Operator (MSO) engaged in the business of providing digital TV services, predominantly in Kerala. It also operates in Karnataka, Andhra Pradesh, Telangana, and Odisha. The Informant has been in the business of distribution of TV channels for the last 28 years. It provides digital TV services to its customers directly as well as through Local Cable Operators (LCO) and currently provides services to about 10.02 lakh customers in Kerala and a minimal 1.19 Lakh customers in all other States combined (as of December 2021).
4. As per the Information, OP-2 *i.e.* SIPL (including its subsidiaries and group companies including OP-2/ Disney and OP-3/ Asianet Star) is a broadcaster of satellite-based TV channels in India having multiple channels of different languages and various genres including general entertainment, movies, kids’ entertainment, sports and infotainment.
5. It is stated that the business arrangement between the parties is such that the Informant *i.e.* ADNPL receives broadcasting signals from OP-1 for a monetary consideration for the purposes of supplying the channels of OP-1 to customers, and for this, ADNPL enters into agreements with OP-1 from time to time.
6. The Informant, in the instant Information, has essentially alleged abuse of dominant position by OPs by discriminating the Informant in not extending the discounts, which are offered to its competitors. Such conduct in offering discriminatory discounts is



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alleged to be in contravention of the provisions of Section 4(2)(a)(ii) of the Act being unfair/ discriminatory prices, as also the provisions of Section 4(2)(c) as it denies market access to the Informant as well due to the inability of the Informant to compete in the downstream market of distribution of TV channels given the unfair advantage OP-1 has conferred upon the Informant's competitors.

7. By way of background, it is averred in the Information that TRAI introduced a new regulatory framework in 2017 by way of the Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) Regulations, 2017 (Interconnection Regulations 2017) and the Telecommunication (Broadcasting and Cable) Services (Eighth) (Addressable Systems) Tariff Order, 2017 (collectively, New Regulatory Framework). The New Regulatory Framework introduced the concept of the Maximum Retail Price (MRP) for each pay channel. Interconnection Regulations 2017 requires broadcasters to deal with distributors on a non-discriminatory basis, and the subscription agreement is required to be non-discriminatory. They further cap the total discount (15% of MRP) and distribution fees (20% of MRP) payable to distributors at 35% of MRP and mandate that broadcasters offer discounts based on fair, transparent, and non-discriminatory terms to ensure that there is a level playing field for distributors.
8. The allegation primarily related to a Subscription License Agreement dated 17.12.2018 executed on Reference Interconnect Offer (RIO) basis between OP-1 and ADNPL under the New Regulatory Framework for signals of Channels for the period effective 01.02.2019 until 31.01.2020 (2018 Agreement). Interim extension letters were issued including the last extension letter dated 06.01.2022, extending the validity of the 2018 Agreement till 31.01.2022. While executing the 2018 Agreement, OP-1 informed ADNPL that subscription fees would be determined strictly according to the Interconnection Regulations 2017 and no extra benefits will be offered to any MSO according to the New Regulatory Framework. However, after the introduction of New Regulatory Framework, ADNPL started losing subscribers to Kerala Communicators Cable Limited (KCCL) as the latter offered low prices to LCOs who in turn offered lower prices to subscribers.



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9. It is averred that the Informant, upon further investigation from market sources, came to know that KCCL was able to offer lower rates to LCOs as it was given special discounts of up to 50% (instead of 15% as per Interconnections Regulations 2017) by OP-1. Upon confrontation with OP-1, it was initially denied but later claimed that the additional discounts were offered in the form of promotion and advertisement payments to KCCL. Furthermore, OP-1 offered to grant similar discounts to the Informant but only for certain channels (kids channels like Hungama, Disney, and Disney XD) of OP-1 which are being subscribed to by only a small universe of ADNPL but not on the existing billing comprising their popular channels like Star Malayalam Value Pack.
10. It was stated by the Informant that, to circumvent the New Regulatory Framework and grant additional discriminatory discounts to KCCL, OP-1 has entered into marketing agreements with KCCL whereby OP-1 pays KCCL for advertising which apparently is an admitted fact by OP-1 in one of its communications. It is also averred that it is claimed by OP-1 that the subscription agreement and marketing agreement are two independent transactions and that ADNPL is attempting to link two different transactions with *malafide* intentions.
11. It is further submitted that OP-1 served a 3-week disconnection notice to the Informant in terms of the New Regulatory Framework, over the non-payment of outstanding subscription fees which was disputed by the Informant and further requested the same discount that was offered to KCCL. In spite of attempting amicable solution, there was no outcome.
12. The Informant submits that the relevant market for assessing the conduct of OPs would be the broad market for “*provision of broadcasting services in Kerala*” and further sub-categorised in terms of language and genres.
13. In light of the afore-mentioned, the Informant alleged that OP-1 is in a dominant position on account of its significant market share, size and economic resources since it is a part of global media conglomerate, dependence of consumers and its



countervailing power. It is further alleged that the conduct blatantly violates provisions of Section 4(2) (a) (ii) of the Act and Section 4(2) (c) thereof since the discriminatory discounts amount to unfair/discriminatory price under Section 4(2) (a) (ii) of the Act and have further denied market access to the Informant, as it is unable to compete in the downstream market of distribution of TV channels considering the unfair advantage OP-1 has conferred upon ADNPL's competitor KCCL.

14. The Commission considered the Information and passed a separate order of even date under Section 26(1) of the Act, observing that the main thrust of the allegations levelled by the Informant is that by offering additional discounts to select MSOs and the main competitor of ADNPL in Kerala viz. KCCL, OP-1 has placed the MSOs like ADNPL at a huge disadvantage which is detrimental to the competition and competitors in the market. Such conduct by a dominant player is alleged to be violative of the provisions of Section 4 of the Act as it not only amounts to imposition of unfair/ discriminatory prices but also denies market access to the Informant, besides distorting the level playing field in the market place and hindering the ability of the players to compete in an effective manner.

15. Taking into account the facts as projected in the Information, the Commission *prima facie* noted that the relevant product market is “*market for provision of broadcasting services*” as OP-1 is engaged in providing the services of broadcasting satellite-based TV channels in India. Furthermore, since the very premise of the Informant is price discrimination between its various distributors in the State of Kerala and also keeping in mind factors such as language and consumer preferences, the relevant geographical market was taken as ‘*State of Kerala*’. Hence, the relevant market *prima facie* appeared to be ‘*market for provision of broadcasting services in the State of Kerala*’.

16. As regards the dominance, the Commission noted from the Information that OP-1 has around 50 entertainment channels and over 15 sporting channels with exclusive content of major sporting events such as ICC, IPL, ODIs, Wimbledon, French Open *etc.* making access to its bouquet of channels indispensable for any MSO operator, especially when



some of the most popular, as per TRPs, regional and nation-wide channels belong to the OPs. Further, as per the Information, the rating for the regional affiliate Asianet (100% subsidiary of OP-1 and OP-1's Malayalam general entertainment channel) for week 52 of 2021, is 1127 in comparison to 262 of Flower TV who is the closest competitor which means that Asianet Channel has more than four times more viewership than the nearest competitor channel. Also, OP-1 is a part of Disney (OP-2) which has global revenue of USD 65.3 billion and total assets of USD 201.5 billion. Further, as per OP-1's financial statements, revenue was Rs. 14,337.46 crore in the financial year ending 31.03.2020. Being part of the Disney group, SIPL and its group companies are present across the entire value chain of the media industry from content generation to Over the Top (OTT) platform. Therefore, on the basis of market share, dependence of consumers, size and resources of the enterprise (being part of global media conglomerate), vertical integration of the enterprise and countervailing power, the Commission was of *prima facie* view that OP-1 enjoyed a position of dominance in the relevant market delineated *supra*.

17. In so far as the alleged abuse of dominance by the OPs is concerned, it is averred in the Information that OP-1 was providing a bouquet of channels to the competitor of the Informant at lesser prices resulting into denial of market access and also amounting to unfair/discriminatory pricing. Apparently, KCCL was getting the channels at about 30% of the MRP with about 70% discount (special discounts of up to 50% added with distribution fee of 20%), whereas the maximum permissible discounts under the New Regulatory Framework is capped at 35% *i.e.*, a minimum of 20% distribution fee and other marketing discounts of maximum 15% (combined, both capped at 35%). As per the allegations, OP-1 chose an indirect way to provide these discounts to circumvent the New Regulatory Framework by way of promotion and advertisement payments to KCCL through high valued advertising deals.
18. The resultant impact was that the Informant was constrained to price its channels at a higher price than that of KCCL and ultimately pay the price by losing consumers consistently whereas KCCL has gained new consumers. The Informant was ultimately



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offering its services at a loss-making price just to prevent the subscriber base from migrating to KCCL's services but in vain. It is stated that ADNPL's subscriber base fell from about 14.5 lakh in April 2019 to about 11.76 lakh in September 2021 while the subscriber base of KCCL went up from 21.3 lakh in April 2019 to 29.35 lakh in September 2021.

19. In view of the above, the alleged discriminatory conduct of price discrimination between different MSOs of OP-1 was noted as resulting in significant loss in consumer base of the Informant and thereby *prima facie* violative of the provisions of Section 4(2)(a)(ii) of the Act as well as the provisions of Section 4(2)(c) of the Act due to discriminatory pricing and denial of market access respectively.
20. In this backdrop, the Commission deems it appropriate to consider the interim relief prayer made by the Informant. For felicity of reference, the interim relief prayer made by the Informant is excerpted below:

*That during the pendency of the matter, the Commission may be pleased to direct SIPL to disclose the additional discounts granted to KCCL (in the form of marketing/ advertising expenses) or otherwise and provide signals to ADNPL at the same effective license fee (after deduction of all additional discounts) as charged to KCCL.*

21. At the outset, it would be apposite to note the parameters and perimeter for grant of interim relief as laid down in Section 33 of the Act. It provides that where, during an inquiry, the Commission is satisfied that an act in contravention of sub-section (1) of Section 3 or sub-section (1) of Section 4 or Section 6 has been committed and continues to be committed, or that such act is about to be committed, the Commission may, by order, temporarily restrain any party from carrying on such act until the conclusion of such inquiry or until further orders, without giving notice to such party, where it deems it necessary. Elucidating the statutory scheme, the Hon'ble Supreme Court of India in the case of *Competition Commission of India v. Steel Authority of India Ltd.*, Civil Appeal No. 7779 of 2010 decided on 09.09.2010 held that this power has to be



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exercised by the Commission sparingly and under compelling and exceptional circumstances. Further, it was held that the Commission, while recording a reasoned order *inter alia* should: (a) record its satisfaction which has to be of much higher degree than the formation of a *prima facie* view under Section 26(1) of the Act in clear terms that an act in contravention of the stated provisions has been committed and continues to be committed or is about to be committed; (b) it is necessary to issue order of restraint and (c) from the record before the Commission, it is apparent that there is every likelihood of the party to the *lis*, suffering irreparable and irretrievable damage or there is definite apprehension that it would have an adverse effect on competition in the market.

22. On a plain reading of the interim relief prayer, the Commission is of the considered opinion that the same does not fulfil any of the criteria for the grant of interim protection. The Informant has not been able to project any higher level of *prima facie* case warranting a positive direction as sought for by the Informant at the interim stage. The Informant has also not able to satisfy as to how the impugned conduct would cause an irreparable harm to the Informant which cannot be compensated in terms of money. The Commission is also not persuaded that balance of convenience lies in favour of the Informant. There is nothing on record which warrants the issue of order of restraint. From the Information, it is evident that the Subscription License Agreement dated 17.12.2018 was executed between the Informant and SIPL as early as in 2018 for the period effective from 01.02.2019 to 31.01.2020. The same has already expired and through various extension letters issued by SIPL, the validity of the arrangement has been extended from time to time, the latest being interim extension granted on 11.02.2022, which is slated to expire on 28.02.2022. In this chronological backdrop, the Commission is not inclined to interfere by issuance of any interim direction.

23. Viewed in the aforesaid backdrop, the Commission is of the considered opinion that no case whatsoever has been made out by the Informant which warrants grant of interim relief. Resultantly, the application stands dismissed.





24. It is also made clear that nothing stated in this order shall be tantamount to a final expression of opinion on the merits of the case, and the DG shall conduct the investigation without being swayed in any manner whatsoever by the observations made herein.

25. The Secretary is directed to communicate to the Parties and the Office of the DG, accordingly.

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

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

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

**Date: 28/02/2022**  
**New Delhi**