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 26(1) of the Competition Act, 2002

1. 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.

2. 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).

3. 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.

4. 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.

5. 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 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.

6. 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.

7. The allegation primarily related to a Subscription License Agreement dated 17.12.2018 executed on a 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 the 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.

8. 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, the 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.

9. 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.

10. 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 an amicable solution, there was no outcome.

11. 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 i.e.:
    a) *''Provision of broadcasting services of Malayalam general entertainment channels in the state of Kerala"*;

    b) *"Provision of broadcasting services of Malayalam movie channels in the state of Kerala"*; and

    c) *"Provision of broadcasting services for sports channels in the state of Kerala"*.

12. In light of the afore-mentioned, the Informant alleges 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 the 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.

13. Accordingly, the Informant has made the following prayers to the Commission:

(i) Pass an order under Section 26 (1) of the Act to cause an investigation into the discriminatory conduct of SIPL;

(ii) Pass an order under Section 27 of the Act finding that SIPL has abused its dominant position in contravention of Section 4 of the Act by indulging in discriminatory pricing and conduct resulting in denial of market access;

(iii) Impose the highest penalty on SIPL given its habitual and repeated contraventions of the Act;

(iv) Pass an order directing SIPL to cease and desist from indulging in discrimination between DPOs;

(v) Pass an order to refund excess amount along with interest @12% p.a to ADNPL; w.e.f. 01.02.2019 in accordance with parity with KCCL in Kerala and parity; with other MSOs. receiving the highest benefits above 35% of MRP and also pay a compensation of Rs 200 crores demanded by ADNPL on SIPL; and

(vi) Pass any other order as it may deem fit.

14. The Commission has considered the Information and other material available on record. Based on the averments and allegations made in the Information, it is observed 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. To ascertain the alleged abusive conduct of a dominant undertaking, the Commission first delineates the relevant market, followed by an assessment of dominance therein, then proceeds to examine the alleged abusive conduct.

16. Taking into account the facts as projected in the Information, the Commission *prima facie* notes 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 is *'State of Kerala'*. Hence, the relevant market *prima facie* appears to be ***'market for provision of broadcasting services in the State of Kerala'.***

17. While adverting to the issue of dominance, certain factors are taken into consideration as enshrined under Section 19(4) of the Act. In this regard, the Commission notes from the Information that OP-1 has around 50 entertainment channels and over 15 sporting channels with exclusive content of the 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 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 having 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 is of *prima facie* view that OP-1 enjoy a position of dominance in the relevant market delineated *supra*.

18. While adverting to the alleged abuse of dominance perpetrated by the OPs, 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.

19. 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 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.Therefore, the alleged discriminatory conduct of price discrimination between different MSOs of OP-1 has resulted into significant loss in the consumer base of the Informant and therefore *prima facie* appears to be in violation of the provisions of Section 4(2)(a)(ii) of the Act as also in contravention of the provisions of Section 4(2)(c) of the Act due to discriminatory pricing and denial of market access respectively.

20. Accordingly, the Commission directs the Director General (DG) to cause an investigation to be made into the matter and submit an investigation report within a period of 60 days from the date of receipt of this order.

21. 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.

22. The Secretary is directed to send a copy of this order along with the Information to the Office of DG forthwith through speed post/e-mail.

Sd/-
(Ashok Kumar Gupta)
Chairperson

Sd/-
(Sangeeta Verma)
Member

Sd/-
(Bhagwant Singh Bishnoi)
Member

Date: 28/02/2022
New Delhi