

Before The  
Competition Commission of India

Case No. 09/2011

Date of Order: 08 May 2012

UTV Software Communications Limited, Mumbai : Informant

Against

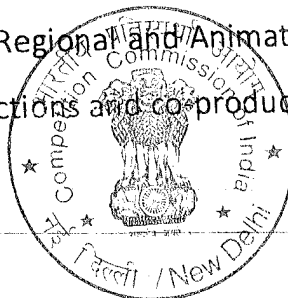
Motion Pictures Association, Delhi : Opposite Party

Order under section 27 of the Competition Act, 2002

The present matter relates to information filed by UTV Software Communications Limited (hereinafter referred to as informant) alleging that Motion Pictures Association, Delhi (hereinafter referred to as the Opposite Party or MPA) has abused its dominant position in contravention of provisions of section 4 of the Act.

2. The facts and allegations in the matter as per information, in brief, are as under;

2.1 The informant, a company registered under the Companies Act, 1956, is a producer, title holder and distributor of feature films. The informant's portfolio includes Hindi, Regional and Animation films. It is also associated with international productions and co-productions.



2.2 The Opposite Party is an association registered under section 25 of the Companies Act, 1956. The OP as a body has been formed to promote and assist the business of production, distribution, exhibition of films and also to provide a common forum to its members to meet and address their problems. The members of the OP are engaged in the business of production, distribution and exhibition of films. The OP governs the arena of distribution and exhibition of motion pictures in the territory of Delhi, Uttar Pradesh and Uttarakhand (hereinafter referred to as "territory").

2.3 It has been alleged by the informant that the OP is abusing its dominant position by imposing unreasonable terms and conditions vide its Memorandum of Association and Articles of Association. The said unreasonable terms and conditions limit the production, supply, distribution and exhibition of films in the areas of operations of the OP.

2.4 As per the information, the OP forces its members to sign a Producer Distributor Certificate and an Acquiring Form for the purpose of registration of the films. The aforesaid Certificate and Form contained conditions such as unreasonable hold back periods i.e. period between the first theatrical release of cinematographic film till the said cinematographic film is distributed through other media for viewing such as satellite exhibition of films, on demand viewing, compact discs, internet etc. In case the above certificate is not signed by the members then their films cannot be registered and subsequently not allowed to be released in the areas of operations of the OP.

2.5 According to the informant, the Acquiring Form contains some conditions as per which the members have to agree for the transfer of all commercial and non-commercial rights of the film including the copyrights



plus commercial video rights through any media including video parlour rights and telecasting rights to the distributor and imposes a holdback period of 5 years. The OP has made it mandatory for the producer/suppliers and distributors to sign the declaration and undertaking for registering a film with it prior to the release of the film in the territory. The said Form has to be signed by the members without any corrections or cuttings.

2.6 The informant has alleged that the OP through the agreements reflected in its Memorandum & Articles of Association, mandates its members not to deal with or to do business with persons engaged in the exhibition and distribution of films (i) who are not members of the Opposite Party; (ii) whose membership has been suspended or terminated; or (iii) members who have distributed a non-registered film. It is also alleged that the decisions and actions taken by the Opposite Party limit, control and restrict the distribution, exhibition and exploitation of films in the territory.

2.7 Further, the Film Acquiring Rules prescribe the penalty in case of premature satellite telecast of films in violation of the undertaking given by the producers/distributors. The executive committee of the Opposite Party has decided to levy a penalty on the members for alleged premature satellite telecast of films according to the grades/categories of the films. The picture/film is graded into four categories viz. 'A', 'B', 'C' & 'D' and a penalty of Rs. 2 lac, Rs. 1 lac, Rs. 50 thousand and Rs. 25 thousand, respectively, is imposed, depending upon the category of the film.

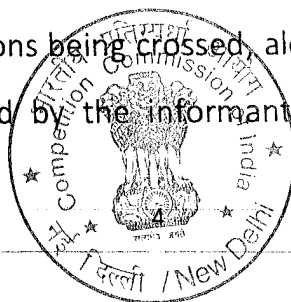
2.8 The informant has given sequence of events in connection with registration of its films with the OP to bring out that its conduct has been



anti-competitive. As per the information, on August 14, 2010, the informant received a letter from the OP in relation to the registration of its film "Peepli Live" for exhibition vide which the OP wanted the informant to furnish a few details in the Form which had not been disclosed. In that letter it was mentioned that penalty had been levied on the informant for alleged premature satellite telecast of its films "Rang De Basanti", "Aamir", "Mumbai Meri Jaan", "Jodha Akbar", "Kismat Konnection", "A Wednesday", "Fashion", and "Kurbaaan" for an amount of Rs. 2,00,000/-, Rs. 50,000/-, Rs.1,00,000, Rs.2,00,000, respectively, and the informant was asked to comply with the same.

2.9 According to the informant, thereafter it addressed a letter dated January 6, 2011 to the OP, enclosing a filled Form for registering its film "No One Killed Jessica" and stating that the clauses mentioned in the certificate (which every distributor is required to submit to the OP for registering a film before its release) were misrepresentation of the rights and the arrangement of business between the informant and the distributor.

2.10 The informant, in the form enclosed along with the letter dated 06.01.2011 to the OP, struck off the provisions and clauses which were non-applicable to them and the distributor as far as their business arrangement and nature of the rights being transferred was concerned. The OP in its letter dated January 12, 2011 stating that since page nos. 3 & 4 of the form was found crossed with respect to Video rights, Telecasting rights, Declaration and Undertaking, asked the informant to submit a fresh Form, without any provisions being crossed, along with a fresh affidavit as the one earlier submitted by the informant was not as per the OP's



prescribed form. The OP also reiterated the orders to pay the penalty which was mentioned in the letter dated August 14, 2010.

2.11 In response to the aforesaid letter, the informant addressed another letter dated January 14, 2011 to the OP reiterating its objections with respect to the terms and conditions mentioned in the Certificate. On January 17, 2011 the informant wrote another letter which was identical to the letter addressed to the OP dated January 14, 2011, with respect to the registration of the film "Dhobi Ghat" which was scheduled for release on January 21, 2011. The informant also brought out that it was not commercially viable for the distributors and/or producers to adhere to such irrational holdback periods, as it would adversely affect the other revenue streams of the films resulting into heavy losses to the film producers and/or distributors. In light of the above, the informant once again cancelled all the provisions in the registration form, which, were contradictory to the terms which the informant had agreed upon with the producers(s) of the aforementioned film. The Opposite Party responded vide letter dated January 22, 2011 with reference to the registration form for the informant's film "No one killed Jessica" mentioning that fresh Form for the aforesaid film's registration had been sent to the informant and it should comply with the same format as it had been doing in the past.

2.12 As per information, thereafter, the informant through its counsels addressed another letter dated January 28, 2011 with regard to the registration of the Film "No One Killed Jessica" in the territory highlighting the fact that the imposition of penalties on it was illegal. Subsequently, the OP issued a circular dated February 14, 2011 declaring the informant's film "7 Khoon Maaf" unregistered since the informant had failed to



comply with the rules and regulations of the OP. The OP vide letter dated February 15, 2011, addressed to the informant declined registration to their film "7 Khoon Maaf" which was to be released on February 18, 2011 and warned the informant that on failing to comply with the instructions given in letters dated January 22, 2011 and February 12, 2011 addressed to the informant regarding the terms and conditions laid down in the Form, the informant's name would be removed from the membership of the association.

2.13 Based on the details of correspondences as above, the informant has averred that the rules framed by the Opposite Party are anti-competitive. The informant has submitted that Indian law permits freedom of contract between any two parties. The counter parties to producers are distributors and not the Opposite Party which is an association. However, the OP imposes such terms upon the producers, which are illegal and which results in a situation wherein although the producers have freedom to contract in law, they are unable to exercise this right, in view of the illegal terms and conditions imposed by the OP.

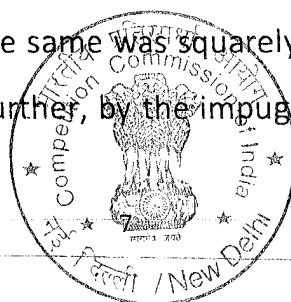
2.16 According to the informant, any condition imposed by the OP that interferes with freedom to contract and/ or is anti-competitive or violative of the rights granted to the informant under law are illegal and not binding on the informant in as much as they limit and control the supply of the film in different formats in the market, contrary to the provisions of the Act. These conditions are unreasonable in as much as it is not commercially viable for the producers/distributors to adhere to such irrational holdbacks especially in the current market scenario when the demand or marketability of a film after its theatrical release is for a limited



period. There will be no market for the films after 5 years of the release of such films and therefore the holdback effectively shuts out/bars, adversely affects the exploitation of the films through satellite exhibition etc.

2.14 According to the informant, by imposing penalties, not registering the film and imposing unreasonable terms and conditions, as set out in the agreements, the OP is trying to unjustly enrich itself. It is the case of the informant that the unfair terms and conditions imposed by the OP, through its Memorandum and Articles of Association, the Certificate and the Form, are restrictive in nature and limit and control the supply of films in the market. Further, the letters and circular(s) issued by the OP, declaring the films of the informant in the territory as non-registered and warning the informant against releasing the same under the threat of its membership being terminated restricted the supply of the films of the informant in the territory. According to the informant, the Memorandum and Articles of Association of the Association, the Certificate, the Form are in complete violation of section 3 of the Act.

2.15 The informant has further brought out that in the present case, the dominant position is that of the OP, who by virtue of its position of strength, imposed penalties on the informant through its letters and issued a circular by which the OP was able to compel the theatre owners/ producers/ distributors/ exhibitors to abide by its unfair and discriminatory restrictions of not releasing any films of the informant in the territory. The action of the OP of issuance of a circular against the informant resulted in denial of market access to the films of the informant in the territory and hence the same was squarely covered by section 4 (2) (b) (c) and (d) of the Act. Further, by the impugned action of the OP, the



informant's fundamental right to free trade and profession has been limited and restricted which is prohibited under section 4(2)(a) of the Act. According to the informant, the OP has also contravened section 4 (2) (e) by abusing its dominant position to discriminate against exhibition of films in formats including satellite exhibition as against theatrical exhibition of films.

2.16 The informant has brought out that the cause for filing the present information arose when the association issued a circular dated February 14, 2011 declaring the informant's film "*7 Khoon Maaf*" unregistered, alleging that the informant had failed to comply with the rules and regulations of the OP. All the members of the association were asked to make a note of this. Further, the informant also received the letter dated February 12, 2011 to the effect that its name would be removed from the membership of the association if the terms and conditions were not agreed to.

2.17 The informant also submitted that time and again vide various letters it asked the OP to resolve the issue and arrive at an amicable settlement and pointed out the non-applicable clauses in the Acquiring Form, but the Association was not willing to look into the issue.

2.18 The informant further expressed its' apprehension that it had numerous films slated for release, which either it was co-producing, distributing or had an arrangement to distribute and that no distributor/ sub-distributor/ exhibitor in the territory might deal with it in the event the circular issued by the OP against it was not withdrawn. Further, if the aforesaid restrictions and conditions were imposed on future films also, grave prejudice and loss would be caused to the OP.





2.19 The informant also prayed that in case No. 58/2010, titled as UTV Software Communication Ltd. v. Bihar and Jharkhand Motion Pictures Association, the Commission had passed an interim order dated November 18, 2011 restraining Bihar & Jharkhand Motion Pictures Association from imposing similar restrictions or conditions, to prevent any distributor/exhibitor from exhibiting the film 'Guzaarish' in the territory of Bihar and Jharkhand. Hence relief may be granted in the instant case as well restraining the OP from imposing any restriction on exhibition of the forthcoming films of the informant.

3. After considering the information, the Commission found that there existed *a prima facie* case in the matter and accordingly passed an order dated 16.03.2011 under section 26(1) of the Act, directing DG to conduct an investigation into the matter.

#### **4. Investigation by the DG, CCI**

4.1 The DG after receiving the order under section 26(1) of the Act investigated the matter and submitted his report dated 19.08.2011 to the Commission.

4.2 For the purpose of investigation, DG relied upon the facts and evidences collected during the course of investigations against the Opposite party in case nos. 25 of 2010, 52 of 2010 and 56 of 2010. Apart from the Opposite Party and the informant, information was also collected from third parties apart from evaluation of materials in public domain.

4.3 The investigation of DG has revealed that to carry out the business of film distribution in the territory of any association it becomes essential for a distributor to take the membership otherwise one may not be able to do



the business smoothly. Although as per its Articles of Association, the membership is voluntary but as almost all the distributors are its members and since the members are not allowed to deal with non-members, it is almost impossible to survive in the film distribution business without becoming the member of the association. Based on his investigation, DG has concluded that most of the distributors and exhibitors of Delhi, UP & Uttarakhand territory are the members of MPA which makes its position so powerful that no film distributor can carry out the business of film distribution in its territory without becoming its member.

4.4 According to DG, rule 14(x) in the Memorandum of Association of MPA, relating to cessation of membership on account of activities prohibited by the MPA is restrictive in nature. The said rule brings out as under;

***“Dealing with a non-member/s by members screening of films registered in favour of members under suspension and/or removed by the association or screening of a film at a cinema suspended and/or removed from the membership of the association and/or admitted as member”.***

4.5 DG also found that the abovementioned rule clearly prohibits the members of MPA to deal non-members.

4.6 The investigation by DG also revealed that MPA has framed various rules for registration of films. These rules put certain restrictions on the producers and distributors of the films. Any producer or distributor desiring to do business in the territory of the Association had to get his



film registered and also abide by the rules and regulations framed for this purpose. Further, it is practically impossible to release a film without following the registration clause of the Association.

4.7 DG has brought out that for the purpose of registration, the distributor has to fill a prescribed pro-forma also called as "Acquiring form". It is necessary to fill this form by the producers and distributors before release of every film in each territory, mentioning the details of film agreeing for certain conditions or declarations. Most of the clauses of this form impose certain restrictions on the producers and distributors. In addition to this, acquiring form and affidavit containing undertakings as per the prescribed proforma are also obtained from the producer at the time of registration. The opposite party makes it mandatory to register every film before release in its territory.

4.8 According to DG, rule no.16 of articles of association of MPA imposes restriction on its members not to deal with non- members and do business with the registered films only. The rules of Association thus compel a film distributor to become member and register the film for distribution in the territory of MPA, Delhi.

4.9 DG has also submitted that since MPA makes it mandatory for its members to deal with the registered films only, it becomes mandatory for every film producer and distributor to go through the process of registration to release their film in the territory under its control. The investigation by DG also revealed that the OP had forced the Informant to register the film "7 Khoon maaf" by submitting the Acquiring Form and



affidavit in the pro-forma prescribed by MPA. The OP issued an internal circular on 14.02.2011 intimating its member to note that the film '7 Khoon Maaf' was unregistered. By issuing such circular the OP gave a message to all the exhibitors to not deal with the unregistered film. Since the film was due for release the Informant had no choice but to accept the direction of MPA and to submit the requisite documents for smooth release of the film.

4.10 During the course of investigation, it was also found by DG that the OP was putting restriction of time limit for broadcasting/releasing a film on satellite/television/cable/radio etc. on the producers. These restrictions are invoked by way of taking declarations through the Registration Form or the Acquiring Form and an affidavit. If the informant does not abide by the conditions laid down in the Registration Form, the OP refuses to register the film which affects the film distribution business.

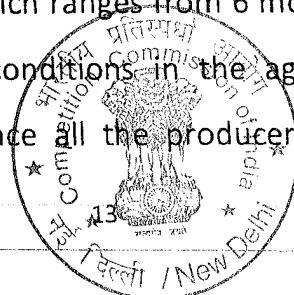
4.11 DG has further submitted that when a producer grants the theatrical exploitation rights to distributor, an agreement is entered into between the producers and distributors in which various details relating to the theatrical distribution of a film in the territories of India are mentioned. In this agreement producers and distributors mutually agree for a period before which the satellite/television/video release of film would not be done. These decisions are taken on the basis of business conditions, market requirement, etc. However, when the film is given for registration in a particular territory the Association imposes its own conditions regarding satellite/television/video/cable release.



4.12 According to DG, it was accepted by the OP that it was imposing restrictions in respect of the Satellite/TV/Video release of films. It was stated that these conditions are forced on the basis of a joint agreement of the Associations of distributors and producers. One of such agreements was entered on 10.06.1994 between Film Distributors' Council (an apex body of All India Film Distributors including Motion Pictures Association, Delhi; Northern Motion Pictures Association, Jalandhar; IMPDA, Mumbai; CCCA, Bhusabal; BJMPA, Patna and Eastern India Motion Pictures Association, Kolkata) and Film Makers' Combine (an apex body of film producers). This agreement was entered into with an objective of regulating and fixing the time period of film exhibition through video cassette, cable TV. The salient features of this agreement are as under:

- 1) No producer shall deliver or cause to be delivered Video Cassettes for home viewing video rights for a minimum period of two weeks from theatrical release of the film in India.
- 2) No producer shall sell or dispose of Cable T.V. rights in any manner directly or indirectly for telecast for a minimum period of six months from the premier theatrical release in India.
- 3) No telecast of picture on any channel of Doordarshan or satellite T.V. directly or indirectly before the expiry of five years from first theatrical release.
- 4) Films will be acquired for a minimum period of ten years.

4.13 According to DG, the associations have provided a fixed time gap in their form for registration, which ranges from 6 months to 5 years and do not accept the terms and conditions in the agreement between the producer and distributor. Since all the producers and distributors sign



these registration forms to ensure the registration for smooth release of their films, these associations take action if the time gap as per their registration form is not honoured by the producers. The OP has formed the rules relating to 'Film Acquiring' by way of resolutions of Executive Committee. These rules prescribe the details of fees charged for Registration of films as well as the amount of penalty for violation of conditions relating to telecast of films on satellite.

4.15 During the course of investigation, it was found by DG that the MPA was issuing letters to producers and distributors mentioning that in case of non-compliance of its conditions the film might not be registered or recoverable sum of penalties on violation of their directions might be imposed upon them. In this regard, to support its contention, DG has cited letters and circulars issued on 12, 13.01.2011, 12.02.11, 14.02.11 and 15.02.2011 issued by the OP.

4.16 DG has concluded that the OP has been pressurising through its letters and circulars to accept the conditions relating to the Registration of films to the Informant. The informant had requested the MPA while submitting the application for registration of film 'No one killed jessica' to remove its conditions relating to time gap for the satellite telecast of films. The distributor, M/S A.A. Films was also in agreement with the informant on this issue. However the OP denied modifying or cancelling the conditions mentioned in the Acquiring form. Ultimately the informant was forced to follow the dictates of MPA.



4.17 After considering the replies and evidences produced and gathered during investigation, DG has concluded that the following rules & regulation and activities of MPA contravene the provision of section 3 of the Competition Act:

- (i) Restriction on members to deal with non-members – Para 14(x) and 16 of the Memorandum & Articles of Association of MPA prohibits dealing with non-members. These provisions practically make it impossible to carry out the business of Film distribution.
- (ii) Compulsory Registration– As per rules 16(i) of Articles of Association “no member of the Association shall distribute/supply and/or screen any picture unless it is registered with the Association. No picture shall be obtained/supplied by the members from/to a non-member. The restriction under these articles shall apply to all films in Hindi/Urdu/Punjabi/Bhojpuri/Haryanvi/Brijbhasha/Awadhi.
- (iii) Imposing Penalty and taking disciplinary actions–Under rule 42 of the Articles of Association, there are provisions which give power to take action against such members, who violate the rules of MPA.
- (iv) Issuing interim circular among the members like letter dated 14.02.2011 regarding film ‘7 Khoon Maaf’ and other letters vide notices dated 15.02.2011, 12.02.2011 to pressurise the informant to submit the acquiring form and affidavit for registration as per its conditions.
- (v) Imposing conditions and terms on screening of a film on satellite/DTH not before certain period from the date of premier release in the country.
- (vi) Imposing penalties for releasing films on satellite channels before the time gap prescribed in the Acquiring Form and affidavit.



- (vii) Imposing conditions on selling video/CD rights not before certain period from the theatrical release of the film in the country.
- (viii) Imposing a time limit of 10 years for agreement between producer and distributor.
- (ix) Reserving the rights for arbitration between producer and distributor.
- (x) Pressurising the producers/distributors of film for payment to the member distributor by refusing to register the film.

4.19 Based upon aforesaid, DG has concluded that the conduct and activities of the opposite party are restrictive in nature and are violative of the provisions of the Act.

4.20 DG also examined the conduct of the OP in light of various factors mentioned in section 19(3) of the Act and concluded that the conduct of the OP is in violation of provisions of section 3(3)(b) of the Competition Act 2002, since it restricts the supply of services in the market through collective intent of all members of the association coming together on one platform.

4.21 The DG has also reported that the MPA has also infringed the provision of Section 3(4) of the Act. As per DG, MPA imposes conditions on its members to deal only with its members and with films which are registered with it which is in the nature of exclusive distribution agreement. Further, an exhibitor cannot deal with a distributor if he is not a member of the association and his film is duly registered with the Association which amounts to refusal to deal. DG has also contended that





the provisions of MPA relating to compulsory registration of every film, non-dealing with non-members or unregistered films results into the exclusive distribution agreement with the distributors and exhibitors which amount to denial of market access. In view of the above facts, according to DG, it is established that the OP has contravened the provisions of section 3(4) of the Act.

5. Having considered the report of DG, the Commission forwarded it to the parties for filing their replies/objections. The replies/objections received from the parties on various dates are as under:

#### **5.1 Reply on behalf of Motion Picture Association, Delhi**

5.1.1 The Opposite Party in course of proceedings denied all the allegations levelled by the informant and prayed for setting aside the report of DG. The OP submitted that it was registered under Section 25 of the Companies Act and its membership is fully and completely voluntary and no coercion or force is exercised by it. The persons, who become member of the Association, have to abide by the rules and regulations of the Association. It has a large number of memberships and has been in existence since about 50 years. The membership of the association is absolutely and completely voluntary in nature. The association does not compel any one to take its membership.

5.1.2 The OP also submitted that there were a large number of distributors in Delhi, UP and Uttaranchal who were not members of MPA Delhi but



were doing film business in Delhi, UP and Uttaranchal. According to the OP, on one hand informant wants to avail the benefits of its membership, and on the other hand is complaining against it.

5.1.3 The OP also submitted that it neither carries on production, supply, distribution, storage, acquisition nor control of goods and services. Therefore, no act of it causes or is likely to cause an appreciable adverse effect on competition within India. It is not doing anything on commercial basis and is only an arbitral body of members who want to avoid long court litigations.

5.1.4 According to the OP, it is concerned with dues recoverable and payable to its distributor members and that money disputes are completely outside the purview of section 3 and 4 of the Act.

5.1.5 The OP also replied that to avoid long drawn out multiple litigation causing loss to all the sectors of film business and to regulate the film business and to safeguard the interest of all the three sectors, i.e. Producers, Distributors and Exhibitors, they had formed their respective trade bodies and jointly framed rules and regulations so that the rights of one sector by the other sector were not encroached. As per one of the regulations of Distributors Association, it was required to get the registration of the film by the Distributors with the trade body functioning in that territory. This was to safeguard against the multiple assignments of distribution rights in a particular territory and to further safeguard those who were booking the films for their cinemas and were advancing moneys to the distributors during the making of a film. The documents were got



signed by producer and distributors for registering the films with MPA as prepared on 10.6.1994 by Joint Consent of producers association and distributors association.

5.1.6 The OP alleged that the DG did not consider and give any finding on the ground raised that UTV did not have locus standi to file the information as UTV is its member. The informant also concealed the fact that as member of the association it had also received benefit from the same. For an instance, to recover dues from "Sangeet Cinema", Mathura UP, the informant had lodged complaint with MPA Delhi on 25.4.2011 to recover dues of Rs. 82,918/-.

5.1.9 The OP also alleged that DG did not carry out independent investigation in the case and simply relied upon investigation in other cases. In order to establish contravention in the case, DG should have collected fresh and independent evidence in the instant case which he failed to do so. The only fresh evidence collected by the DG was the statement of Surinder Paul, who happened to be the representatives of Eros International Media Limited, informant in case no. 52 of 2010.

## **5.2 Reply on behalf of the office bearers of Motion Picture Association, Delhi**

5.2.1 The office bearers of MPA namely Sakshi Mehra (Hony. President), Kirit C.Desai (Hony. Vice President), GD Mehta (Hony. Vice President), Vinod K Lamba (Hony. Gen. Secretary), Shri SurinderPaul (Hony. Jt. Secretary ), Shri Rajender Singh (Hony. Jt. Secretary), Vikram Sethi (Hony. Jt. Secretary) and Sanjay Ghai (Hony. Jt. Secretary) in their replies submitted that since all decisions in the matter were that of MPA, Delhi



and since the association had already filed reply, they had nothing further to say in the matter.

### 5.3 Reply on behalf of the informant

5.3.1 The informant in course of proceedings submitted that MPA was formed as a dispute resolving body among its members. The objective with which the association was formed was to promote and assist the business of production, distribution, exhibitions of films and provide a common forum to its members to meet and address their problems. While the objective of MPA was to protect the interests of its members, it governs and dominates the arena of distribution and exhibition of motion pictures in its territory, as is understood in the Indian Film Industry.

5.3.2 The informant also alleged that the act of MPA, refusing to register new film, instructing the exhibitors to not to release films of so-called defaulting members amounts to abuse of dominance in terms of section 4 of the Act. The Informant also submitted that the DG in his report has committed an error by absolving MPA under section 4 of the Act in spite of recording the findings that the association by its action and conduct limits and controls the supply of films in the territory.

5.3.3 In order to buttress its argument that MPA is an enterprise, the informant has submitted that a perusal of the definition of "enterprise" in the Act shows that the motive of any organization i.e. profitable or non-profitable is not the pre-condition for qualifying under the definition. Further, the definition of "enterprise" includes a "Person" and the perusal of definition of "Person" reveals that it is an inclusive definition which

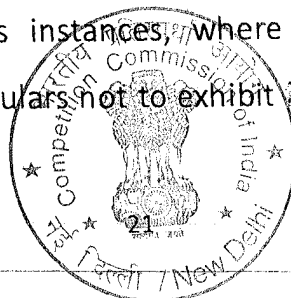


includes an association of persons, co-operative society, local authority, etc. The Informant has further submitted that after reading the definition of "enterprise" and "Person" together, it is established that a collective body can also qualify as an "enterprise".

5.3.4 The informant also submitted that MPA is not a charitable organization but a self-reliant organization for safeguarding and protecting the interest of its members, who are producers, distributors and exhibitors. All the members of MPA are profit making entities, which by virtue of forming a cartel dominate and control the business of films distribution and exhibition in the territory.

5.3.5 In its reply, the Informant also submitted that the definition of "enterprise" reflects that a person engaged in any activity relating to control of articles of goods or provisions of services of any kind do qualify as "enterprise" in terms of Section 2(h) of the Act. It also submitted that neither the definition of "enterprise" nor the definition of "person", under the Act, pre-empts either of these to be commercial or profit making organizations so as to oversee their activities while investigating violation under Section 4 of the Act.

5.3.6 The Informant further submitted that admittedly MPA is an association of persons comprising of producers, distributors and exhibitors located in the Territory, which has about 5000 members. As per charter documents of the MPA, members cannot deal with non-members. Further, there are various instances, where MPA has instructed its members through their circulars not to exhibit films in their theatres, and



not to offer films to certain exhibitors. All these action/ instructions issued by MPA demonstrate that it is in a dominant position and the activities practiced by them amount to abuse of dominance, being unfair and discriminatory.

5.3.7 The Informant also submitted that three other complaints (25/2010, No. 52/2010 and No. 56/2010) of similar nature had already been filed before the Commission against MPA where instance of similar malpractices of the MPA that had hampered the trade and business for other members in the territory were brought to the notice of the Commission.

#### **Decision of the Commission**

6. On a careful consideration of the information, the report of DG, submissions of various parties and other materials available on record, the Commission observes that the following issues arise for determination in the present matter:-

**Issue 1: Whether MPA is an 'enterprise' within the meaning of section 2(h) of the Act and if the answer to this is in affirmative, can its acts and conduct be said to be violative of provisions of section 4 of the Act as has been alleged by the informant ?**

**Issue 2: Whether the rules and regulations, acts and conduct of MPA are subject matter of examination under section 3 of the Act?**

**Issue 3: Whether the rules, regulations and byelaws of MPA are anti-competitive?**

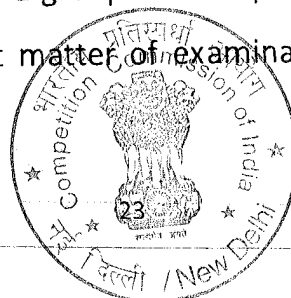


## Determination

**Issue 1: Whether MPA is an 'enterprise' within the meaning of section 2(h) of the Act and if the answer to this is in affirmative, can its acts and conduct be said to be violative of provisions of section 4 of the Act as has been alleged by the informant ?**

6.1 The Commission notes that the aforesaid issue has been discussed in detail in the order dated 16.02.2012 passed in case no. 25 of 2010 involving MPA and other associations. In the said order, it was observed that as per the provisions of section 2(h) of the Act, to qualify as an enterprise, it is required that any person or department of the Government is, or has been, engaged in any activity, relating to the production, storage, supply, distribution, acquisition or control of articles or goods, or the provision of services, of any kind, or in investment, or in the business of acquiring, holding, underwriting or dealing with shares, debentures or other securities of any other body corporate, either directly or through one or more of its units or divisions or subsidiaries.

6.2 The Commission after examining the provisions of the Act has concluded while passing order dated 16.02.2012 in case no. 25 of 2010 that MPA or other film associations as named in that case do not qualify to be 'enterprise' since they are not engaged in any activity enumerated in section 2(h) of the Act. The Commission in that case has also held that once an association is not 'enterprise' in terms of section 2(h), its conduct also cannot be examined under section 4 of the Act since it is only the conduct of an 'enterprise' or a group of enterprise as defined in section 5 of the Act, which is subject matter of examination as is apparent from



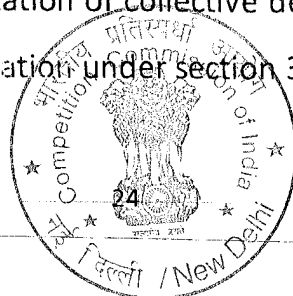
wordings of section 4 (1) which states that 'No enterprise or group shall abuse its dominant position'.

6.3 Considering the findings in case no. 25 of 2010, in the instant matter also the Commission holds that MPA cannot be held as an 'enterprise' within the meaning of section 2(h) and consequently its conduct, rules and regulations cannot be a subject matter of examination under section 4 of the Act.

**Issue 2: Whether the rules and regulations, acts and conduct of MPA are subject matter of examination under section 3 of the Act?**

6.4 The Commission has discussed this aspect also in detail in case no. 25 of 2010. In that order it has inter-alia been concluded that even though the associations themselves are not engaged in any activity which enables them to be termed as an 'enterprise', the practices carried on, or decisions taken by MPA and other associations, are covered within the scope of section 3(3) since these associations are in fact associations of enterprises (constituent members) who in turn are engaged in production, distribution and exhibition of films. MPA is taking decisions relating to production or distribution or exhibition in the interest of the members who are engaged in similar or identical business of production of films or distribution or exhibition.

6.5 On the lines of order dated 16.02.2012 passed in case no. 25 of 2010, the Commission holds that the rules, regulations and byelaws of EIMPA which are in essence forms of various trade practices carried on by the association and are manifestation of collective decisions of its constituent members is liable for examination under section 3(3) of the Act.





6.6 The Commission while passing order in no. 25 of 2010 had also observed that there was no vertical agreement between associations and the informants in terms of provisions of section 3(4) since the associations and the informants were not found to be part of production or supply chain in respect of production or supply of any goods or service.

6.7 The Commission, accordingly holds, that while act and conduct, rules, regulations and byelaws of MPA may be examined under section 3(3) of the Act, there is no case of examination under the provisions of section 3(4), since there is no vertical agreement between MPA and the informant as part of any production or supply chain in respect of production or supply of any goods or service in the instant matter.

**Issue 3: Whether the rules, regulations and byelaws of MPA are anti-competitive?**

6.8 The Commission has examined rules framed by MPA while passing orders dated 16.02.2012 in case no. 25 and further in orders dated in case nos. 52 and 56 of 2010. The Commission in these cases inter-alia has observed that rules of MPA and other associations restricting their members not to deal with non-members, making compulsory the registration of each film before release in their territories, restrictions regarding unfair holdback period for exploitation of Satellite, Video, DTH and other rights and act and rules regarding penalizing members who do not follow the dictates of the association are anti-competitive and violative of provisions of section 3(3) (b) of the Act.

6.9 The issues raised by the informant in the instant matter have already been dealt in the case nos. 25, 52 and 56, in light of the foregoing, the



Commission holds that MPA has violated the provisions of Section 3(3)(b) of the Act and have caused appreciable adverse effect on competition in India in terms of section 19(3) of the Act.

6.10 The Commission while passing order dated 16.02.2012 in case no. 25 of 2010 has discussed in length as to how the competition is adversely affected in terms of provisions of section 19(3) of the Act due to the decisions and practices of MPA and other associations. The Commission holds that the findings in those cases apply in the instant matter as well.

### **7. Order under Section 27 of the Act**

7.1 The Commission has found rules of MPA as violative of section 3(3)(b) read with section 3(1) of the Act since they limit and control the distribution and exhibition of films in its areas of operation. The rules of the association are anti-competitive and are against the spirit of free competition in the market. However, since penalty has already been imposed on MPA vide order dated 16.02.2012 in case no. 25 of 2010, the Commission deems it fit not to impose further penalty on the association. As regards the conduct of the executive members of the association, as was held in case no. 25 of 2010, proceedings shall be taken up separately.

7.2 The Commission has also passed 'cease and desist' order in case no. 25 of 2010 , 52 and 56 of 2010 asking MPA to dispense with rules which are anti-competitive. The said order applies in the instant matter as well.

8. The Commission decides accordingly



9. Secretary is directed to inform the parties as per regulations.

Sd/-  
Member (GG)

Sd/-  
Member (G)

Sd/-  
Member (AG)

Sd/-  
Member (T)

Sd/-  
Chairperson

Certified True Copy

