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Fair Competition
For Greater Good

COMPETITION COMMISSION OF INDIA

Case No. 11 of 2021

In Re:

R. Gunasekaran
M-15, Casa Grande (Riviera)
No. 120, Velachery Main Road
Medavakkam
Chennai - 600100

Informant

And

Broadcast Audience Research Council
Rose Cottage, Next to Citi Tower
61, Dr. SS Rao Road, Parel (E)
Mumbai - 400012

Opposite Party

CORAM:

Mr. Ashok Kumar Gupta
Chairperson

Ms. Sangeeta Verma
Member

Mr. Bhagwant Singh Bishnoi
Member

Order under Section 26(2) of the Competition Act, 2002

1. The present Information has been filed under Section 19(1)(a) of the Competition Act, 2002 (“Act”) by Mr. R. Gunasekaran (“**Informant**”) against Broadcast Audience Research Council (“**OP**”/“**BARC**”) alleging contravention of the provisions of Sections 3 and 4 of the Act.



2. The OP is stated to be a television audience measurement rating agency registered as a not-for-profit company under Section 8 of the Companies Act, 2013. The OP is further stated to be a joint industry body with stakeholder representation from all the relevant stakeholders in the audience measurement ecosystem, viz., the Indian Broadcasting & Digital Foundation (IBDF), the Indian Society of Advertisers (ISA) and the Advertising Agencies Association of India (AAAI). The OP is involved in the business of measurement, analysis and provision of television viewership data to those who avail of its services, such as advertisers, broadcasters and advertising agencies.
3. The Informant has averred that the services of the OP are the sole currency of the television advertising industry, based on which, advertisement campaigns for all commodities are planned and released by various manufacturers and suppliers of products. The Informant is stated to have recently come to know, through TV channels and a few reports, about the 'fake TRP' scam and how a few news channels have been making payments to increase their viewership and thereby, their TRP ratings.
4. The Informant has stated that the OP had suspended reporting of ratings for a period of 8-12 weeks for news channels while continuing to publish ratings of other channels. The Informant has submitted that if the system is faulty in respect of news channels, it can be faulty in respect of other genres of channels too. Thus, when institutional integrity has been compromised, it is improper to allow such an institution to publish ratings.
5. The Informant has alleged that the OP had colluded with a private news channel and a media outlet and manipulated TRP ratings of the said news channel and media outlet such that they are perceived as the highest grossing television channels which would, in turn, invite more advertisements. As per the Informant, the said collusion between the OP and the television channels would amount to an arrangement



between entities at different stages of production, and the manipulation of TRP has a direct and significant impact on the performance of a channel and how it is received by the public, and therefore, the OP has entered into an anti-competitive agreement which is prohibited under Section 3 of the Act.

6. In relation to his allegations relating to contravention of the provisions of Section 4 of the Act, the Informant has defined the relevant market as a service of television audience measurement and supply of related advisory reports. In relation to the dominance of the OP, the Informant has averred that there are no recognizable or significant competitors within the relevant market, and furthermore, the OP is unaffected by the market forces, being the sole supplier of such TRP ratings. Therefore, it occupies a dominant position in the relevant market.
7. The Informant has further submitted that BARC obtains/collects an average sample data of only a few of the viewers, who are negligible in number, and this cannot form the basis of any result, as the sample size is too small to arrive at a reasonable conclusion. It has been stated that this would lead to baseless ratings, making it easy for such 'fake TRP' scams by fudging numbers.
8. Based on the above averments and allegations, the Informant prayed the Commission to regulate the operations of the OP and also direct the OP, as interim relief, from releasing weekly ratings for television channels until the issues are decided by the Commission.
9. The Commission considered the Information in its ordinary meeting held on 15.06.2021 and decided to seek response thereon from the Opposite Party. The Informant was also allowed, thereafter, to file its rejoinder, if any, to such reply filed by Opposite Parties, with an advance copy to the Opposite Parties. Such reply and rejoinder thereto have since been received.



10. The Commission in its ordinary meeting held on 11.11.2021 considered the Information and the rejoinder filed by the Informant along with the reply filed by the OP and other material available on record and decided to pass an appropriate order in due course.
11. The submissions of the Opposite Party are summarised below:
- (i) The OP was granted registration to operate as a Television Rating Agency by the Ministry of Information & Broadcasting (MIB) in 2015, in terms of the Policy Guidelines for Television Rating Agencies in India (“**MIB Guidelines**”).
 - (ii) The OP has submitted that MIB also constituted a committee in November 2020 headed by CEO, Prasar Bharati to review the MIB Guidelines and suggest ways to further strengthen the system. This committee already submitted its report in January 2021, which is currently being considered by the Ministry.
 - (iii) The Commission lacks the necessary jurisdiction to look into the issue of publication of television ratings by OP or the alleged ‘fake TRPs’ as it is already occupied and falls within the exclusive domain of the MIB.
 - (iv) In relation to the ‘TRP Scam’, the OP has submitted that its vigilance team, which investigates unusual behaviour in households, found that five panel homes serviced by one of the vendors, Hansa Market Research Private Limited, were abnormal, and accordingly, the same was directed to be investigated further. It was noted that one of the employees of the said vendor was involved in tampering and influencing the household members of BARC for unlawfully gaining more viewership data, thereby increasing the ratings of certain channels. Further, pursuant to the efforts of, *inter alia*, the OP and the vendor, a criminal complaint was registered with the Mumbai Police regarding cheating in relation to the ‘TRP scam’. The OP has further averred that it has assisted several law enforcement agencies in their investigations surrounding the ‘TRP scam’.



- (v) Subsequent to the various news items about the rating manipulation, the OP, on 15.10.2020, temporarily decided to cease the reporting of news and niche genres with a view to allow its Technical Committee to review and augment the existing standards of reporting viewership data for the aforesaid genres.
- (vi) The OP has further averred that no case for violation of Section 3, or Section 3(4) specifically, is made out against the OP for the following reasons:
- i. The Informant has failed to identify the ‘agreement’ which forms the basis of its allegation of violation of the provisions of Section 3(4) of the Act by the OP. Further, the Informant has also failed to assert that the purported ‘agreement’ (which has not even been identified) causes or is likely to cause an appreciable adverse effect on competition in India.
 - ii. There is no whisper in the Information that the OP has entered into any ‘tie-in arrangement’ or ‘exclusive supply agreement’ or ‘exclusive distribution agreement’ or ‘refusal to deal’ or ‘resale price maintenance’.
 - iii. The Informant has also failed to establish, as required by Section 3(4) of the Act that the OP and the faked television channels belong to different stages or levels of the production chain in different markets.
- (vii) Further, as per the OP, no case for violation of Section 4 is made out against the OP for the following reasons:
- i. The Informant has wrongly identified the relevant market to be the market of ‘television’ audience measurement. The OP avers that the relevant market is the market of ‘audience measurement’ as, today, all content that is broadcast on television is also made available on digital/OTT (over-the-top) platforms.
 - ii. The OP is not dominant at all in the relevant market of ‘audience measurement’.



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- iii. The Informant has failed to produce a single document on record in order to show that the OP has manipulated television audience estimates or to show that the OP has colluded with any television channel.
 - iv. It is the OP's former employees that have been arrested for their alleged role in the manipulation of television audience estimates and not the OP or any of its current employees/key managerial personnel/past and current directors/subsidiaries. The provisions of the Act cannot be invoked to initiate investigation for alleged criminal conduct by errant former employees mischaracterizing it as anticompetitive conduct by the organization.
- (viii) The interim relief sought by the Informant is contrary to the directions of the MIB in order No. 2/32/2020-BP&L dated 15.02.2021, directing the OP to maintain the *status quo*.
12. Based on the above, the Opposite Party has prayed the Commission to dismiss the present Information.
13. The submissions of the Informant in the rejoinder are summarised below:
- (i) Merely because the sectoral authority (in this case, the MIB) is seized of the matter, it cannot be said that the jurisdiction of this Commission has been ousted *in toto*, and such an interpretation would necessarily render the jurisdiction of the Commission infructuous, as effectively every sector of goods and services is governed by a sectoral authority.
 - (ii) The term 'agreement' as defined under the Act is given the widest possible interpretation as it may not always be possible to locate a conventional agreement between colluding parties.
 - (iii) The relevant market is the market for 'television audience measurement'. Further, there is no other recognized entity providing the aforementioned services, and a customer has no active substitutes for those services provided



by the OP. Thus, the OP holds a dominant position in the said relevant market. The Informant has also relied on the decision of the Commission in *Prasar Bharati v. TAM Media Research Private Limited* to assert its submissions.

- (iv) The intent of the OP and its employees at the time of the commission of the ratings manipulation is relevant and not that of the current employees. Criminal intention may be imputed to a company if an offence is committed in relation to the business of the company, and such offence is committed by a person or body of persons in control of the affairs of the company.
 - (v) Proceedings before the Commission are independent of the criminal proceedings as the scope of inquiry is limited to the economic impact and effect on market and competition as a result of the ratings manipulation.
 - (vi) The Informant pointed out that though the OP has stated that the TRP Scam was committed solely by its erstwhile CEO and COO and no other employee or the company itself was involved; it is not understood as to how two individuals independently managed to substantially manipulate the ratings without the assistance of any other employee when the primary objective of the OP is to provide a transparent and reliant television audience measurement system. At any rate, the CEO and COO represent the senior management of the company and have significant control over the affairs of the OP.
14. The Commission has perused the Information and the material available on record. The Informant has alleged that the manipulation of the ratings has resulted in violation of the provisions of Section 3 as well as Section 4 of the Act. In this regard, from the reply of the OP, it appears that the OP got a criminal complaint registered with the Mumbai Police in relation to 'TRP Scam'. The OP further claims to have assisted several law enforcement agencies in their investigations surrounding the 'ratings manipulation'. The Informant has not contested the said submissions and assertions of the OP.



15. The Informant has further averred that the OP has suspended publication of ratings of only news channels, whereas if the system is faulty in respect of news channels, then it can be ascribed with a fair degree of certainty that the system can also be faulty in respect of other genres of channels too. In this regard, the Commission takes note of the submission of the OP that, on 15.10.2020, it *temporarily* decided to cease the reporting of news and niche genres with a view to allow its Technical Committee to review and augment the existing standards of reporting viewership data for the aforesaid genres. Thereafter, the MIB, *vide* its letter dated 15.02.2021, had asked the OP to maintain *status quo* with respect to temporary pause in the reporting of Channel Wise Weekly Data for the news genre. It is further submitted that the OP's Technical Committee has provided its recommendations on the revised reporting standards, and the OP is in the process of implementing the same once the directions for maintaining *status quo* are lifted by MIB.
16. In view of the above developments and taking the submissions and assertions made by the OP and as noted in the preceding paras, the Commission is of the view that it is unnecessary to dwell any further on the issues projected in the Information by examining the matter on merits, and accordingly, the Information is ordered to be closed.
17. Before parting with the order, the Commission deems it appropriate to deal with the request of the Opposite Party seeking confidentiality over certain documents / information filed by it under Regulation 35 of General Regulations, 2009. Considering the grounds put forth by the Opposite Party for the grant of confidential treatment, the Commission grants confidentiality to such documents/information in terms of Regulation 35 of the General Regulations, 2009, read with Section 57 of the Act for a period of three years from the passing of this order. It is, however, made clear that nothing used in this order shall be deemed to be confidential or deemed to have been granted confidentiality, as the same have been used for the purposes of the Act in terms of the provisions contained in Section 57 thereof.



18. 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: 23 / 11 / 2021