

COMPETITION COMMISSION OF INDIA

Case No.16/2011

Filed by

Date: 09.08.2012

SAJJAN KHAITAN, Proprietor, M/s. Heart Video

Informant

Against

(1) President, Eastern India Motion Picture

Association and Ors.

Opposite Parties

ORDER UNDER SECTION 26 (6) OF THE COMPETITION ACT, 2002

Mr. Sajjan Khaitan, the Informant in this case is proprietor of M/s. Heart Video. Heart Video is engaged in business of distributing video cinematographic of TV serials for telecasting regional serials in Eastern India Regions.

2. M/s. Heart Video was assigned a power of attorney by M/s. BR TV, Mumbai, the Producer of Hindi TV Serial 'Mahabharata' to dub Hindi version of Mahabharata in Bangla language for exploiting the Video, Satellite, Cable mediums for the TV serial 'Mahabharata' dubbed in Bangla language till September, 2016. Heart Video did dubbing of TV serial Mahabharata in Bangla language and it executed a deed of agreement for time slot on revenue sharing basis with two T.V. channels namely, Channel-10 and Channel CTVN Plus. The serial was to be broadcast at 10.00 AM on every Sunday by Channel 10 and 10.00 PM on every Sunday by CTVN Plus. The necessary publicity was given about the programme broadcasting to the viewers on the channels and broadcasting commenced from 20th February, 2011.



3. Opposite Party-I is an association of film producers, distributors and exhibitors having its office at Kolkata and operates mainly in State of West Bengal and Opposite Party – II is the joint platform of Federation of Cine Technicians and Workers of Eastern India and West Bengal Motion Pictures Artistes Forum registered under Trade Unions Act, 1926. When Opposite Party-I learnt about the schedule of broadcasting of dubbed TV serial 'Mahabharata', it issued letters to both the channels requesting them to stop the telecast of the serial in the interest of Producers, Artists, Technicians and Workers of West Bengal Film and Television industry. However, the channels expressed their inability to stop the telecast in view of the fact that month long publicity had already been given for the telecast. On 1st March, 2011, both the channels got another letter from OP-I asking them to withdraw and to stop telecast of the serial. Both channels got another letter dated 11th March, 2011 from OP-II asking them to stop the telecast of the serial. On 12th March, 11, they got another letter from Coordinating Committee, i.e. OP-II whereby OP-II threatened that the Members of OP-II would go on strike on 18th March, 2011 against the telecast of dubbed serial. On 14th March, 2011, channels got another letter threatening non cooperation. Since these threats did not work, so OP-I & II roped in Mr. Mithun Chakraborty, actor, who was also Advisor of Channel 10 and a meeting was held between OP-I, OP-II and two channels with the intervention of Mr. Mithun Chakraborty on 11th April, 2011 in which CEO of Channel 10 was also present. Mr. Mithun Chakraborty requested Channels not to telecast Mahabharata dubbed in Bangla language. This request was acceded to by

Channel 10 only and not by CTVN Plus. However, even Channel 10 vide its



letter dated 13th April, 2011 informed to OP-II and others that this request was being acceded to because of the intervention of Mr. Mithun Chakraborty and other respected persons but the issue of telecasting dubbed serial had not been properly addressed . The broadcasting of serial was agreed to be withdrawn by Channel 10 on 17th April,2011 with one condition that in case any other channel telecasted any Bangla language dubbed programme, then Channel-10 would also again start telecasting the programme. Channel CTVN Plus did not succumb to the pressure tactics and continued telecasting of dubbed serial Mahabharata. Other channels like Discovery Bangla were also telecasting English serials dubbed in Bangla language. Door Darshan was also telecasting some dubbed versions of film shots in other language, etc. Looking into this, Channel 10 also again started telecasting of dubbed serial 'Mahabharata'. It wrote letter dated 7th May, 2011 to Opposite Party wherein it complained that though it was made to discontinue broadcasting serial Mahabharata, some Bangla channels were continuing screening of the films dubbed in Bangla language and similar other programmes. Channel 10 told Opposite Party-II that it had stopped the telecast of Mahabharata (dubbed version) only because of mediation of Mr. Mithun Chakaravorty and due to respect to him. In the meantime, Sajjan Khaitan, Proprietor of Heart Video field present information before the Commission on 20th April, 2011 regarding the violation of the Competition Act by the Opposite Parties. It made both the channels also as opposite parties . Channel 10 had resumed the telecasting of Mahabharata (dubbed version) from 3rd July, 2011.



4. DG after investigation of the matter came to conclusion that for purpose of Section-3 of the Competition Act, the relevant market in this case would be 'Film and TV Industry of West Bengal' and Coordination Committee of Artists and Technicians of West Bengal Film and Television Industry had been representing this market since long. Thus, the agreement of joint action by co-constituent would attract the provisions of section 3 (3) of Competition Act being in the nature of horizontal agreement. The activities of OP-I and OP-II resulted in foreclosure of competition by hindering entry into the market, since these associations were collectively deciding not to allow any person involved in the business of distribution and exhibition of film serials dubbed in Bangla language from Hindi or other languages into the market. Thus OP-I and OP-II violated section 3 (3) (b) of the Act causing appreciable adverse effect on the market of dubbed films. DG also had the opinion that activities of the Opposite parties had the element of potential harm to competition which may restrict freedom of trade in the market and thus amounted to anti competitive practices. The conduct and practice of OP-I and OP-II violated Competition Act by restricting and controlling the market and supply of dubbed version of serials on TV Channels through collective intent.

5. In my opinion, DG had not identified the relevant market correctly nor considered the provisions of section-3 in proper perspective. The relevant market is defined in Section 2 (r) as under:-



“relevant market” means the market which may be determined by the commission with reference to the relevant product market or the relevant geographic market or with reference to both the markets.”

Thus, the relevant market can be determined either with reference to relevant product market or relevant geographic market or with reference to both. The relevant product market is defined in section -2 (t) as under:-

“relevant product market” means a market comprising all those products or services which are regarded as interchangeable or substitutable by the consumer, by reason of characteristics of the products or services, their prices and intended use.”

Thus as per the definition of the relevant market, it must refer to some product or service which is regarded as interchangeable or substitutable by the consumers by reason of characteristics of the product or services, its price or intended use.

6. DG’s conclusion in this case that the relevant market was ‘Film and TV Industry of West Bengal’ is highly vague and inappropriate. ‘Film and TV Industry of West Bengal’ has no co-relation with the case in hand. Identification of product/service market has to be very specific in order to arrive at a right conclusion. In this case, the protest by OP-II with the help of OP-I was against broadcasting of a TV serial. The broadcasting of TV serial can take place either by way of ‘Direct to Home Service’ or through Cable. Broadcasting service is altogether a separate market, different from production, exhibition & distribution of films in which OP-I was engaged as an Association.



7. DG in its report in Chapter-IV gave statistics that about 600 registered TV channels were being beamed in India. There were around 60,000 local cable operators, 6,000 multi system operators and 6 private subscribers based DTH operators. There were more than 25 Bangla language channels telecasted in West Bengal and the list was growing day by day.

8. As per investigation and information, the action of OP-I and OP-II was against two channels i.e. CTVP Plus and Channel 10-. Both these channels are in the market of telecasting programmes for the viewers of the DTH category or Cable TV category. They were not in the production, distribution or exhibition of dubbed films. None of the Opposite Party was active in the market of DTH telecasting /broadcasting T.V. programmes. Nor both were involved in the market of MSOs or Cable Operators which is altogether a different market.

9. I consider that since the agitation of OP-I and OP-II was against two channels, we can only consider the relevant market as that of broadcasting of T.V. serials. If we narrow down the market, then the market in this case would be broadcasting of other language serials dubbed in Bangla language. This is apparent from letter written by channel 10 to OP-II wherein Channel 10 had categorically stated that if it found other channel broadcasting dubbed programmes, it will resume broadcasting of 'Mahabharata' (dubbed in Bangla language).

10. Considering that the relevant market was broadcasting of T.V. serials dubbed in Bangla language, it is to be seen if there was an agreement in violation of section-3 in respect of this market among the Opposite Parties.



Undisputedly none of the Opposite Party was active in the relevant market of broadcasting of dubbed TV serials. Since the Opposite Party-I was not active in the relevant market, the question of agreement among members of OP-I Association or among the different unions forming OP-II would not arise.

11. The genesis of application of section-3 is an agreement among the enterprises or associations of enterprises or persons of associations of persons in respect of production, supply, distribution, storage, acquisition or control of goods or provisions of services which causes or is likely to cause appreciable adverse effect on competition within India. Section-3 does not take into its fold coercive actions taken by non players or labour unions or worker unions, affecting the various facets of product or service market affecting production, distribution or supply of goods or services. Section 3(2) declares agreements among enterprises, whether horizontal or vertical, which cause appreciable adverse effect on competition in India as void. Sub-section 3 (3) and sub-section 3 (4) give the nature and kind of some of the agreements which find fault with the law.

12. There is no doubt that OP-I and OP-II protested against broadcasting of the serial Mahabharata and adopted pressure tactics to pressurize the channels from broadcasting the serial Mahabharata. However, this pressure was not economic pressure. This pressure was kind of a trade union pressure wherein they had resorted to boycott, strike, noncooperation etc. It was not an agreement among the enterprises active in the same relevant market due to which the informant was stopped from telecasting dubbed serial. In fact the two channels



were threatened of boycott, strike etc. by the coordination committee of artists, etc. and one day strike was called by OP-II. However, the informant had already purchased rights to telecast Mahabharata and TV Channels were at liberty to ignore such coercive threats. In fact one channel did ignore threats and continued telecasting the serial. Merely, if someone under the threat or boycott, does not telecast some programme on his channels, for which it has legal rights, that would not be covered under section-3. Section-3 would have been attracted only if under some agreement, the informant had not been allowed the telecasting of the programme on T.V. Channels. Since the informant already had secured the rights of the telecasting of the programme, it was at liberty to telecast the programme and nobody could have stopped the viewers from viewing the programme. A threat of demonstration or dharna or strike if ignored, would not have affected the telecasting even by Channel-10. I think this kind of threat or action is not covered under section-3 and this case would not fall within the ambit of section-3.

13. The Opposite Parties considered that broadcasting of TV programmes of other languages dubbed in Bangla language shall affect the opportunities for Bangla language artists. Under this perception, they were protesting against the broadcasting of dubbed Bangla language serials. This perception of the Opposite Parties and artists may be 100% wrong and it is quite possible that the local producers, looking into the popularity of dubbed serials may profitably venture into production of Bangla language TV serials on similar lines. However, simply because Opposite Parties I & II had a wrong perception about the effect of



broadcasting such serials, their right of expression guaranteed under Article 19 (1) (a) of the Constitution cannot be taken away by the Competition Act. Unless and until it is shown that the Opposite Parties were involved in economic activities in the same relevant market and they had entered into an agreement which finds foul with the provisions of section-3 of the Competition Act, provisions of section-3 cannot be invoked.

14. I find that the Opposite parties have not violated either section-3 or section-4 of the Competition Act. The case is liable to be closed and is hereby closed.

Sd/-
Member (D)

Certified True Copy



S.P. Gahlaut
13/08/2012
S. P. GAHLAUT
ASSISTANT DIRECTOR
Competition Commission of India
New Delhi