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Fair Competition
For Greater Good

COMPETITION COMMISSION OF INDIA

Case No. 32 of 2015

In Re:

**Polimer Media Private Limited
Through its CEO Mr. P.V. Kalyana Sundaram
30, 1st Street, Balaji Nagar, Royapettah,
Chennai, Tamil Nadu**

Informant

And

**TAM Media Research Private Limited
9th Floor, Hincon House (Tower B), 247 Park,
L.B.S. Marg, Vikhroli West,
Mumbai, Maharashtra**

Opposite Party

CORAM

**Mr. Ashok Chawla
Chairperson**

**Mr. S. L. Bunker
Member**

**Mr. Sudhir Mital
Member**

**Mr. M. S. Sahoo
Member**

**Justice (Retd.) Mr. G. P. Mittal
Member**

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Appearances:

For the Informant: Shri Abishek Malhotra, Advocate

For the Opposite Party: Shri Amit Bajpai, Advocate and Ms. Aditi Chikurdekar, Associate General Counsel

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

1. This order will dispose of the information filed by Polimer Media Private Limited through its CEO Mr. P.V. Kalyana Sundaram (hereinafter referred to as the “**Informant**”) under section 19(1)(a) of the Competition Act, 2002 (hereinafter referred to as the “**Act**”) against TAM Media Research Private Limited (hereinafter referred to as the “**Opposite Party**”/ “**OP**”), alleging, *inter alia*, contravention of the provisions of sections 3 and 4 of the Act.
2. As per the facts stated in the information, the Informant is engaged in the business of satellite television channels in the name of ‘Polimer TV’ and ‘Polimer News’ since 2009. These are stated to be well-known Tamil channels especially in south India, featuring programs which have viewers across the globe. Besides, it also telecast programs in other regional languages such as Kannada under the name and style of ‘Polimer Kannada’.
3. It is submitted that OP, a company incorporated under the Companies Act, 1956, is engaged in the business of conducting market research for providing television viewership data analysed with the help of an instrument known as ‘People Meter’ based on Television Audience Measurement System [TAM]. OP measures in-home minute to minute TV viewership pattern of the television channels in Class I towns of India which is subscribed and primarily relied upon by the advertisers as well as the said channels for negotiating



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advertising rates. It is submitted that the market research and data, generated by OP, is based on the sample size of viewers where it installs 'People Meters' based on which their viewership pattern is analysed.

4. The allegations in the present case pertain to the alleged unfair terms and conditions of the Agreement dated 18.08.2014 executed between the Informant and OP (hereinafter referred to as the 'Agreement'). Besides, the Informant has also placed on record certain facts that took place before the execution of the Agreement which are briefly laid out in the following paragraphs.
5. On 05.04.2013, allegedly, OP issued a show cause notice to the Informant threatening it to stop reporting its channel from their database to preserve the confidentiality and security of OP's viewership panel. The show cause notice stated that the Informant has breached the security of OP viewership panel in an attempt to influence the ratings in its favour. As per the Informant, the show cause notice was vague and without any explanation, whatsoever, as to how the Informant or its employees jeopardized the security of OP viewership panel.
6. The Informant, in response to the said notice, denied the allegations raised therein. Thereafter, OP is alleged to have pressurised the Informant, *vide* its communication dated 23.04.2013, to furnish an undertaking not to jeopardize, in any manner, the sanctity of OP's viewership panel or attempt to discover/identify OP's panel homes or towns for any purpose. The Informant claims to have submitted the said undertaking on 24.04.2013 under protest and in fear of suspension of services and refusal to report the data of Informant's channels by OP as the same could have resulted in huge financial loss to the Informant.



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7. Thereafter, the Informant and OP alleged to have entered into an agreement on 03.06.2013 whereby the Informant was to avail OP's services, for internal research and analysis. It has been alleged that OP, *vide* its email dated 27.01.2014, blamed the Informant for indulging in unfair and unethical practices to manipulate viewership and had purportedly transgressed into the panel homes in order to influence/ subvert the viewers to watch 'Polimer TV' by offering bribe/ gold coins. The Informant is stated to have denied all the said allegations but OP, *vide* its another email dated 31.01.2014, conveyed that the case would be put up before an Independent Transparency Panel in the month of March 2014 to decide the matter.
8. Thereafter, the Informant issued a notice dated 21.02.2014 to OP against its alleged conduct. It is averred that OP threatened the Informant to withdraw its notice and furnish an undertaking that the Informant will carry out an investigation on the allegations raised by OP and submit the report as a pre-condition to avail the services of OP. The Informant alleged to have withdrawn its notice under protest and submitted an undertaking to appoint a private investigation agency (i.e. 'Eyes Private Detectives') to conduct investigation. OP, *vide* its email dated 06.08.2014, stated that the report of the said investigation agency would be decided by a Committee constituted by OP and in case the Committee is not satisfied with the report, OP will have the discretion to suspend its services.
9. Accordingly, the Informant, *vide* its email dated 11.08.2014, submitted the investigation report to OP with all the supporting documents. The Informant claims to have mentioned the names of the persons who were working with other TV channels competing with the Informant who were involved in the manipulations *etc.* The Informant has contended that even after the submission of the investigation report to OP along with the details (mobile numbers) of three persons who were involved in the manipulations, OP neither took any action against those three persons nor did it inform the Informant as to



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whether the Informant was at fault or not. The Informant alleged to have registered police complaints against the subscribers of the said three mobile numbers mentioned above.

10. The Informant, thereafter, entered into the Agreement with the OP on 18.08.2014 in respect of the services for providing data for the year 2014 terms of which are alleged to be anti-competitive. This Agreement, as per the Informant, was aimed at putting an end to all the earlier disputes/issues between the Informant and OP. However, as per the Informant, OP again sent an email dated 06.11.2014 threatening for suspension of the services agreed between them in the said Agreement. It is submitted that the said email had a trailing email dated 24.10.2014, which the Informant claims to have never received, wherein OP intimated the Informant that it will be suspending its services. The email dated 06.11.2014 was in breach of the terms of the Agreement between OP and the Informant since it required a notice to be served through registered post with acknowledgment due to the postal address for communication to the Informant. The hard copy of the said email was received by the Informant on 08.11.2014 and the services of OP were alleged to have been suspended from 09.11.2014. This alleged conduct of OP left the Informant without any opportunity to respond or challenge the said notice in the court of law or forum.

11. The Informant has alleged that the conduct of OP is a clear abuse of its dominant position. It is submitted that OP is the only service provider which is relied upon by the advertisers and TV channels for negotiating advertising rates.

12. Besides, the above conduct of OP, which is alleged to be abusive in terms of section 4 of the Act, the Informant has also highlighted few articles/ clauses of the Agreement which were stated to be anti-competitive in terms of section 3 of the Act. It is averred that Articles 10 (v) to (vii) of the Agreement dated



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18.08.2014 vest unjust and arbitrary power to OP to terminate the said Agreement forthwith without assigning any reasons in case of breach of any of the conditions of the Agreement by the Informant. Similarly, Article 14(i) permits OP to terminate the said Agreement in case of breach of the terms set out in Articles 8, 9 and 10 of the said Agreement. Further, it is alleged that the Article 15(vii) and (viii) compels the Informant to clear all pending dues after the termination of the Agreement which were due and payable to OP.

13. Based on the above stated facts and allegations, the Informant has, *inter alia*, prayed for initiating an enquiry against OP in the matter for alleged contravention of the provisions of the sections 3 and 4 of the Act.

14. The Commission have given a thoughtful consideration to the material available on record. Further, an opportunity was provided to the Informant as well as OP to present their arguments pursuant to which both the parties, through their legal counsels, presented their oral arguments on 16.07.2015 and filed written submissions.

15. The counsel of the Informant reiterated the facts stated in the information which needs no repetition here. The counsel of OP, however, refuted all the allegations stating that the same are baseless and misplaced. For the sake of brevity, the arguments posed by the counsel of OP are succinctly reproduced in the following paragraphs.

16. It has been submitted that the Agreement was a well negotiated contract between the parties and none of the clauses were unfair or one-sided. In March 2013, OP got to know that the Informant was inquiring from its officials about households where people meters were installed so that their preferences could be manipulated. A show cause notice was served to the Informant on 05.04.2013 in response to which the Informant provided an undertaking dated 24.04.2013 to the effect that it would abide by the instructions issued by OP to



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maintain integrity/ sanctity of TAM panel homes. However, again in December 2013, OP alleged to have found that the Informant had indulged in similar conduct. After conducting preliminary investigation, OP had sent an email dated 27.01.2014 intimating its decision to cease its services to the Informant with effect from the same week. The Informant, *vide* its email dated 30.01.2014, denied such indulgence and on Informant's request OP resumed the services.

17. Thereafter, on OP's insistence, the matter was referred to TAM Transparency Panel ('TTP') and the Informant appealed to TTP to intervene in the matter in order to ensure that OP provides its services to the Informant. Apparently, on 21.02.2014, the Informant sent a notice, through its advocate, to OP asking it to revoke the suspension on reporting the data of Polimer TV. After discussion, the Informant unconditionally withdrew the notice and promised that it would investigate the matter and submit the report to TTP. Thereafter, OP claims that a meeting was held between the Informant and OP on 19.09.2014 wherein the Informant was intimated that OP would be suspending its services to the Informant. OP has furnished an email dated 23.09.2014 sent by the Informant to OP wherein the Informant has referred to the meeting held on 19.09.2014 and requested OP not to suspend its services. OP has placed on record another email dated 24.10.2014 which was sent to the Informant wherein the request of the Informant regarding continuation of OP's services to the Informant has been rejected. Finally, in November 2014, OP sent an email to the Informant (dated 06.11.2014) regarding its decision to suspend its services.

18. Besides, OP had also submitted that the Informant has already approached Bombay High Court and Madras High Court seeking the same relief as prayed in the present information but has failed to avail it. In view of the aforesaid contentions, OP has requested that the information filed by the Informant be rejected.



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19. The Commission has heard the parties at length and considered the material available on record. The Informant has alleged contravention of both the sections 3 and 4 of the Act. Section 3 of the Act deals with agreement, arrangement or understanding or action in concert among two or more entities, which causes or is likely to cause appreciable adverse effect on competition within India. Thus, there must be at least two entities for the application of section 3 of the Act. The Agreement which is alleged to be anti-competitive in terms of section 3 of the Act was entered into between the Informant and OP. Since, the Informant is one of the parties to the Agreement and has alleged imposition of unfair conditions, allegation pertaining to the contravention of section 3 of the Act is misplaced. Further, in cases where the allegation pertains to imposition of unfair terms/conditions by a dominant entity by way of an agreement, the same can be examined under section 4 of the Act.
20. With regard to section 4 of the Act, the allegation of the Informant basically pertains to abuse of dominant position by OP in providing the television audience measurement services by imposing unfair terms and condition in the Agreement and also by way of its arbitrary conduct *i.e.*, suspending the services to the Informant, as elucidated in the aforesaid facts.
21. For analysing any case under section 4 of the Act, determination of the relevant market is generally required. Considering the issues in the present matter, it is noted that TV, as a media platform, is distinct from other media platforms and the advertisers mostly use other media platform in conjunction and not in substitution with TV to advertise products/ services. Thus, it appears that the relevant product market for the OP would be the *“provision of services for audience measurement for channels and programs on television”*. As regards the relevant geographic market, the Commission is of the view that the relevant geographic market would be *“India”* as the conditions of competition with regard to the defined relevant product market is homogeneous across India. Accordingly, the Commission



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has to assess the position of strength of OP in the relevant market for the “provision of services for audience measurement for channels and programs on television in India”.

22. The Commission has earlier dealt with the assessment of OP’s dominance in the relevant market defined above in Case No. 70 of 2012. Though the case is pending for final disposal before the Commission, *prima facie*, OP was found to be holding a dominant position in the above determined relevant market. Since August 2011, apparently OP was the only player in the said relevant market providing the television audience measurement services. Apart from OP, aMAP was also the provider of Television Audience Measurement Services. However, aMAP discontinued its services from August, 2011. Further, OP has access to substantial financial and technical resources due to affiliation with global players in advertising business. Further, though OP has alleged there are other players offering similar services in the market, no evidence has been brought on record to show that they were not dominant in the relevant market. Based on the above, *prima facie*, OP seems to hold a dominant position and strength in the relevant market which enables it to operate independently of competitive forces prevailing in the relevant market or affect its competitors or consumers or the relevant market in its favour. In view of the foregoing, the Commission is of the view that *prima facie* OP is dominant in the relevant market determined above.

23. With regard to the allegations of abuse of dominance, the Informant has basically highlighted two allegations – arbitrary suspension of services being provided by the OP and anti-competitive clauses/ articles in the Agreement. As regards the arbitrary suspension of services, the Commission notes that there was a vast exchange of emails/ communications between the Informant and OP before which the services were terminated. From a combined reading of the email exchange, it



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appears that OP was aggrieved by the Informant for his alleged intervention into the households where 'People Meters' were installed by OP. OP, as appears from the emails/ communications, had reasons to believe that the Informant attempted to influence the viewers by offering them monetary benefits or gold coins. In response to the said grievance, the Informant appointed an independent investigation agency to carry out the investigation in the matter and submitted the report to OP. The investigation report suggested that the manipulation was done by persons who were working with other TV channels competing with the Informant. Accordingly, the Informant mentioned that it did not interfere with the security mechanism of OP rather his competitors were involved in manipulating the increase in the TRP rating of its channel. OP did not accept the justification given by the Informant. Such non-acceptance on the part of OP appears to be adequate as the justification offered by the Informant does not seem to be plausible. Further, the email dated 23.09.2013 which was sent by the Informant to OP clearly shows that the Informant was aware that the Informant has taken a decision to suspend its services to the Informant because of the botched up investigation undertaken by the Informant. In view of the above factual matrix the alleged conduct does not appear to be abusive in term of the provisions of section 4 of the Act.

24. Further, the Commission does not find the alleged clauses of the license agreement *per se* abusive in violation of section 4 of the Act.
25. In the light of the above analysis, the Commission finds that no *prima facie* case of contravention of the provisions of sections 3 and 4 of the Act is made out against OP in the instant matter. Accordingly, the matter is closed under the provisions of section 26(2) of the Act.



26. The Secretary is directed to inform all concerned accordingly.

Sd/-

**(Ashok Chawla)
Chairperson**

Sd/-

**(S. L. Bunker)
Member**

Sd/-

**(Sudhir Mital)
Member**

Sd/-

**(M. S. Sahoo)
Member**

Sd/-

**(Justice [Retd.] G. P. Mittal)
Member**

New Delhi

Date: 17/11/2015