

# COMPETITION COMMISSION OF INDIA

Case No. 36/2012

Dated: 05/09/2012

## IN THE MATTER OF:

BIG CBS Networks & Anr.

... Informants

V.

TATA Sky Ltd.

... Opposite Party

## ORDER UNDER SECTION 26(2) OF THE COMPETITION ACT, 2002.

The present information was filed under section 19(1)(a) of the Competition Act, 2002 ('the Act') by BIG CBS Networks Pvt. Ltd. and Reliance Television Pvt. Ltd. (together referred to as 'informant') against Tata Sky Ltd. ('OP') alleging abuse of dominant position in contravention of section 4 of the Act.

2. BIG CBS Networks Pvt. Ltd. is stated to be a joint venture between Reliance Broadcast Television Pvt. Ltd. (wholly owned subsidiary of Reliance Television Pvt. Ltd.) and CBS Broadcasting Inc. (a company incorporated under the laws of the State of Delaware, USA). The informant distributes TV channels such as BIG CBS SPARK, BIG CBS PRIME, BIG CBS LOVE, BIG CBS PUNJABI and BIG MAGIC etc.

3. The OP is stated to be a joint venture between Tata Sons and the Star Group ('Sky'). It is a Direct To Home (DTH) service provider. The informant submitted that the OP was a popular and dominant DTH operator with a subscriber base ranging between 26% to 35% and it communicated its leadership in the market to the informant through the email dated 10.02.2012. It was further submitted that, Star India Pvt. Ltd. held substantial interest in the OP, a leading broadcaster in India.

4. The Sky network is alleged to be the ultimate owner of Star India and it telecasts channels such as Star World, Nat Geo Adventure, Nat Geo Wild, FOX Crime etc. which are in direct competition with the informant's channels. The informant submitted that introduction of the informant's channels was likely to adversely affect TRPs (Television Rating Points) of Star India's channels and for this reason, OP was restricting access of the market to the informant by imposing arbitrary terms, making it unviable for the informant to run its channels on the OP's DTH platform.

5. The informant stated that the OP *vide* email dated 10.02.2012 communicated its intent to allow the telecast of the informant's channels on payment of carriage fee of Rs. 6,00,00,000/- per year per channel to telecast the channels on its DTH platform 'Tata Sky' along with cross promotion worth Rs. 2,00,00,000/- on the informant's network apart from other terms and conditions. It was further stated that the OP made it clear that only three channels would be broadcasted within three months of obtaining additional bandwidth and another three channels after they obtain six additional transponders.

6. According to the informant, the carriage fee quoted by the OP was exorbitant, discriminatory, unfair and much higher than the prevalent market rates of Rs.0/- to Rs. 50,00,000/- per channel per year along with some amount of cross promotion. It further submitted that the OP wrote to it on 20.04.2012 about shortage of bandwidth and that the informant's channels could only be included on fresh bandwidth being available to the OP. However, OP included some other channels on its platform such as MOVIES OK, SONY HD, ZEE TV etc. after informants request for broadcasting was made.

7. The informant, in the additional information, submitted the copies of agreements it had entered into with Reliance Big Tv Ltd., Bharti Telemedia Ltd and Dish Tv Ltd. to show the fee it agreed to and paid to these three DTH operators for similar service. As per these agreements, the informant paid Rs. 50 lakh per channel per annum (agreement dated 18.11.2010, one year agreement) to Reliance Big Tv, Rs. 35 lakhs per annum per channel (agreement dated 11.01.2011, one year agreement) to Bharti Telemedia and Rs. 33,33,333/- per annum per channel (agreement dated 17.05.2012, one year agreement) to Dish Tv. It further submitted that it offered Rs. 30 lakhs per channel per annum alongwith Rs. 1.2 crore worth of promotion *vide* email dated 24.02.2012 to the OP, which was not accepted.

8. The informant alleged that the highest fee being charged by other DTH operator was Rs. 50 lakh per channel per annum whereas the OP was asking the informant to pay Rs. 6 crores per channel per annum plus Rs. 2 crore worth cross promotion.

9. The informant submitted that the relevant product market in its case was 'service of broadcasting channels through DTH platform'. It was further submitted that its channels catered to english speaking urban population and therefore, the relevant geographic market was 'the urban market' which included 6 metropolitan cities i.e. Delhi, Mumbai, Chennai, Hyderabad, Kolkatta, Bangalore and other

important cities like Chandigarh, Kochi, Goa, Pune, Mangalore and state of Sikkim. Hence, the relevant market, as per the informant's submissions was 'service of broadcasting channels through DTH platform in the urban market i.e. Delhi, Mumbai, Chennai, Hyderabad, Kolkatta, Bangalore and other important cities like Chandigarh, Kochi, Goa, Pune, Mangalore and state of Sikkim'.

10. According to informant's counsel's arguments, OP was having dominance in the above relevant market since OP was most widely used DTH platform in metropolitan and other big cities where viewership of English channels was concentrated. Informant, relying on the balance sheet of OP and on TRAI report pleaded that subscriber base of OP in the year 2008-09 was 35 million, which was 26 to 35% of the market. Though no data of current subscriber base was there but at the previous growth rate, OPs current subscriber base would be around 9.25 million. Informant submitted that OP was thus dominant player in DTH service.

11. The informant submitted that the refusal by OP to distribute/broadcast the informant's channels over its DTH platform was illegal and an abuse of its dominant position and anti-competitive; the demand by OP of carriage fee of Rs. 6 crores per channel per year alongwith cross promotion worth Rs. 2 crores was per se discriminatory, illegal and abuse of dominant position. it wanted the Commission to direct the OP to cease and desist from anti-competitive practices and abusing its dominant position; call for and summon information including documents establishing the carriage fee being charged by Tata Sky from other broadcasters and lastly, the informant prayed that penalty be imposed on the OP for misusing its dominant position and indulging in anti-competitive practices. The informant

submitted that the OP was abusing its dominant position by dictating discriminatory terms/ conditions and refusing to carry the informant's channels, thereby denying access.

12. The Commission has perused the information and the material available on record. The main grievance of the informant is the refusal of the OP to telecast the informant's channels on its platform at offered terms as communicated *vide* email dated 20.04.2012. The informant's contention is that demand of exorbitant amount as carriage fee for telecast of its channels on the opposite party's DTH network amounted to abuse of dominance. It is alleged that the OP falsely took the plea in refusal to telecast any of its channels, on the ground of shortage of bandwidth. The informant had sought investigation against OP under section 4 of the Act for abuse of dominance.

13. To attract the provisions of section 4 of the Act, one needs to examine the dominant position; the relevant market (both relevant geographic market and relevant product market) and the abuse of the dominant position by the opposite party in the relevant market. The informant has annexed the sector report of PINC research on Cable and Satellite Industry 2011 which shows that out of the total market, the cable operators hold 62% of the market share, DTH operators hold 38 % of the market share and the IPTV operators hold 0.4% of the market share. The report further lists the market share of the different DTH operators viz. Dish Tv (30%), Tata Sky (18%), Airtel Digital (18%), Sun Direct (15%), Videocon D2H (10%) and Reliance Digital (9%). The service which informant seeks is broadcasting his channels on TV sets of viewers. In the opinion of the Commission, the relevant product market would be the 'provision service of broadcasting of channels through DTH'. The OP cannot be considered as dominant player in this market since it stands second with 18% market share, after Dish TV (Dish TV being

dominant with market share of 30%). This is substantiated by the PINC research report on Cable and Satellite Industry of 2011 submitted by the informant.

14. It is the case of informant that channels offered by the informant are english genre and the target audience is the english speaking urban population, however, the informant did not support his submission with cogent evidence nor did he submit anything to show that these programs are not viewed by non-english, non-urban population or that english channels are not telecasted in other areas. This argument of the informant is not accepted and therefore, the geographic market is whole of India.

15. The relevant market in the present case would be the market of 'provision of services for broadcasting of TV channels through DTH in India'. Since the OP is not dominant in the relevant market, the issue of abuse of dominant position does not arise.

16. The informant placed reliance on the decision of the European Commission in *British Midland V. Aer Lingus* (dated 26.02.1996) and *London European V. Sabena* (dated 04.11.1988) wherein it was held that a company in dominance abused its position by refusing to deal with the new entrants. These cases have no bearing on the present case before us as the OP does not enjoy a dominant position whereas the European Commission in both the decisions concluded that there existed a dominant player i.e. Aer Lingus and Sabena respectively. Similarly, the case of *United States V. Griffith* [334 U.S. 100 (1948)] was relied upon.

17. The Supreme Court of USA found that there existed monopoly and held that it was not necessary to find a specific intent to restrain trade or to build a monopoly in order to find that the antitrust laws have been violated. This case also does not

help informant in the present case since there does not exist a monopoly/dominant position. Further, the informant places reliance on the decision of the Hon'ble Supreme Court in *Mahindra & Mahindra Ltd. V. Union of India* [(1979) 2 SCC 529]. However, the reliance is misplaced since the Hon'ble Supreme Court had held that in absence of any material, it was difficult to see how a decision could be reached by the MRTP Commission that the particular trade practice was a restrictive trade practice. Similar is the situation in the present matter.

18. It may be noted that the informant and the OP are present in both the channel production segment as well as the DTH broadcasting segment. The informant owns the DTH platform in the name of Reliance Digital TV and channels such as BIG CBS prime etc. Similarly, the OP is running its DTH platform in the name of Tata Sky as well as channels such as Star World, Star Movies etc.

19. In the light of the above facts and situation, the Commission finds that no *prima facie* case is made out against the opposite party. Therefore, the matter is closed under section 26(2) of the Act.

Secretary is directed to inform all concerned accordingly.

Sd/-  
(H.C.Gupta)  
Member

Sd/-  
(R.Prasad)  
Member

Sd/-  
(Geeta Gouri)  
Member

Sd/-  
(Anurag Goel)  
Member

Sd/-  
(M.L.Tayal)  
Member

Sd/-  
(Justice S.N.Dhingra) (ret'd.)  
Member

Sd/-  
(Ashok Chawla)  
Chairperson