



**COMPETITION COMMISSION OF INDIA**

**Case No. 43 of 2015**

**In Re:**

**Makkal Tholai Thodarpu Kuzhumam Ltd.  
Through  
Director Shri V. Dhanasekaran  
No.12, Subbarao Avenue  
1st Street, College Road  
Chennai-600006**

**Informant**

**And**

**Tamil Nadu Arasu Cable TV Corporation Ltd.  
No.32, Dugar Towers, 6th Floor  
Marshals Road  
Egmore, Chennai-600008**

**Opposite Party**

**CORAM**

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

**Mr. Sudhir Mital  
Member**

**Mr. Augustine Peter  
Member**

**Mr. U. C. Nahta  
Member**

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

**Appearances:** Shri Ajay Kumar, Advocate for the Informant.

Ms. Meha Aggarwal, Advocate for the Opposite Party.



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### **Order under section 26(2) of the Competition Act, 2002**

1. The present information has been filed by Makkal Tholai Thodarpu Kuzhumam Ltd. ('the Informant') under section 19(1)(a) of the Competition Act, 2002 (the 'Act') against Tamil Nadu Arasu Cable TV Corporation Ltd. ('the Opposite Party'/ 'OP'/ TACTV) alleging *inter alia* contravention of the provisions of sections 3 and 4 of the Act.
2. Facts, as gathered from the information, may be briefly noted:
3. The Informant is a broadcaster disseminating TV signals through designated satellite. It transmits various programmes in Tamil language with intermittent news contents. It has obtained uplinking and downlinking permission from Ministry of Information and Broadcasting for its TV Channel named and styled as "Makkal TV".
4. OP is a company fully owned by State Government of Tamil Nadu, incorporated in 2007 to act as a Multi System Operator (MSO) in the State of Tamil Nadu. OP started its operation in 2008 and after a gap, it was re-started/ re-launched in 2011.
5. It is submitted in the information that there is vertical integration of broadcasting and cable TV industry wherein broadcaster provides contents to MSOs who bundle the signals and provide the bundled signals to the consumers through designated local cable TV operators. Since 1990s, the bandwidth for analog cable TV transmission was within the band of 545 Mhz which was later on upgraded in some areas upto 860 Mhz. However, many of rural areas still have bands of 545 Mhz. To increase the signal quality and number of channels, Government of India decided to digitalize the cable TV industry in a phased manner in 2011 by effecting amendments in the Cable Television (Networks) Regulation Act, 1995.



6. The TV channel of the Informant is stated to be re-transmitted in the platforms of all the DTH service providers without any carriage fee. As per the information, OP has also carried 'Makkal TV' from September 2011, free of cost in its S-band in 'S-4' channel.
7. OP on 28.06.2012 has come out with a tender with title 'Tender for Fixation of Carriage Fee and Allotment Slots for Satellite Free-To-Air (FTA) and Pay Channels in the Cable TV Service of TACTV Corporation in Tamil Nadu (except Chennai)' for auctioning its carriage which was for both pay and FTA Channels, which was later on withdrawn. On 09.02.2015, OP came out with another tender titled 'Tender for Fixation of Carriage Fee for the Allotment of 23 slots to Satellite Free-To-Air Tamil Channels in Mid, Super and Hyper Bands for Telecasting throughout Tamil Nadu (except Chennai Metro Area and Coimbatore City)'. OP, under the tender, fixed the upset price as Rs. 46,92,000/- for the bands S4 to S6, Rs. 43,01,000/- for the bands S12 to S20 and Rs. 39,10,000/- for bands S21 to S31. It has been alleged that the first tender was for both pay and FTA channels and in the present tender the pay channels were purposefully omitted to favour the channels of JAYA TV group which supports the ruling party.
8. It is alleged that on 31.03.2015, OP deliberately moved the Informant's channel from S-4 band to U-40 band because of the negative news coverage by the Informant about the state sponsored liquor raj and failure of State Government to impose prohibition on liquor in the State. Because of this shift, the Informant's channel was not seen in almost all the parts in the network of OP in rural areas. The Informant received several communications from viewers complaining of the disappearance of Makkal TV. The Informant approached the Hon'ble High Court of Madras and the High Court directed OP to consider the request of the Informant.



9. It is alleged that OP, with the sole intention to discriminate, single out and deny access to market to the Informant, has passed an order on 10.04.2015 rejecting the request of the Informant and further placed upon the Informant an unfair condition to pay Rs. 62,02,000/- plus service taxes per month to retain its carriage in the nearest Band. The Informant again approached the Hon'ble High Court of Madras challenging the order of OP by way of writ petition and the same is stated to be pending for adjudication.
10. It is alleged that OP *vide* its order dated 10.04.2015 has fixed the carriage fee as Rs. 62,02,000/- plus service taxes per month for the slot for Makkal TV while the same slot was offered free of cost to the Informant for over three years. The sudden fixation of purchase price was with the intention to eliminate the Informant from business. It is further stated in the information that all other Tamil FTA channels are carried by OP free of cost without any demand of carriage fee. The fixation of purchase price is alleged to be in contravention of the provisions of section 3(3)(a) of the Act.
11. By replacing the Informant's TV channel from S4 band to U40 Band, OP has thrown away the channel from its network for political reasons. The selective discriminatory treatment to the Informant by OP is alleged to be in contravention of the provisions of section 3(3)(b) of the Act. Further, OP has neither given room for negotiation nor given a fair deal which shall be construed as total refusal to deal. Thus, it is alleged that OP has violated section 3(4)(d) of the Act as well.
12. The Informant alleges that with a market share of 95%, OP enjoys a virtual monopoly position and dominant position in the relevant market. The unfair condition by way of demanding Rs. 62,02,000/- as carriage fee by OP is without any justification. It is alleged to be in contravention of the provisions of section 4(2)(a)(i) of the Act. OP has involved itself in unfair



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and discriminatory practice by abusing its apparent monopoly position in the relevant market by pricing the carriage at a phenomenally high position for Mid and Hyper bands for FTA channels including the Informant and giving the carriage at free of cost to pay channels for much advantageous position viz. prime band and colour band. OP has deliberately chosen not to sell/ fix price for the prime band which is the most precious band in the analog cable TV network. By the said act, OP has contravened the provisions of section 4(2)(a)(ii) of the Act by demanding unfair and discriminatory price to the carriage.

13. It is further alleged that by blacking out the channel of the Informant, OP has limited and restricted the choice of the consumers and thereby caused adverse effect to competition to favour the channels of a particular political class. Hence, by limiting and restricting the provision of services to the customers and further denying the services, OP has contravened the provisions of section 4(2)(b)(i) of the Act. It is also alleged that by replacing the Informant's channel from S-4 band to U-40 Band, OP has denied the market access to the Informant which is violation of section 4(2)(c) of the Act.
14. Based on the above averments and allegations, the Informant has filed the instant information before the Commission seeking, *inter alia*, a direction to the Director General (DG) to investigate the matter and order OP to carry the Informant's channel in S-4 Band.
15. The Commission has perused the material available on record including the written submissions dated 04.08.2015 filed by the Opposite Party besides hearing the counsel for the parties who appeared before the Commission on 29.07.2015 and made their respective submissions.
16. At the outset, it may be noted that there are different mechanisms for transmitting/ re-transmitting signals of TV channels which are regulated



by Ministry of Information and Broadcasting/ TRAI, such as: Terrestrial (this mode of transmission is owned and operated by national public service broadcaster *i.e.* Doordarshan), Cable TV (analog and digital) , Direct To Home (DTH), Head-end In The Sky (HITS), Internet Protocol TV (IPTV) and Mobile TV *etc.*

17. Amongst the above, Cable TV is the most economical and has reach in almost every possible part of India. DTH provides the technology for receiving signals by set-top box directly from satellite, but it is not affordable by everyone because it is costlier than the Cable TV. Besides, television signals received through DTH mode can be hampered owing to bad weather conditions. HITS and IPTV are at the nascent stage in India and do not have reach to substantial number of TV sets. Mobile TV is also yet to take-off in a significant manner apart from other limitations.
18. The Informant's TV channel *i.e.* Makkal TV can be viewed through both Cable TV and DTH modes. However, for the reasons noted above, these platforms cannot be treated similar. Hence, the relevant product market in the present case would be "Re-transmission of channels through Cable TV Networks".
19. The relevant geographic market in the present case would be State of Tamil Nadu except Chennai which has been covered under Digital Addressable System (DAS) in Phase I.
20. Hence, the relevant market in the present case would be "Re-transmission of channels through Cable TV Networks in State of Tamil Nadu except Chennai".
21. As per the list of registered MSOs dated 02.07.2014 issued by Ministry of Information and Broadcasting, Government of India, there are 18 registered MSOs in State of Tamil Nadu to operate in digital addressable



system. It may be pointed out that the Opposite Party applied for MSO license for the DAS notified areas of Chennai Metro on 05.07.2012 and on 23.11.2012 for the rest of Tamil Nadu; both of which are stated to be pending with Ministry of Information and Broadcasting, Government of India.

22. The Informant has neither given the market share of the Opposite Party or other MSOs in the relevant geographic market. However, it may be pointed out that as per data available in the Census of India 2011 there are 1.6 crores households owning television sets in State of Tamil Nadu. Further, as per Census of India 2011 the number of households owning television sets in the city of Chennai is 10.55 Lakhs Furthermore, as per Information Technology Department, Government of Tamil Nadu Policy Note 2014-15, the subscriber base of the Opposite Party in the State of Tamil Nadu as of 15.07.2014 was 70.52 lakhs and the subscriber base in Chennai was 3.4 Lakhs. Accordingly, the subscriber base of the Opposite Party in the State of Tamil Nadu (except Chennai) works out to be about 44.67%.
23. In view of the market share commanded by the Opposite Party in the relevant market and by virtue of the fact that being a government company, the Opposite Party appears to be dominant in the relevant market.
24. Now adverting to the alleged instances of abuse by the Opposite Party, it may be noted that the Informant is essentially aggrieved by the fixing of Rs. 62,02,000/- plus service tax per month as carriage fee by the Opposite Party for the slot (S-4) desired by the Informant. It is the case of the Informant that the same slot was offered free of cost by the Opposite Party during the last three years.



25. On a careful perusal of the material on record, it appears that the Opposite Party decided to collect the carriage fee from the satellite channels (Free-to-Air) to augment its revenue. In this regard, the Commission notes that to maintain transparency and to arrive at reasonable policy, the Government of Tamil Nadu formed a High Level Committee *vide* G.O. Ms. No. 2, Information Technology Department dated 07.02.2013. This Committee was comprised of Chief Secretary to the Government; Secretary to the Government, Home Department; Secretary to the Government, Finance Department; Secretary to the Government, Information Technology Department; and Chairman, TACTV. Accordingly, a policy was evolved with regard to collection of carriage fee from satellite channels through tender process.
26. Pursuant to the aforesaid policy, the Opposite Party had floated the tender dated 09.02.2015 for fixation of carriage fee for allotment of 23 slots for Tamil Free-to-Air channels. Pursuant to the said tender, two bidders participated and were selected and accordingly a Letter of Acceptance was issued to the channel of one of the bidders for the S-4 slot at their offer rate of Rs. 62,02,000/- plus service tax per month. The grievance of the Informant arises out of the demand of the Opposite Party seeking this carriage fee which was discovered through a competitive bidding process.
27. It cannot be disputed that MSOs also incur various expenses including the expenditure towards payment to 'pay channels' and as such floating of the tender by the Opposite Party to augment its revenue to meet such expenses, can neither be termed as unfair or discriminatory in any manner. In fact, the process followed by the Opposite Party was in terms of the policy formulated by the Government which was fair and transparent since an open auction method was adopted. Furthermore, it appears that Makkal TV did not even participate in the tender proceedings. In view of the above, the demand of carriage fee by the Opposite Party for allotting the





desired slot for the Informant's channel is neither unfair nor discriminatory.

28. It cannot be gainsaid that the Informant and other Free-to-Air channels that use the infrastructure provided by MSOs collect revenues from the advertisers and, as such, the insistence by the Informant claiming free ride upon the infrastructure deployed by the Opposite Party, is thoroughly misconceived. As the S-4 Mid Band - where the Informant's channel was placed earlier - was put to auction in an open and transparent manner, no grievance can possibly arise particularly when the Informant chose not to participate in the tendering process. The bidder who participated in the carriage fee tender successfully became the rightful owner for the S-4 frequency slot after execution of the relevant agreement. In these circumstances, the Opposite Party has only relocated the Informant's channel to another frequency slot and the same has not been disconnected from its network altogether. The Commission is also conscious of the fact that the Opposite Party is providing cable services at Rs. 70/- per month as a subscription fee whereas other MSOs/ cable operators are charging Rs. 150/- to Rs. 250/- from the consumers for availing cable television services.
29. Lastly, the Commission also notes that the Informant has already approached the Madras High Court as well agitating similar issues by filing of writ petition and the same is pending adjudication.
30. In view of the above, the Commission is of view that no case whatsoever is made out against the Opposite Party for contravention of the provisions of section 4 of the Act and the information is ordered to be closed forthwith in terms of the provisions contained in section 26 (2) of the Act.



31. The Secretary is directed to inform the parties accordingly.

**Sd/-  
(S. L. Bunker)  
Member**

**Sd/-  
(Sudhir Mital)  
Member**

**Sd/-  
(Augustine Peter)  
Member**

**Sd/-  
(U. C. Nahta)  
Member**

**Sd/-  
(M. S. Sahoo)  
Member**

New Delhi  
Date: 29/09/2015