COMPETITION COMMISSION OF INDIA

Case No.2/2010 – File No. (1)/(2)/2010-Sectt.

02.03.2010

Informant	Cinergy Picture (P) Ltd., Mumbai
Opp. party	ETC Network Ltd., Mumbai

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

1. The instant information has been filed against the opposite party under section 19(1)(a) of the Competition Act, 2002. It is stated that the informant has produced a cinematograph film by the name 'Rann' and this movie was slated to be released in public on 29th January, 2010. According to the informant, the movie has a social message in public interest and with a view to informing the public about the misuse and abuse of media, the informant published a 12 page advertisement through the newspaper titled as 'Rann Times'.

2. It is further stated that the opposite party is one of the leading broadcasters and broadcasts various television channels in the name of 'ETC'. As per the informant ETC is an entertainment oriented channel which also provides information on the entertainment events like movies. It is also stated that ETC channel is promoted by Zee network which has a dominant position in the television entertainment channels market and since it has national as well as regional television channels, it has the capacity to influence the consumer opinion. It is alleged that the informant did not advertise trailer of its movie 'RANN' with the ETC channel and therefore, with a vengeful attitude, the opposite party in its programme 'Movie Meter' rated the movie poorly before its release by awarding it 3 points out of 10 and on the other hand, gave higher rating to the movie 'Ishqiya' which had given its trailer for advertisement to it. It is alleged that by adopting the vote meter method, the opposite party has curtailed the right of the informant to the audience for the movie and by publishing/telecasting the

regarding exhibition, distribution and exploitation of the movie. The informant has attributed malafides on the part of the opposite party and also the motive to cause damage to the informant because it did not choose to advertise the movie on the platform of ETC. On the basis of above mentioned allegations, violation of section 4(2) (c) and 4(2) (e) of the Competition Act has been alleged.

3. The informant has prayed that :-

(I) the opposite party be restrained and be ordered to cease and desist from publishing/telecasting any report, assessment, comments which undermine the movie or its performance and further restrain it from projecting the movie negatively in any manner whatsoever and direct it not to abuse its dominant position in a manner to harm and hurt the interest of the complainant as regards the movie "RANN";

(II) the opposite party be asked to tender an unconditional apology to the informant for causing damage to its reputation and goodwill;

(III) the opposite party be asked to telecast a clipping in the next episode of the show "Movie-Meter" making clarification that the movie was erroneously and unreasonably given the rating of 3 points.

(IV) such other order may be passed which the Commission deems fit and proper in the circumstances of the case.

4. The informant has also sought interim relief under section 33 of the Competition Act and has prayed that opposite party be restrained from abusing its dominant position until the enquiry is completed.

5. In support of the information, affidavit of Shri Gaurav Mehra has been filed. The informant has also filed additional affidavit and has annexed documents to substantiate the allegations made in the information.

6. The Commission after considering the information in its meeting held on 9th February, 2010, directed the informant to clarify

a) What is the evidence to prove that the opposite party is in a dominant position and accordingly produce evidence?

b) Whether the informant and the opposite party are in the same line of business in order to be competitors?

7. In compliance to these queries, through an additional affidavit dated nil, the informant gave further details including the details of Zee Network viewership trends. It was also stated that both the informant and the opposite party are engaged in the entertainment industry.

8. On behalf of the informant, Smt. Neha Nagpal, Advocate appeared and argued the matter. She also filed written submissions which were taken on record.

9. The Commission has considered the entire material on record and the written as well as the oral arguments advanced on behalf of the informant.

10. On examining the entire matter in depth, it is borne out that though the informant has made the allegation that the opposite party has abused its dominant position by limiting/ restricting the right of the informant to have access to the market by giving poor rating to its movie 'RANN' but it has not been able to establish that the opposite party enjoys dominant position in the broadcasting or television entertainment market which enables it either to operate independently of its 'competitors' or affect them or 'consumers' or the 'relevant market' in its favour. No concrete material has been placed before the Commission to arrive at the conclusion that the method and the practices adopted in such dissemination of opinion by way of 'movie rating' any unfair or discriminatory conditions have been imposed by the opposite party. In this context it may be further observed that the informant has not been able to demonstrate that simply by awarding low rating to the movie 'RANN' in the movie meter, the opposite party has limited or restricted the degree of competition in the relevant market in any manner. The informant had made full publicity by advertising the movie and it has full freedom to do so by availing other alternative forums and methods. Thus neither the market access is denied to the informant nor the

'rating' done by the opposite party had limited or restricted the market in which the informant operates.

11. In the additional affidavit filed by the authorized signatory of the informant, Shri Mehra, on 22.2.2010 i.e. after the release of the movie, it is deposed that "the Respondent has attempted to hamper the market viewership of the Complainant and promote the viewership of those 'movies' which advertised with the Respondent."

12. Even from the above deposition filed on behalf of the informant it is not discernible that the rating done by the opposite party has in fact 'curtailed, 'reduced' or 'restricted' the viewership of the movie. It may be pointed out that for supporting the assertion that the act of the opposite party has restricted or limited the market of the informant, no details or data has been given by the informant despite sufficient opportunity having been granted. Considering the facts and circumstances of the present case, the plea raised by the informant regarding the damage or loss caused to it appears to be conjectural or far- fetched and the same is not found to be convincing.

13. Regarding application of section 26(1) and 26(2) of the Act, in this case the Commission is of the opinion that the above provisions are not applicable as the act of showing the 'movie meter' or 'vote meter' or 'rating' as carried out by the opposite party does not have the effect of limiting or restricting the production of goods or provision of services or market thereof nor it has the effect of causing damage to the informant as alleged.

14. The allegation that the opposite party has contravened the provision of section 4(2)(e) is also not made out because there is no evidence or even assertion in the information that the opposite party has used its dominant position in one relevant market to enter into or protect other relevant market.

15. Further, the bald allegations of malafide or vengeful motive shorn of any supporting material in down rating the movie as stated in the information do not provide any justification to hold that there is a prima facie contravention of the relevant provisions of the Competition Act. In fact, by alleged down rating of the movie it cannot be said that the opposite party has imposed any unfair or discriminatory condition for the display or exhibition of the movie.

16. On the basis of the above, it is suffice to say that the allegations made by the informant are not found to be covered within the vice of abuse of dominance as contemplated under section 4 of the Act and the reliefs sought in the information are, therefore, not maintainable. Consequently, the information filed by the informant and the material as placed before the Commission in support thereof does not provide basis for forming opinion for conducting further investigation into the matter. This matter, therefore, is liable to be closed at this stage.

17. The matter is, therefore, closed under section 26(2) of the Competition Act forthwith. The Secretary is directed to inform the informant accordingly.

Sd/ -	Sd/ -	Sd/ -
Member (G)	Member (R)	Member (P)
Sd/ -	Sd/ -	Sd/ -
Member (GG)	Member (AG)	Member (T)

Sd/ -
Chairperson