

COMPETITION COMMISSION OF INDIA
[Case No 63/2010]

DATE OF DECISION: 29TH MARCH, 2011

Shri Anuj Kumar Bhati

Informant

Vs.

- 1. Sony Entertainment Television (SET)***
- 2. Idea Cellular Limited.***
- 3. Star India Pvt. Limited***
- 4. Bharti Airtel Limited***

Opposite Parties

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

The present information has been filed by Shri Anuj Kumar Bhati (hereinafter referred to as 'informant') against Sony Entertainment Television (hereinafter referred to as "OP 1"), Idea Cellular Limited (hereinafter referred to as "OP 2"), Star India Pvt. Limited (hereinafter referred to as "OP 3"), and Bharti Airtel Limited (hereinafter referred to as "OP 4") under section 19 of the Competition Act, 2002 (hereinafter referred to as 'the Act') for their alleged abuse of dominant position and unfair trade practices in telecast of the TV Quiz Show Kaun Banega Crorepati-4 (hereinafter referred to as "KBC-4").

2. The facts as stated in the information, in brief, are as under:

- 2.1. In response to the advertisement of OP 3 to participate in the T.V. Quiz Show Kaun Banega Crorepati-2 (hereinafter referred to as "KBC-2") the informant tried to participate in the show by answering question asked by OP 3 through 646 SMS service of OP 4. The informant has correctly answered more than 1200 questions. The OP 4 informed the informant through**



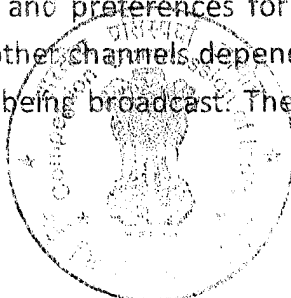
SMS that his total score was 5875 and was asked to try for more questions. But, in spite of repeated attempts, the informant could not get any further questions from OP 4 and thus was unable to improve his score to participate in the show. The OP 3 and OP 4 have also refused to divulge the total score of the informant. The informant has alleged that the OP 3 and OP 4 are adopting unfair and discriminatory practices in selection of candidates to participate in the said T.V. Show.

- 2.2. The informant had filed a writ petition (No. 2215/2006) in the Hon'ble High Court of Delhi against OP 3 and OP 4 for stopping the telecast of the show KBC-2 mid way and restarting the same show in the name of Kaun Banega Crorepati-3 (hereinafter referred to as "KBC-3").. The Hon'ble High Court in its order dated 27.04.2007 has observed that the allegations leveled against the OP 3 and OP 4 will require an elaborate examination of evidence by the MRTP Commission including a deep probe into the working of KBC scheme.
- 2.3. The OP 3 and OP 4 in turn filed a special leave petition in the Hon'ble Supreme Court of India. The Supreme Court of India had disposed off the petition with direction that while considering the matter the MRTP Commission will not be influenced by the observations made in the judgment passed by the High Court of Delhi.
- 2.4. Subsequently, the matter was under investigation in the MRTP Commission. On repeal of the MRTP Act, the said case was transferred to the Competition Appellate Tribunal (COMPAT) and now the matter is subjudice before the COMPAT.
- 2.5. The informant has submitted that without honoring the direction of the Hon'ble Supreme Court and the observations of the High Court of Delhi in regards to telecast of the show KBC-2 & KBC-3, the OP 1 and OP 2 are telecasting the same T.V. Quiz Show again in the name of KBC-4.
- 2.6. The informant submitted that the OP 1 and OP 2 have duped the participants of KBC-4 of crores of rupees and are indulging in foul play in the selection of contestants for the show. The rules for participation in the show did not allow employees and associates of the channel to participate but the OP 1 and OP 2 are allowing their employees and associates to participate in the show which is unfair and discriminatory.
- 2.7. Further, it alleged that through advertisements on various modes OP 1 and OP 2 are encouraging the common citizens to make more and more telephonic calls to answer more and more questions to participate in the show. The advertisements like 'Rs. 2 crore or 5 crore are just a telephonic call away' are so alluring and enticing that the common citizens are trying repeatedly to reach the so called 'Hot Seat' of the show. This results in loss of lacs of rupees to the innocent common people.
- 2.8. The sponsoring companies of the show are also playing fraud with the common citizens by indulging in unfair trade practices, misrepresentation and breach of trust which is detrimental to the public interest at large. The well known figures or popular actors and actresses who are participating in the show for charities invariably get hefty prize money as



compared to common participants implying, the questions asked in the show are manipulated and accordingly prizes are given to the desired persons which is an unfair trade practice.

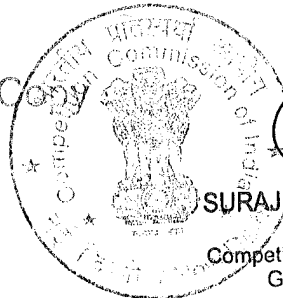
- 2.9. The informant has requested the Commission to conduct an investigation regarding the working of Kaun Banega Crorepati show and such other quiz shows which are based on unfair trade practices. The informant has also sought compensation for the loss and inconvenience occurred to him while trying to participate in KBC-2 and has requested to impose heavy penalty on all the Opposite Parties for their alleged anti-competitive activities.
3. The matter was considered by the Commission in its meetings held on 07.12.2010, 28.12.2010, 18.01.2011, 15.02.2011, 08.03.2011, 22.03.2011 and 29.03.2011. The Commission also heard the informant through his advocate and carefully scrutinized the entire material submitted by the informant and material available on record.
4. It is noted that the OP 1 and OP 3 are the broadcasters of television shows and the OP 2 and OP 4 are the mobile telephone service providers. All the Opposite Parties are the registered companies under the Companies Act, 1956. The activities being performed by all the Opposite Parties are covered in the definition of 'enterprise' under section 2 (h) of the Act.
5. The issue for consideration before the Commission is whether the allegations raised by the informant in the matter involve any Competition issue. If so, whether the Opposite Parties are engaged in any anti-competitive activities which are in violation of Section 3 and/or Section 4 of the Act.
6. The main allegation of the informant in the matter is that the Opposite Parties, being in a dominant position, are discriminating in selection of contestants for the T.V. Quiz Show Kaun Banega Crorepati and adopting unfair practices in selection of questions asked during the show to win cash prizes, which is in violation of Section 4 of the Act. The Commission observes that the question of dominance in this case must be examined in context of viewership of different shows in Hindi during prime time in India as these shows are substitutable for the viewers. In this regard the Commission, on the basis of viewership rating, has observed that compared to all other shows/ programs telecasted on television in Hindi language during the prime time in India, the share of viewers of the show Kaun Banega Crorepati is not so much that on the basis of which it can be said that it is dominating all other shows telecasted in Hindi language during the prime time in India. The viewers have many options to watch programmes during the prime time depending on the demographic profile of the viewer, his tastes and preferences for watching a programme. Further, the viewers are fast in switching to other channels depending on changes in mood or quality and content of another programme being broadcast. The Kaun Banega Crorepati programme is



not adversely affecting any other programs running in the prime time as each programme has its niche viewership due to which it is sustaining in the prime slot position.

7. It is also observed that the voice call and other charges are purely based on the business decision taken by the Opposite parties. These decisions are taken to sustain in the market rather than affecting competition in the relevant market.
8. With regards to applicability of Section 3 of the Act in the matter the Commission observed that there is no anti-competitive agreement among the Opposite Parties so as to cause appreciable adverse effect on Competition in India in the context of Section 19 (3) of the Act. The informant has also not alleged any violation of Section 3 of the Act in the matter.
9. The Commission is of the opinion that prima facie there is no violation of provisions of Section 3 and/or Section 4 of the Act in the matter. The informant has also not been able to bring any cogent evidence on record to establish that the opposite parties are indulging in any anti-competitive activities which are in violation of Section 3 or Section 4 of the Act.
10. The Commission, therefore, is of the view that, *prima facie*, no case is made out for making a reference to the Director General for conducting investigation into this matter under Section 26 (1) of the Act and the proceedings are liable to closed forthwith.
11. In view of the above discussion the matter relating to this information is hereby closed under Section 26 (2) of the Competition Act.
12. Secretary is directed to inform the informant accordingly.

Certified True Copy



SP Sahlaul
25/4/2011
SURAJ PARKASH GAHLAUT
Office Manager
Competition Commission of India
Government of India
New Delhi