

COMPETITION COMMISSION OF INDIA

Case No 44/2010

Date of Decision: 21.12.2010

Information filed by : Dish TV

Against : Prasar Bharti

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

1. The present information has been filed by Dish TV (hereinafter referred to as 'Informant') under Section 19 of the Competition Act, 2002 (hereinafter referred to as 'the Act') against Prasar Bharti alleging abuse of dominant position.
2. The brief facts of the case, as given by the Informant, are as under:
  - 2.1 The Informant is a Direct to Home (DTH) Service Provider operating under the License dated September 16, 2003 issued by the Ministry of Information and Broadcasting, Government of India.
  - 2.2 Doordarshan is the National Broadcaster engaged in broadcasting of various programs throughout the country through different channels.
  - 2.3 The Informant has alleged that it had requested Prasar Bharti for airing its advertisements on DD National channel on commercial basis but the same was returned with the remarks "the commercial advertisement of private DTH platform are not allowed for telecast on Doordarshan". As per the Informant, the advertisement sought to be telecast does not fall under any of the prohibited categories specified under the *Advertisement Code* of Doordarshan.
3. The authorized representatives of the Informant Company appeared before the Commission on 25.11.2010 and made submissions to substantiate the information. The Informant also filed written submission on 03.12.2010. The Informant in its written submissions has raised the following points:

- 3.1 The Prasar Bharti had been constituted under the Prasar Bharti (Broadcasting Corporation of India) Act, 1990. It is engaged, inter alia, in the commercial activities of broadcasting various TV programme including advertisements. Hence, it is covered under the definition of “enterprise” under Section 2(h).
- 3.2 Prasar Bharti also runs a free to air DTH platform after obtaining necessary license/permission from the Ministry of Information and Broadcasting, Govt. of India and, thus, the said DTH service stands at the same footing as the service provided by the Informant.
- 3.3 Doordarshan is one of the largest broadcasting organization in the world in terms of infrastructure, studio and transmitters and it reaches 92% population of the country through a network of 1413 terrestrial transmitters, C-band satellite and DTH service.
- 3.4 Doordarshan is regularly telecasting the advertisement of private service providers such as mobile phone service providers viz. Airtel, Vodafone etc. in addition to BSNL & MTNL which are State owned enterprises. Further, it is also regularly telecasting the advertisements of other private products and services such as soaps, cements, steel, milk products etc.
- 3.5 There is no prohibition in the *Advertisement Code* of the Doordarshan for telecasting the advertisements of the private products or services.
- 3.6 The Informant has alleged that Prasar Bharti is involved in an anti competitive conduct with a view to promote and monopolize the DTH market for its own DTH service namely DD Direct Plus.
- 3.7 The Informant has submitted that all the other broadcasters, except Doordarshan, are regularly telecasting the advertisements of all DTH operators without any discrimination. This is to ensure that the public at large is apprised of this latest satellite based digital delivery technology so as to enable them to access various subscription based and free to air channels disseminating news, views, current affairs, educational programmes and entertainment etc. to masses.
- 3.8 The Informant has alleged that refusal to telecast its advertisement violates fundamental rights of the Informant. It also deprives the consumer of the latest information about the products and services available in the market.

4. The Commission considered all the relevant material placed on the record and the written submissions filed by the Informant in its ordinary meeting held on 21.12.2010.
5. It is noted that Prasar Bharti [a body established by the Prasar Bharti (Broadcasting Corporation of India) Act, 1990] is entrusted with the primary duty of organizing and conducting public broadcasting service to inform, educate and entertain the general public and to ensure a balanced development of broadcasting on radio and television.
6. It is also noted that by virtue of enactment of “the Cable Network Regulation Act, 1995” it has been made mandatory on the part of all the cable and DTH operators in the country to carry all the channels of the Prasar Bharti. By virtue of the mandatory provision of this Act, the channels of Prasar Bharti including DD-1 have got immense coverage and popularity.
7. It is evident that the Prasar Bharti is engaged, inter alia, in the commercial activities of broadcasting various TV programme including advertisements. It is engaged in the activities envisaged under Section 2(h) and, therefore, covered under the definition of “enterprise” for the purposes of the Competition Act, 2002 (the Act).
8. The Informant in his written submission dated 02.12.2010 has alleged that Doordarshan enjoys the dominant position in the broadcasting sector having maximum reach amongst the channels operating in the country. Although the grievance of the Informant is arising out of the fact that the Prasar Bharti is not allowing the advertisement of Informant on DD National channel, however the Informant is taking the viewership market of the Prasar Bharti as relevant market. Therefore, the relevant market in the present case should be in terms of advertisement air time and not in terms of the viewership of a particular channel.
9. The Informant has not placed any material before the Commission to establish the dominant position of Prasar Bharti/Doordarshan in selling of airtime for commercial

advertisement which is the relevant market in the present case. In the said relevant market, Prasar Bharti – DD National does not appear to be in a position of dominance as there are countless other Free To Air (FTA) channels in addition to paid channels. It only has certain privileges conferred by the Parliament, through the Acts mentioned in para 3.1 & 6 of this order, which inter alia enables it to air its channels on all the DTH and cable network. This cannot be construed to mean that it has a dominant share in advertisement telecasting. The revenue generated from selling airtime for commercial advertisement is based on many diverse factors such as viewership, TRP rating, Brand image of the TV channels etc. Therefore the Commission is of the view that there is no prima facie evidence to show that DD National is a dominant seller of airtime for commercial advertisement.

10. The Informant in his written submission dated 02.12.2010 has relied upon *inter alia* the judgment dated 15.12.2008 of Telecom Dispute Settlement & Appellate Tribunal in petition no. 195(c) of 2008 – Zee Turner Ltd. vs. Prasar Bharti and the judgment of Hon'ble Supreme Court in Civil Appeal No. 895 of 1978 - Ramana Dayaram Shetty vs. International Airport Authority of India and others.

- 10.1 In the former case the petitioners had challenged the action of Prasar Bharti in removing their channels from its DTH platform despite the petitioner having deposited or agreed to deposit the revised carriage fee as demanded by Prasar Bharti and therefore had contended that their channels should have been allowed to be continued to be relayed and discontinuance thereof was illegal. In this case the TDSAT has held that act of Prasar Bharti discontinuing the carriage of the petitioner's channel, in disregard of the TRAI Regulations, is illegal. The TDSAT, in this context, has commented that Prasar Bharti being an instrumentality of the state is expected to conduct its affairs in a fair manner.

- 10.2 In the later case the issue considered by the Apex Court was that what are the constitutional obligations on the State instrumentality in the matter of awarding a contract or dealing with its property. The Apex

Court emphasized that the State is obligated to follow procedural fairness and its action should be non-discriminatory while awarding public contracts.

10.3 Here, it can be seen that the ratio propounded in the above two cases are specific to the facts of respective cases and are not applicable to the facts and issues involved in the instant case.

11. Furthermore the Prasar Bharti cannot be compelled to carry the advertisements of Informant when the Informant itself has mentioned that DD Direct Plus- a DTH platform of Prasar Bharti is its direct competitor. The policy decision of Prasar Bharti in not allowing the advertisement of Informant or other competitors by itself cannot be termed as anti-competitive.
12. In view of the above discussion and after considering the entire material and submissions made on behalf of the Informant, the Commission is of the opinion that there is no cogent evidence/material to indicate that there is any infringement of the provisions of the Act. The Commission, therefore, is of the opinion 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.
13. In view of the above, the matter relating to this information is hereby closed under section 26(2) of the Act.
14. Secretary is directed to inform the Informant accordingly.

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Member (G)

Sd-  
Member (R)

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Member (P)

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Member (G)

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Member (T)  
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