

**COMPETITION COMMISSION OF INDIA**

**Case No.29/2011**

Dated: 08.07.2011

**Information filed by:**

1. Mr.Sanjay Rastogi
2. Mr R K Gupta

**Information against:**

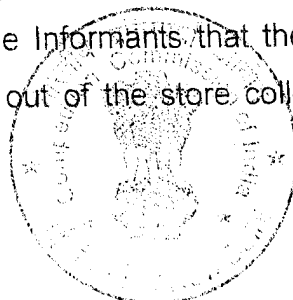
M/s. BigFlix Pvt Ltd, Mumbai

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

The present information has been filed on 13.06.2011 by Mr Sanjay Rastogi and Mr R K Gupta ('Informants') against M/s. BigFlix Pvt Ltd, Mumbai ('Opposite Party') alleging contravention of the provisions of Section 4 of the Competition Act, 2002 ('the Act').

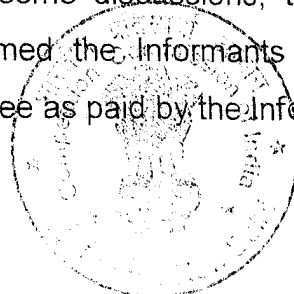
2. Facts of the Case, in brief, are as under:

- 2.1 The Informants in the case are in the business of DVD rentals in the capacity of a franchisee of the Opposite Party. It has been alleged by the Informants that Opposite Party is an enterprise which is a part of Reliance Big Entertainment and is India's largest on line and off line movie rental service.
- 2.2 As per the allegations of the Informants, around April, 2010, the Opposite Party circulated a message to its members inviting them to be associated as business partners of it. The representative of the Opposite Party assured the Informants to provide all assistance and support in carrying out the business plan. The said representative further assured the Informants that they will be provided certain percentage of revenue i.e. 60% out of the store collection and 40% out of the

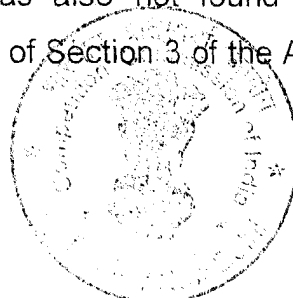


online collection. A franchisee agreement was entered into between the Informants and Opposite Party, and certain amount was also paid by the Informants to Opposite Party as an adjustment towards the franchisee fee.

- 2.3 As per the allegations, the aforesaid amount was taken by Opposite Party on the pretext to start business with the Informants at two outlets, one at Punjabi Bagh and other at Dwarka, both in Delhi.
- 2.4 It has been alleged that the Informants were kept at abeyance with respect to marketing and technical knowhow by the Opposite Party despite its promise made earlier at the time of entering into the agreement. Further, it has also been alleged by the Informants that they were informed that it has been decided by Opposite Party to give only 10% online revenue to the Informants instead of 40% as promised earlier.
- 2.5 As per the Informants, they started losing faith in the integrity of the Opposite Party and expressed their intention of terminating the agreement. In response to the same, Opposite Party agreed to terminate the Punjabi Bagh franchisee but retained the Dwarka Franchisee with an enhancement in the security deposit from Rs.7 lac to Rs.11 lac and agreed to refund Rs.6 lac only towards the termination of Punjabi Bagh Franchisee.
- 2.6 Further, it has been alleged by the Informants that Opposite Party have also failed to provide any marketing personnel and aggressive marketing development in Dwarka. Under these circumstances, the Informants terminated the franchisee agreement for Dwarka outlet also vide their legal notice dated 24.11.2010.
- 2.7 It has also been alleged that after some discussions, the Opposite Party on 12.01.2011 through an email, informed the Informants about its decision of forfeiting the security and franchisee fee as paid by the Informants.

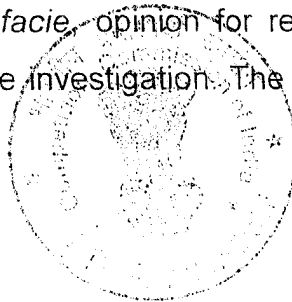


- 2.8 The Informants have alleged that the Opposite Party is enjoying a dominant position in the market with respect to DVD rentals and is having a tremendous market share being a part of Reliance Big Entertainment.
- 2.9 It has been further alleged by the Informants that the acts of the Opposite Party constitute abuse of dominant position as contemplated u/s 4(1) and 4(2) of the Act since the Opposite Party is market leader in providing DVD rental service and is able to bargain on unilateral terms with the Informants. As per the allegations, the Opposite Party did not comply with its part of contractual obligations, invited franchisee agreement with a malicious intention and restricted the service quality of the Informants by not providing them requisite assistance etc. which amounts to abuse of dominant position by the Opposite Party.
3. The Commission considered the matter in its meeting held on 23.06.2011 and directed that the Informants be called either in person or through their authorized representatives to explain their case. Accordingly, on 08.07.2011 the counsel for the Informants appeared before the Commission and explained the case.
4. The Commission has carefully perused the information, the relevant documents annexed with the information, the contention of the counsel for the Informants and other relevant materials available on record. The allegations of the Informants center around the issue that the Opposite Party did not fulfill its contractual obligations as mentioned in the franchise agreement and as promised by it at the time of invitation for franchise agreement.
5. It is noted that the Informants have only alleged violation of Section 4 of the Act and has not alleged violation of any of the provisions of Section 3 of the Act by the Opposite Party. The Commission has also not found any material which is indicative of the violation of provisions of Section 3 of the Act in this case and is of



the view that the instant case can only be examined under the provisions of Section 4 of the Act.

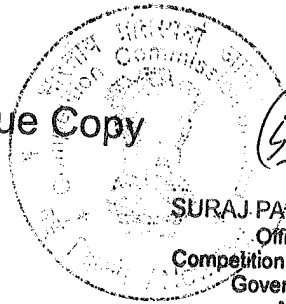
6. The Commission has found that as per the information available in public domain, the Opposite Party is one of the many DVDs/CDs rental service providers in the country. The Opposite Party commenced its business in 2008 and is one of the latest entrants in the league. There are other players also like Seventymm, Klikflix, Catchflix, CineSprite, Friday box office, Home view and Moviemart etc. which are having considerable presence in the relevant market. Looking at the market structure, it cannot be said that the Opposite Party is enjoying a position of dominance in term of explanation (a) of Section 4 of the Act.
7. As per the information in public domain, it has been observed by the Commission that no DVD, CD Rental Company in India has countrywide vast presence as they are limited to select big cities only.
8. The Commission has also found that the Informants have not been able to bring any cogent evidence on record to show that the Opposite Party is in the dominant position in the relevant market.
9. Further, the Commission is also of the view that there is no issue in the instant case which raises competition concern.
10. In view of the foregoing discussion, the Commission is of the considered view that the allegations made in the information do not fall within the mischief of either Section 3 or Section 4 of the Act and the information filed by the Informants do not provide basis for forming a, *prima facie*, opinion for referring the matter to the Director General (DG) to conduct the investigation. The matter is therefore, liable to be closed at this stage forthwith.



- 11. In view of the above discussion, the matter relating to the information is hereby closed under Section 26 (2) of the Act.
- 12. Secretary is directed to inform the Informants accordingly.

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

Certified True Copy

  
*SP Gahlaut*  
26/7/2011  
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Competition Commission of India  
Government of India  
New Delhi