



## COMPETITION COMMISSION OF INDIA

### *Suo Motu* Case No. 02 of 2013

**In Re: Cartelisation by broadcasting service providers by rigging the bids submitted in response to the tenders floated by Sports Broadcasters.**

**Against**

- |   |                      |
|---|----------------------|
| 1. Essel Shyam Communication Limited<br>(now Planetcast Media Services Limited) | Opposite Party No. 1 |
| 2. Globecast India Private Limited  | Opposite Party No. 2 |
| 3. Globecast Asia Private Limited   | Opposite Party No. 3 |
| 4. Bharat K. Prem   | Opposite Party No. 4 |
| 5. Jason Yeow   | Opposite Party No. 5 |

### **CORAM**

**Mr. Devender Kumar Sikri**  
Chairperson

**Mr. Sudhir Mital**  
Member

**Mr. Augustine Peter**  
Member

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

**Justice G. P. Mittal**  
Member

### **Appearances:**

*For OP-1, Lalit Jain, M.N. Vyas and  
Atul Gupta*

Mr. G. R. Bhatia, Advocate  
Mr. Rudresh Singh, Advocate  
Mr. Arjun Nihal Singh, Advocate  
Mr. G.V. Rao, Company Secretary



	Mr. Rajshekhar Rao, Advocate
	Ms. Shweta Shroff Chopra, Advocate
<i>For OP-2, OP-3, Vinay Sewal, Marie Seah, Soo Yew Weng and Ms. Darby Sanchez</i>	Mr. Yaman Verma, Advocate
	Ms. Nitika Dwivedi, Advocate
	Mr. Sapan Parekh, Advocate
	Mr. Chaitanya Puri, Advocate
	Ms. Kruttika Vijay, Advocate
	Mr. Abhay Joshi, Advocate
	Mr. Sahil Khanna, Advocate
<i>For OP-4</i>	Mr. Ishwar Nankani, Advocate
	Mr. Ravisekhar Nair, Advocate
	Ms. Tanya Sethi, Advocate
	Mr. Bharat K. Prem
	Mr. George G. Poothicote, Advocate
<i>For OP-5</i>	Mr. Mathew Kurian, Advocate
	Mr. Abhilash Pillai, Practice Manager
<i>For Michelle Gossetti (OP-3)</i>	None

## **ORDER UNDER SECTION 27 OF THE COMPETITION ACT, 2002**

### **Facts in brief:**

1. The present case emanated from a Lesser Penalty Application filed by Globecast India Private Limited (**OP-2**) and Globecast Asia Private Limited (**OP-3**) [OP-2 and OP-3 collectively referred to as **Globecast**] on 11.01.2013 under Section 46 of the Competition Act, 2002 (**Act**) read with the Competition Commission of India (Lesser Penalty) Regulations, 2009 (**Lesser Penalty Regulations**), providing information in relation to its bid-rigging arrangement with Essel Shyam Communication Limited (**OP-1/ESCL**) in the market for provision of broadcasting services. As per information provided to the Commission, ESCL's name was changed to



Planetcast Media Services Limited. However, for purposes of consistency it is referred to as ESCL in this order. Thus, all references to ESCL would imply reference to Planetcast Media Services Limited.

2. As per the information received, there was exchange of commercial and confidential price sensitive information between ESCL and Globecast through Mr. Bharat K. Prem (**OP-4/ Bharat**), an employee of OP-2, which resulted in bid rigging of tenders for procurement broadcasting services of various sporting events, especially during the year 2011-12. It was alleged that OP-4 had clandestinely entered into a Consultancy Agreement with ESCL, under which Bharat, though an employee of OP-2, used to work for ESCL for a fixed remuneration and a share in profits from the contracts obtained through bid rigging. Jason Yeow (**OP-5/ Jason**), an employee of OP-3, was also alleged to be involved with ESCL and Bharat in this case.
3. Based on the information received and a preliminary analysis of the matter, the Commission was of *prima facie* view that there existed a bid-rigging cartel between ESCL and Globecast in contravention of the provisions of Section 3(3)(d) read with Section 3(1) of the Act. Accordingly, the Commission *vide* order dated 19.02.2013 passed under Section 26 (1) of the Act directed the Director General (DG) to cause an investigation into the matter and submit a report on the same.
4. During the course of investigation, ESCL also filed application under Regulation 5 of the Lesser Penalty Regulations read with Section 46 of the Act on 11.07.2013.

**The Industry:**

5. The industry involved in the instant case is broadcasting services. Broadcasting services can be continuous or *ad hoc*. Continuous services are those that are provided from a particular studio for a continuous period, *e.g.* television shows. On the other hand, *ad hoc* services are those that take place on a one-off basis. The broadcasting services in relation to which the alleged



anti-competitive activities have taken place are sporting events. These are referred to as ‘planned *ad hoc* events’ as it is known beforehand that these events are going to take place.

6. Broadcasting process consists of three major parts *namely* uplinking, carriage of signals on a satellite, and downlinking. Uplinking is the communication link used for transmission of signals from an earth terminal to a satellite or to an airborne platform. Downlinking is the communication link used for transmission of signals from a satellite or an airborne platform to a ground station. During the time of the alleged infringement, as per the Ministry of Information and Broadcasting’s (MIB) “*Guidelines for Uplinking from India*” (July 2000), only companies that were registered in India and were owned and controlled by Indians were permitted to provide satellite uplinking services. Further, at the time of the alleged infringement, as per the MIB’s above-stated guidelines, for the purpose of broadcasting, a service provider requires permission/ licenses from MIB and the Department of Telecommunications (DoT) for uplinking and downlinking signals.
7. Further, live coverage of sporting events comprises of two major components: Ground Services and Satellite Bandwidth Services. Ground services are services provided on ground in India to the broadcasters for the purpose of uplinking and downlinking of broadcasts from the satellites. These services include provision of transmission equipment/ kit, technical/ engineering personnel, logistic activities and obtaining requisite regulatory permission from the MIB, Apex Committee under the DoT (if required), Wireless Planning and Coordination (WPC) and Network Operation and Control Centre (NOCC), a wing of DoT *etc.* On the other hand, Satellite Bandwidth Services (Space Segment) implies providing satellite space to broadcasters. The Satellite Bandwidth Service provider is required to hire the satellite space/ bandwidth space on the designated satellite. Pursuant to allotment of bandwidth, the hirer is able to receive and transmit signals for a given time period. This too requires permission from the MIB, WPC, NOCC *etc.*



8. In India, broadcasting rights for sporting events are held by broadcasters like ESPN Star Sports (**ESS/ ESPN**), Sony, World Sports Group (**WSG**), Nimbus, NEO Sports (**Neo**), Ten Sports, *etc.* For the purpose of covering events and uplinking and carriage of signals on designated satellites, broadcasters approach broadcasting service providers like Globecast and ESCL and float Request for Proposal (**RFP**) to submit a composite quote for covering the entire event, including both Ground Segment Services and Satellite Bandwidth Services.
9. The bidding scenario is that the ground service providers are Indian companies who have the license for operating the ground services but usually do not have access to the best rates from the satellite space providers for satellite space capacity due to financial inability to purchase bulk volume. In such cases, they tie up with International operators for buying satellite capacity at low prices and make their overall operation profitable. Similarly, in some cases, the international operators front-end the deal with the sports broadcasters for both ground services and satellite space. However, since they do not have the license to operate ground services in India, they tie up with the Indian ground service providers and bundle it with their own/ leased satellite space to offer package solutions to sports broadcasters. Thus, the industry functions on model of sub-contracting or collaboration between ground service and satellite space providers to provide end-to-end broadcasting services.

**Profile of the Parties:**

10. ESCL is a technology service provider since 1998 with specialisation in media broadcasting, distribution for multi-platform/ multi-devices along with Very Small Aperture Terminal (**VSAT**) based satellite communication. It holds license in India for news gathering, transmission of entertainment and sporting events providing both Ground Segment Services and Satellite Bandwidth Services.



11. Globecast is a subsidiary of the Orange Group (earlier France Telecom Group) and a global service provider of broadcasting services. OP-3 is a wholly owned subsidiary of Globecast Holdings SA, France and it operates in India through OP-2, which is majorly owned by it (99.9%). OP-2 and OP-3, as such, are part of the same 'Group'. As per the DG report, for the provision of end-to-end broadcasting services, OP-3 enters into contracts with broadcasting companies and OP-2 sub-contracts the ground services to other entities like ESCL or Indiasign, who are duly licensed by the MIB to provide such services in India.
12. Bharat is an ex-employee of OP-2 who worked as Director – Business Development in OP-2. He was primarily responsible for providing market related information for end-to-end broadcasting services contracts (in relation to sporting events) in the Indian sub-continent and direct sales of the entire portfolio of services to broadcasters. Jason is also an ex-employee of OP-3 who was in charge of sales for South East Asia, Hong Kong and Macau.

**DG's Investigation:**

13. The three issues identified by the DG in the investigation report and findings thereupon are as follows:

***Issue No. 1: Whether there was exchange of commercially sensitive information between ESCL and Globecast with respect to bids for broadcasting of sporting events during 2011-2012?***

14. The DG has concluded that in tenders for procurement of broadcasting services for 12 sporting events there was exchange of commercially sensitive information related to bidding such as bid prices, terms of offer, etc. between ESCL and Globecast through Bharat in violation of provisions of Section 3 (3) (d) read with 3 (1) of the Act. These events are as follows:
  - (i) Australia tour to Sri Lanka (August-September 2011);
  - (ii) Cricket Tournaments in Zimbabwe (August-September 2011);
  - (iii) Corporate Trophy (September 2011);



- (iv) Champions League Twenty-Twenty (CL T20) (*September-October 2011*) – With regard to this event, Jason was also involved;
  - (v) Neo’s contract for Domestic Cricket Season 2011-12 and International Tournaments;
  - (vi) Formula 1 races from Buddh International Circuit (*October 2011*);
  - (vii) New Zealand Tour to Zimbabwe (*October-November 2011*);
  - (viii) Bangladesh Premier League (*February 2012*)
  - (ix) i1 Super Series (*February 2012*)
  - (x) World Series Hockey (*February-March 2012*);
  - (xi) Asia Cup 2012 (*March 2012*); and
  - (xii) Cricket Tournaments in Sri Lanka 2012 (*June-August 2012*).
15. Further, the DG report records that with respect to the tenders for procurement of broadcasting services for Indian Premier League (IPL) 2012 [Sony’s Feed – India Rights] and [Nimbus’ Feed – World Rights] (*April-May 2012*), Globecast and ESCL had entered into a Teaming Arrangement (on a 50:50 profit-sharing basis). Certain e-mails have been found by the DG, which were exchanged between the two of them with regard to the execution of this Teaming Arrangement wherein Globecast and ESCL had strategised and pre-decided that they would mutually decide their proposed quotations on the basis of true internal costs in a manner such that:
- (a) for Sony’s feed, Globecast would win the contract for provision of end-to-end broadcasting services and sub-contract the Ground Segment Services to ESCL; and
  - (b) for Nimbus’s feed, ESCL would win the contract for provision of end-to-end broadcasting services and sub-contract the Satellite Space Segment Services to Globecast.
16. On analysis and examination of various documents including e-mails and statements of the parties, the DG concluded that there was concerted action and meeting of minds between Globecast and ESCL in bidding for provision of broadcasting services for certain *ad hoc* sporting events in India during



2011-12, amounting to infringement of Section 3 (3) (d) read with 3 (1) of the Act.

**Issue No. 2: Assessment of explanations offered by the parties for the alleged bid-rigging.**

17. During investigation, the parties offered rival explanations for the alleged exchange of information and the DG in respect of each of such explanation, concluded as follows:

**(a) Consultancy Agreement dated 01.07.2011 between ESCL and Bharat** – Globecast submitted before the DG that exchange of information took place between ESCL and Bharat under a Consultancy Agreement which was entered into between them whereby ESCL was to pay to Bharat a fixed remuneration of Rs. 36 lacs (Rupees Thirty Six Lacs Only) per annum along with 40% of the net margin share on orders received by ESCL through Bharat. ESCL and Bharat, though admitted the existence of such agreement, submitted before the DG that the said Agreement never came into effect as the same was to be enforced only after Bharat left the employment of Globecast, and the exchange of information was not in pursuance of such agreement. The DG concluded that the coming into operation of the Agreement and exchange of information in pursuance to the same does not stand conclusively established. However, it seems from the e-mails sent by Bharat to ESCL that Bharat was attempting to extract monetary benefits on personal basis under the impending Agreement.

**(b) Proposed acquisition plans of ESCL by Globecast and the consequent Non-Disclosure Agreement (NDA) dated 23.09.2011 entered into between them** – ESCL submitted before the DG that commercially sensitive information was exchanged between ESCL and Globecast not under the afore-said Consultancy Agreement but as an investment proposal in ESCL was being pursued by Globecast and an





NDA to this effect had been signed between both the parties. Bharat supported such contention raised by ESCL. On the other hand, Globecast submitted before the DG that such acquisition talks were only at a preliminary stage and Globecast had engaged into acquisition talks with several other entities as well simultaneously. So the same are of no consequence. Upon being confronted by the DG with the NDA, Globecast stated that similar NDAs had also been executed with certain other potential acquisition partners and hence, Globecast could not perceive that the fact of entering into such NDA was of such relevance to the case that the same ought to have been disclosed to the DG. Non-disclosure of the same was a genuine mistake on its part. Later, when it was asked about the NDA, it had submitted the same to the DG. Upon weighing the rival submissions, the DG has concluded that the acquisition talks between Globecast and ESCL were not at a preliminary stage as contended by Globecast but the same were rather at an advanced stage. Non-disclosure of the fact of entering into an NDA by Globecast to the DG raises serious questions regarding the role of Globecast in the alleged anti-competitive activities.

- (c) **Teaming Arrangement between ESCL and Globecast for acting in concert for IPL 2012 continued to other events** – Another factor, which the DG considered as the potential umbrella under which the entire anti-competitive exchange of information took place, was the Teaming Arrangement which Globecast and ESCL had provided services on profit sharing basis. As per Globecast, such Teaming Arrangement was entered into only with regard to IPL, 2012 and was executed only with regard to Sony's feed thereof. In case of Nimbus' feed of IPL, 2012, though the Teaming Arrangement was made, the same was never executed. On the other hand, ESCL and Bharat contended that this Teaming Arrangement though entered into for IPL, 2012, in principle continued for the other events as well. The DG concluded on this aspect that although there is no evidence, which may indicate that the principle of Teaming Arrangement



was followed in the other events apart from IPL, 2012, however, the possibility of such an arrangement being continued for other events too, cannot be ruled out.

**Issue No. 3: Who are the key persons of ESCL and Globecast involved in the alleged bid-rigging?**

18. Based on the e-mail correspondence exchanged between the OPs , the DG concluded that the following persons of ESCL and Globecast were involved in the alleged anti-competitive activities and should be held liable under Section 48 of the Act:

ESCL

- Mr. Lalit Jain, Whole-time Director of ESCL;
- Mr. M.N. Vyas, Whole-time Director of ESCL; and
- Mr. Atul Gupta, Deputy Chief Operating Officer of ESCL.

Globecast

- OP-4/ Mr. Bharat K. Prem – Director (Business Development) of OP-2 (Ex-employee);
- OP-5/ Mr. Jason Yeow – In-charge of Sales of Globecast in South-east Asia, Hong Kong and Macau;
- Mr. Vinay Sewal – Managing Director of OP-2;
- Ms. Darby Sanchez – Chief Executive Officer of OP-3;
- Mr. Soo Yew Weng – Head Sales of OP3; and
- Ms. Marie Seah of OP-3.
- Mr. Michelle Gossetti – Chief Financial Officer of OP-3.

19. Post the submission of the DG investigation report on 08.09.2015, the Commission, *vide* order dated 22.12.2015, directed the DG to allow ESCL and Bharat to cross-examine the witnesses who have deposed against them and whose statements have been relied upon by the DG in its report, unless such statements are admitted by the respective party. The DG was instructed to submit a supplementary report on the afore-said aspects. Further, *vide*



another order dated 13.10.2016, the Commission, on request, allowed Globecast also to cross-examine certain witnesses who have deposed against it and whose statements have been relied upon by the DG in its report. The DG was instructed to permit such cross-examination and include this aspect as well in its supplementary report. The DG submitted its supplementary report on cross-examination on 23.01.2017. In the supplementary report, the DG stated that the factual evidence as listed in the main investigation report with respect to ESCL and Globecast stands intact and the findings of the DG report do not stand contradicted by any such cross-examination. With regard to Bharat, the DG stated that the earlier evidence which showed that Bharat played an active role in the exchange of commercially sensitive information also stood un-contradicted.

#### **Consideration of the Investigation Report by the Commission:**

20. The investigation report as well as the supplementary report of the DG were forwarded to the parties as well as their individual officers found liable by the DG under Section 48 of the Act on 28.09.2017 directing them to file their respective objections/ suggestions thereto and appear for oral hearing on 21.11.2017. Oral hearings finally took place on 03.01.2018 and 11.01.2018 and the Commission decided to pass an appropriate order in due course.

#### **Objections/ Submissions of the Opposite Parties and their Individuals:**

21. The various contentions raised by the Opposite Parties and the individuals found liable by the DG under Section 48 of the Act, in their written submissions as well as during the oral hearings, are being referred to and dealt with, as required, below while analysing the matters on merits.

#### **Analysis:**

22. The Commission has perused the investigation reports submitted by the DG, the submissions filed by the parties and their individual officers, the other material available on record and also heard the oral arguments of the



respective learned counsel representing the OPs and their individual officers. It is admitted by both ESCL and Globecast that they were involved in the exchange of commercially sensitive information with each other for the tenders floated by various broadcasters for availing broadcasting services for *ad hoc* sporting events.

23. With respect to the background in which exchange of commercially sensitive information took place between ESCL and Globecast, ESCL and Bharat have stated that the same was done because of the proposed acquisition of ESCL by Globecast, pursuant to which an NDA was executed between them, and because of a Teaming Arrangement which existed between ESCL and Globecast. On the contrary, Globecast has submitted that the actual reason behind the same was the Consultancy Agreement entered into between ESCL and Bharat and the same was done by ESCL and Bharat without the knowledge of Globecast (except in IPL, 2012 –Sony’s Feed – India Rights) under the pretext of the proposed acquisition. The Teaming Arrangement, though admitted by Globecast, is stated to be only for IPL, 2012 (Sony’s Feed – India Rights) and for no other events and the proposed acquisition talks, as per Globecast, were only at preliminary stage.
24. In the submissions made before the Commission, ESCL has agreed with the findings of the DG. It has stated that the assertion of Globecast that Bharat’s conduct was not within their knowledge and that he had committed anti-competitive acts without their knowledge is incorrect and devised with the sole purpose of evading responsibility of the anti-competitive acts that took place with ESCL. Even Bharat had stated that ESCL and Globecast had prepared the entire corporate strategy and he was merely a pawn of Globecast to execute its strategy. It was in fact Globecast which had the motive of dictating its terms and conditions and ESCL was merely following the terms laid down by Globecast under the garb of Globecast acquiring ESCL.
25. Globecast in its submissions has admitted its involvement in the cartel and agreed with the DG in relation to the finding of bid-rigging cartel for the 14



sporting events. It has submitted that the DG has correctly recorded that ESCL and Globecast through Bharat agreed amongst themselves to clandestinely collaborate over their response to request for quotations and that under this arrangement there was exchange of confidential and commercially sensitive information related to bid between the parties, which enabled them to coordinate their bidding. ESCL did not effectively compete with Globecast as they knew in advance what the other was going to bid as the bids were decided in consultation with each other.

26. However, Globecast has argued that the entire anti-competitive conduct was the brain-child of Bharat and Globecast had no knowledge of the same except in IPL, 2012 (Sony's Feed – India Rights). The communications for the remaining events took place through Bharat's personal Gmail ID and not through his official e-mail ID. Moreover, in none of such e-mails, any Globecast personnel was marked. Anyhow, Globecast concedes to the fact that it may be held vicariously liable for the acts of its employee Bharat. With respect to Neo/Nimbus contracts, Globecast has asserted that mere fact that it was unwilling to offer more lenient credit terms to Nimbus does not prove that there was intention to make ESCL win by manipulating the bids. Therefore, such portrayal by Bharat is incorrect. ESCL and Bharat have merely made bald assertions that Bharat was acting on behalf of or under instructions of Globecast.
27. On the contrary, Bharat has submitted that all the information exchanged with ESCL was in knowledge of Globecast and, in fact, the same was done at their behest. In the backdrop of the ongoing proposed acquisition, he was asked to work in close co-ordination with ESCL. The sharing of commercially sensitive information through him was part of the understanding between Globecast and ESCL. Hence, for such exchanges, he used both his personal Gmail ID and official account, a fact which was known to Globecast.



28. Bharat has submitted that ESCL had placed all the bids for the events during the period from 2011-12 after proper discussions with Globecast since there was serious discussion on the proposed acquisition. All the bids were placed with the understanding that in the tenders where Globecast would front end and win the tenders, it would procure the ground services from ESCL and in the tenders where ESCL would win, satellite services would be taken from Globecast.
29. Bharat further submitted that during the period between IPL, 2011 and IPL, 2012, all cricket rights were held by Nimbus/ Neo Sports. Due to huge financial dues from Nimbus, Globecast had decided either to take 50% advance payment or opt out of Nimbus' contracts. Since 50% advance payment was not agreed upon by Nimbus, the work was decided to be given to ESCL. This was the reason why Globecast started losing contracts from Nimbus. Also, some parts of this project work were given by ESCL to Globecast and this was in fact, part of a larger strategy between Globecast and ESCL, so that business would remain between the two of them only. E-mail dated 09.03.2012 sent by Jason to the entire team of Globecast Singapore congratulating for the success of ESCL, Globecast's partner, and European Broadcasting Union's (EBU) loss in the IPL 2012-Nimbus project shows that Globecast and ESCL were aware of the discussions and were spearheading the process.
30. Jason has denied having any knowledge of meetings and Teaming Arrangement between ESCL and Globecast. He has stated that he was a mere pawn in the grand scheme of things engineered by ESCL and Globecast. He was not Bharat's superior officer as claimed by Globecast. The evidence in the case suggests that Bharat reported directly to Mr. Vinay Sewal.
31. Having perused the submissions of the OPs, the Commission finds that neither ESCL nor Globecast has denied that they had indulged in the conduct of bid rigging in the tenders for broadcasting of 14 sporting events in 2011-12, which are subject matter of this investigation. Several contentions have



been made by ESCL, Globecast as well as Bharat with respect to background in which anti-competitive conduct took place, *namely*, the proposed acquisition talks and consequent NDA, the Consultancy Agreement and the continuance of the Teaming Arrangement. However, since ESCL and Globecast have accepted that their conduct was in contravention of the provisions of Section 3(3)(d) read with Section 3(1) of the Act, the Commission finds that such contentions become inconsequential and would not impact the final finding in the matter. Accordingly, the same are not dealt with in this order.

32. The Commission now proceeds to examine the conduct of the OPs regarding the exchange of commercially sensitive information event-wise, which led to the rigging of bids in tenders for procurement of broadcasting services for various sporting events during the year 2011-12.

### **Event-Wise Analysis**

#### **Australia Tour to Sri Lanka (August – September 2011)**

33. The DG noted that although Globecast and ESCL submitted separate bids for this project, they did not effectively compete with each other. The statements of the parties and e-mail correspondences between Bharat and ESCL shows that the quotes sent to Ten Sports by Globecast and ESCL were discussed and co-ordinated amongst them in violation of Section 3 (3) (d) read with Section 3 (1) of the Act. They know in advance what other was going to bid and the bids were decided in consultation with each other.
34. In this regard, the Commission has perused the chain of e-mails exchanged amongst the OPs in relation to this event, which commenced with the e-mail dated 26.06.2011 sent by Mr. Manaf Ahammad of Ten Sports to Bharat for Globecast's quote for the event. Between 05.07.2011 to 08.07.2011, several e-mails were exchanged between Bharat and ESCL regarding the quotes to be submitted by Globecast and ESCL. It is observed that Bharat not only shared Globecast's quote with ESCL, but prepared ESCL's quotes as well.



All the quotes were decided, co-ordinated and pre-approved amongst Bharat and ESCL before sending to Mr. Manaf as final quotes. Finally, as per the arrangement amongst Globecast through Bharat and ESCL, the tender was won by ESCL but ESCL did not take the service of Globecast as satellite provider and provided both ground segment services as well as satellite bandwidth services itself.

Cricket Tournaments in Zimbabwe (August-September, 2011)

35. For this event, the DG has referred to an e-mail dated 08.07.2011 from Bharat to Mr. M. N. Vyas of ESCL wherein it was *inter alia* stated as follows:

*“As stated earlier, I have spoken to our GCSA (GlobeCast South Africa) colleagues and discussed with them the modus operandi for doing this project through you...”*

The DG has noted that this e-mail as well as other communication for this event were made by Bharat from his Gmail account marking his colleagues from OP-3 and Globecast Africa and therefore, Globecast was aware that he was using his Gmail account for official communications.

36. Globecast has contended that the examination of evidence made by the DG is incorrect as it was never Globecast’s position that it was unaware of Bharat’s use of Gmail account for official communications. Employees were permitted to use personal e-mail IDs for official purposes on occasions such as when the employee was on-site and had difficulty in accessing corporate e-mail account due to poor connectivity. Its contention was rather with respect to Bharat’s submission that he was instructed by Globecast to share such information, a fact which has not been corroborated by the DG from any letter or e-mail.
37. With regard to the e-mail dated 08.07.2011 referred to by the DG, Globecast has contended that the DG has only read a stray line of the e-mail and failed to consider the entire context of the e-mail. Further, mere statement that





*modus operandi* was being communicated to Globecast does not by itself suggest that the management was aware of the arrangement which Bharat had with ESCL.

38. Bharat agreed that there was communication with Ten Sports regarding the event. He also cited a few e-mails exchanged with Mr. Manaf Ahammed of Ten Sports (Mr. Manaf of Ten Sports) to highlight that it was in Globecast's interest that he was having discussions and negotiations with ESCL.
39. The Commission has perused the e-mail trail with respect to this event. It is observed that on 14.06.2011, Mr. Manaf approached Bharat for quotes. On 18.06.2011, Bharat wrote to Ms. Asma Hassan of Globecast about this request from Mr. Manaf. Thereafter, on 06.07.2011, quotes for availing ground segment services of ESCL were finalised by Globecast and sent to Bharat, who contacted Mr. Abdul Gardee of Globecast to re-work the quote and bring it down so that Globecast had a fighting chance to win. Once the quote was re-worked, Bharat wrote to ESCL that he had a discussion with Globecast Africa colleagues on the *modus operandi* of doing the project with ESCL. Thereafter, Bharat told ESCL to obtain Globecast's quote for ground services. On receiving the quote of Globecast, Mr. Lalit Jain of ESCL told Bharat that the quote from Globecast was too high. In response, Bharat suggested that they should let go as Octagon had already quoted very low price to Mr. Manaf for the tender.
40. From the above e-mail trail, it is evident that even though the tender for this event was won by another competitor *namely* Octagon, there was consultation between Globecast through Bharat and ESCL's officials with the respect to the amount to be quoted by them to the broadcaster. Moreover, as per the DG report, both Globecast and ESCL submitted separate consolidated bids to Ten Sports. Thus, though neither Globecast nor ESCL won the event their conduct was clearly in contravention of the provisions of Section 3(3)(d) of the Act as the resulted in manipulation of the bidding process and reduction in competition for bids.



### Corporate Trophy (September 2011)

41. With respect to this event, the DG observed that though Globecast and ESCL had submitted separate bids to Neo/ Nimbus, the e-mails dated 12.08.2011 and 13.09.2011 sent from Bharat to ESCL reveal that ESCL and Globecast had clandestinely collaborated over their response to RFQ to the client. As Globecast was not willing to work with Neo/ Nimbus unless it agreed on 100 % advance payment, it made commercial sense for Globecast to provide satellite services through ESCL without exposing itself to commercial risk.
42. As stated earlier, Globecast has argued that unwillingness to work on a more lenient terms does not prove that Globecast was manipulating the bids. Rather the fact that Bharat had the entire correspondence for this event through his Gmail account without marking any of the Globecast personnel disproves that the management had knowledge of or had instructed him to exchange price information.
43. On the other hand, Bharat has submitted that the demand of 100 % advance payment was made to Nimbus on instructions from Mr. Soo Yew Weng as depicted by the e-mails exchanged between them on 11.08.2011. Since Globecast was exploring strategic investment and possible Teaming Arrangement with ESCL, it had asked ESCL to front-end this Nimbus/ Neo project to protect its own commercial interest.
44. The Commission has perused the e-mails in relation to this event and observes that the e-mail trail shows that Mr. Taljit Nirankar of Nimbus Sports (Mr. Taljit of Nimbus) had separately asked for quotes for space and ground services from Globecast as well as ESCL on 11.08.2011. Thereafter, Bharat wrote to Mr. Soo Yew Weng of Globecast from his official account that, as discussed, he will quote 100 % advance payment terms to Nimbus. Once Globecast's draft offer for Nimbus was confirmed by Mr. Soo Yew Weng, Bharat forwarded the same to Mr. Atul Gupta of ESCL *vide* e-mail dated 12.08.2011 stating as follows:



*“Dear Atul, As spoken today, please find attached the draft quote from GC to Nimbus without the figures, which I will let you know later. It has BOM for HD and SD set ups and also scope of work that we offer. You can use this to draft your quote. We offer them AS5 for domestic matches, but you can offer them IS-10/ IS-17/ AS5 whichever works out the cheapest. Regards”*

45. Thereafter, on 16.08.2011, Bharat sent the Globecast’s quote along with the payment terms to Mr. Taljit of Nimbus. Soon thereafter on the same day, ESCL also sent its quote to the client. On 18.08.2011, Ms. Sonali Rege of Neo wrote to ESCL asking for discount. After ESCL offered discounted rate, Ms. Sonali Rege sent a confirmation mail to ESCL for this event.
46. From the above discussion, it is evident that Bharat was communicating with Nimbus on the quotes from Globecast and also the payment terms for the event. Moreover, Bharat and ESCL also had discussions regarding the quotes to be given to Nimbus. The Commission finds that the evidence in the case shows that Globecast through Bharat had conspired with ESCL to rig the bid for this event and, therefore, both acted in contravention of the provisions of Section 3(3)(d) of the Act.

Champion League Twenty-Twenty (September-October 2011)

47. The DG observed that though Globecast and ESCL had submitted separate bids to ESPN, the e-mails reveal that ESCL and Globecast through Bharat had collaborated over their response to RFQ to ESPN. It was also observed that certain cost sheets were shared between ESCL and Globecast through Bharat with reference to this event. However, the DG has concluded that due to various overlapping events it could not be established with certainty whether the cost sheets were shared as part of the consultancy agreement or profit sharing arrangement/ acquisition talks. Notwithstanding, from the perspective of broadcasters, the fact remains that there was concerted action



between ESCL and Globecast that resulted in bid-rigging amounting to violation of Section 3(3)(d) of the Act.

48. Regarding this event, Bharat has stated that it was initially agreed between ESCL and Globecast that the project would be executed on a 50-50 profit sharing ratio but they later came to an agreement of 42-58 ratio in favour of Globecast. It is averred that the e-mail dated 24.12.2011 which was sent by him to Mr. Lalit Jain of ESCL refers to the share of Globecast by using name of Jason and Bharat as a proxy. This was done upon instructions of management of Globecast. Further, Globecast wanted to execute this event with ESCL as part of its wider strategy and it was felt by Globecast that as previous two tenders were executed by with Indiasign, it may have to create false pretense in the market in order to work with ESCL. Therefore, it was decided that in order to give plausible reason to Indiasign of not working with them on this event, Globecast would ask ESPN for its assistance. Globecast used Jason to convince ESPN to force Globecast in using ESCL as its ground service provider instead of Indiasign. It is claimed that Bharat was given instructions to work in close co-ordination with ESCL for the project and to keep the quote of ESCL in line with the quote given by Globecast.
49. On the other hand, Globecast has stated that the DG has relied upon baseless and incorrect statements of Bharat regarding this event and failed to give any finding. On Bharat's submission, Globecast has contended that Bharat's claim that references to Jason and himself in the context of profit sharing actually refer to Globecast is contrary to the record. The entire chain of e-mails exchanged from 16.12.2011 to 29.12.2011 shows that Bharat was negotiating a share for Jason. Bharat and Jason's share cannot be interpreted to mean Globecast's share. If Bharat and Jason both referred to Globecast, there would be no need or benefit of adjusting shares between themselves as the e-mails show. Moreover, ESCL had offered ground services to Globecast for a fee and there was no profit sharing between them as was the situation with Indian Premier League (Sony), 2012. Further, Globecast has the



absolute freedom to use any ground service provider. If Globecast wanted to use ESCL, then there was no reason for it to be forced.

50. The Commission has perused the e-mail correspondence with respect to this event and notes that regardless of the background in which information exchange took place, the fact remains that Globecast through Bharat and ESCL were indeed discussing the prices to be quoted for the tender. Regarding role of Jason in this event, it is noted from the e-mail trail that on 21.07.2011, Bharat wrote to ESCL about Jason having joined hands for this event. However, Jason was not marked in this e-mail. Similarly, in the e-mails dated 24.12.2011 and 27.12.2011, though Bharat discussed Jason's share for this project, he neither marked Jason in the e-mails nor there is any other e-mail from Jason or statement by any party on record to establish Jason's involvement. Nevertheless, it is noted that for this event both Globecast and ESCL placed separate bids with the broadcaster and the e-mail evidence shows that they decided these bids in consultation with each other. Accordingly, the Commission finds the conduct of Globecast and ESCL to be in contravention of the provisions of Section 3(3)(d) of the Act.

#### Domestic Cricket Season 2011-12 and International Series

51. The DG observed that though Globecast and ESCL had submitted separate bids for Neo's contract for these events, the e-mails reveal that ESCL and Globecast through Bharat had collaborated over their response to RFQ to the client. From the perusal of the records, the DG found that Globecast had asked Nimbus/ Neo for payment up-front as it was significantly in arrears to Globecast for past services. The DG noted that although Globecast alleged that it lost the tender because of Bharat's collusion with ESCL, it appeared from the records that Globecast was in fact not keen on front-ending the project of Nimbus at all because of earlier issues.
52. Globecast has argued that it was Bharat who had manipulated the bids in favour of ESCL. Bharat had prepared both Globecast's and ESCL's bid in



consultation with Nimbus and made sure that ESCL's quote was such that it would put Globecast at a disadvantageous position.

53. Bharat on the other hand has submitted that Globecast deliberately lost this contract in favour of ESCL because of its payment issues with Nimbus and anyhow, ESCL was to take the satellite space services from Globecast only.
54. The Commission has examined the trail of e-mails from 30.08.2011 to 25.09.2011 between Bharat, ESCL and Mr. Taljit of Nimbus. It is noted that 100% advance payment by Neo/Nimbus was a requirement for Globecast to do business with them, which also was an issue with Neo/Nimbus. Further, Bharat and Mr. Atul Gupta of ESCL seem to have exchanged quotes for Nimbus/Neo and collaborated in such a manner that the bid goes in favour of ESCL. One of the e-mails depicting of such collaboration is e-mail dated 13.09.2011 from Bharat to Mr. Atul Gupta of ESCL, which states as follows:

*“Dear Atul, As discussed, please find attached the numbers for your quote to Neo. Please give them the quote for all three configurations as stated in the attached sheet in your own format. You can change the language of the description of the line items so that it looks different from that of GC (Globecast).....The payment terms would be 100% within 30 days of receipt of invoices by Neo. Also, please clearly specify in the terms of the quote that the quote is valid for the entire season of Neo as per the schedule they have sent and not on a per event basis, i.e. Neo should release one composite order for the entire season of both Domestic and International events. Based on this information can you send me your draft quote for review today. Regards, Bharat.”*

55. On perusal of above and other e-mails exchanged between Globecast through Bharat and ESCL for this event, the Commission finds that the information exchange took place between the two was in contravention of provisions



Section 3(3)(d) of the Act. Even though the same took place through Bharat only, Globecast is responsible as Bharat, an employee of Globecast indulged in bid-rigging on Globecast's behalf.

2011 Formula 1 (Motor Sport) Races from Buddh International Circuit

56. With respect to this event, the DG found that Globecast's contention that Bharat manipulated Globecast's bid in favour of ESCL is not established from the available documents. In this regard, the DG referred to an e-mail dated 27.09.2011 wherein Bharat had informed the broadcaster that Globecast would "*execute this project using the services of Essel Shyam, who were also doing the world feed services for F1 race.*"
57. Globecast has contended that its management was not aware of the request for proposal made in relation to this event nor they were consulted by Bharat in this regard. Further, it is argued that it was because of the Consultancy Agreement that Bharat was propagating ESCL as the ground service provider. Further, if Bharat was aware that ESCL would be awarded the bid since it was doing the world feed for F1 race, there was no reason for him to put a separate bid for Globecast at all.
58. On the other hand, Bharat has explained that since the client had a limited budget, it found Globecast's quote to be on a higher side and was, therefore, looking for cheapest possible solution to cover the event. Since ESCL already had the global rights from F1 organisers and its ground equipments were already set, it was decided that ESCL would provide additional services as well as that would work out cheaper. Therefore, Bharat was required to introduce the client to ESCL to work as the front-end service provider.
59. The Commission has perused the relevant e-mail correspondence. It is observed that on 19.09.2011, Mr. Chandrashekhhar of Asia Sports channel had asked Bharat for quotes for uplinking facilities from Greater Noida F-1 track to ESPN Star Sports, Singapore. Bharat replied that Globecast would offer Rs. 7,15,000/- and it would require 100 % advance alongwith order



confirmation. On 27.09.2011, Bharat informed Mr. Chandrashekhar that Globecast would execute the project using ESCL's services, who is already doing the world feed services for F1 race and that Mr. Atul Gupta of ESCL would be the point of contact. Consequently, ESCL bagged the contract.

60. The Commission observes that the above e-mails show that Globecast through Bharat had knowledge that RFQ had been received for this event. Globecast has clearly stated before the DG that Bharat had the freedom or discretion to quote the standard rate on behalf Globecast without approval. This has been re-iterated in the statements of the parties as well. Therefore, having given authorization or freedom to its employee to negotiate and submit quotes on its behalf, Globecast cannot go back and claim unawareness and lack of knowledge. Though in the end, ESCL who won the bid did not choose to work with Globecast as the back-end partner for this event, the evidence on record shows that bid price for the tender was exchanged between Bharat and ESCL. Globecast and ESCL submitted separate quotes for the event though both were aware of each other's quote. The Commission finds this conduct to be in contravention of the provisions of Section 3(3)(d) the Act.

New Zealand's tour to Zimbabwe (October-November 2011)

61. From the e-mails dated 03.10.2011 and 04.10.2011 sent by Bharat to ESCL and Mr. Manaf Ahammed of Ten Sports respectively, the DG has found that though Globecast and ESCL had submitted separate bids for this event, ESCL and Globecast through Bharat collaborated over their response to RFQ to the client. The DG has observed that Globecast, by allowing ESCL to bid lower, was able to prevent ESCL from partnering with its competitor, Octagon.
62. Regarding this event, Bharat has stated that since ESCL and Ten Sports belonged to the Zee group, Ten Sports insisted on availing services of ESCL. Further, since Globecast did not want to lose the tender at all, it was decided





that business should remain with Globecast and ESCL. Accordingly, the bid was co-ordinated with ESCL.

63. On the other hand, Globecast has argued that Bharat's such contention is incorrect, particularly when ESCL itself has submitted that all its dealings with Ten Sports were at arm's length. If such contention were true, there would have been no need for Bharat to share Globecast's potential bid with ESCL and recommend ESCL to give a lower quote. Further, the DG's finding that Globecast had collaborated with ESCL as it did not want ESCL to partner with Octagon is also incorrect. Globecast was under no obligation to bid for this project. The mere fact that Globecast had submitted a bid and Bharat had to explain the reason why the bid did not succeed itself shows that Globecast wanted to compete for the business honestly.
64. The Commission has perused the e-mail correspondence between Mr. Manaf of Ten Sports, Bharat and Globecast from 29.09.2011 to 04.10.2011 with respect to this event. The communication started with e-mail dated 29.09.2011 whereby Mr. Manaf asked Bharat for a quote for the event. Bharat asked Ms. Asma Hassan of Globecast for the same, marking copy of the e-mail to Mr. Abdul Gardee and 'Asia Planning'. Next day, Ms. Asma Hassan sent the quote to Bharat which he forwarded to ESCL on 03.10.2011 alongwith suggestion of lower quote that may be offered by ESCL. From such e-mail trail, it is evident that Bharat was aware of both Globecast's and ESCL's quote for this tender and price co-ordination hence, took place. Though the e-mails do not show that an officer of Globecast management other than Bharat was aware of such sharing of quote; nevertheless, since both Globecast and ESCL quoted separately as competitors while at the same time, they had knowledge of each other's quote, shows collusion amongst Globecast and ESCL in bidding for this event.



Bangladesh Premier League (February 2012)

65. The DG has observed that though Globecast and ESCL had submitted separate bids to Channel Nine and were competing with each other, e-mails exchanged on 12.01.2012 and 13.01.2012 suggest that the parties had coordinated their bids for this event.
66. Bharat in this regard, has stated that for this event, two kits were required to be used and Globecast had only one and that too in Singapore. Considering the viability and the expenses, it decided to use the service of ESCL who already had two in-house kits in India. This decision was largely driven by the proposed acquisition talks so as to strengthen the relationship between Globecast and ESCL. Further, the proposed acquisition talks were known only to few personnel of Globecast including Bharat. Hence, when Bharat had to inform the operations team of Globecast which was unaware of the proposed acquisition, he had no choice but to come-up with an alternative story that ESCL won owing to lower cost structure with its in-house resources. He was merely implementing decision of the management.
67. On the other hand, Globecast has stated before the DG that Bharat not only shared Globecast's bid with ESCL but also prepared a revised quote for ESCL such that ESCL's proposal was marginally lower than Globecast's quote. It was also stated that right after sending the revised quote to Channel Nine on 22.02.2012, Bharat sent the same to ESCL too. As a result of such information exchange, Globecast lost the tender to ESCL.
68. The Commission notes that the e-mail trail of this event begins with e-mail dated 12.01.2012 whereby quotes were invited from Globecast and ESCL by Channel Nine. On 13.01.2012, Bharat sent Globecast's quote and then shared the same with ESCL whereafter ESCL sent its quote as well. Thereafter, upon asking, on 22.01.2012, both Globecast and ESCL send their revised quotes as well wherein yet again, Bharat told ESCL about the revised quote of Globecast. On 23.01.2012, ESCL's offer was accepted. Thereafter,



on 24.01.2012, Bharat wrote to ESCL informing them that he had got the deal closed for Bangladesh Premiere League Cricket project starting next month. On 27.01.2012, when the operations team of Globecast asked Bharat about this event, Bharat replied saying that the deal was lost to ESCL as it was using its in-house SNG and in-house IS-10 space. Later on 08.02.2012, ESCL even wrote to Bharat providing satellite details and asking for advice.

69. The Commission notes that Bharat had shared the draft quotes of Globecast with ESCL. After ESCL won the contract, further e-mails were also exchanged which show complicity of Globecast through Bharat with ESCL for this event. Thus, the information exchange that took place between Globecast through Bharat and ESCL with regard to this event is found to be in contravention of Section 3(3)(d) read with 3(1) of the Act.

i1 Super Series (February 2012)

70. The DG has found Bharat and Mr. Atul Gupta of ESCL discussing quotes for this event in e-mails dated 20.12.2011 and 21.12.2011. From these, the DG concluded that ESCL and Globecast through Bharat had exchanged commercially sensitive information which enabled them to co-ordinate their bids.
71. In this regard, Globecast has cited an email dated 20.12.2011 wherein Bharat had sent the revised consolidated quote for the services to Mr. Gaurav Bahal of Sportzworks and right after this, the mail was sent to ESCL from his Gmail account. As per Globecast, this showed a deliberate attempt on part of Bharat to conceal his actions with ESCL from Globecast. When this fact is overlaid with the fact that Consultancy Agreement was in effect, it leads to irrefutable conclusion that Bharat's dealings with ESCL from his personal e-mail ID were not for 'official purposes'. No evidence has been provided in support of his assertion that the management had asked him to send such e-mails from his personal e-mail account and not copy any Globecast personnel.



72. In contrast, Bharat has submitted that the revised quote of Globecast was not acceptable to the client and hence, the option to use ESCL's resources for this event was explored. To use ESCL's resources for the event at all locations was found by Globecast to be much cheaper than to take the broadcasting services from its own entities. Also, in line of larger business strategy, Bharat was asked to share the quote with ESCL for their reference.
73. In this regard, the Commission notes that on 10.11.2011, Bharat received an e-mail from Sportzworkz asking for a quote. On 22.11.2011, Bharat gave him a partial quote excluding Bahrain location and thereafter the quote for the entire project on 02.12.2011. On 03.12.2011, Sportzworkz sent to Bharat the schedule of all races and asked for a settlement of the budget for ground services. However, same was not acceptable to Bharat and he on 04.12.2011, wrote back the revised costs. On 05.12.2011, Bharat's quotes were confirmed but the option of availing cheaper DSNG in Bahrain was kept open. On 19.12.2011, discussions between Bharat and Sportzworkz on changed schedule took place. On 20.12.2011, Bharat sent Globecast's revised quote to Sportzworkz. On the same day, Bharat also forwarded this quote to ESCL and suggested that ESCL can send the final offer as earlier. From a bare reading of the above e-mails, the Commission finds that Bharat had shared the bid price of Globecast with ESCL. This in itself amounts to infringement of law by ESCL and Globecast (through Bharat).

World Series Hockey Project (February-March 2012)

74. The DG has referred to e-mails dated 01.02.2012, 02.02.2012 and 20.02.2012 and found that Bharat had discussed quotes of Globecast and ESCL with Mr. Atul Gupta of ESCL. Accordingly, bids were decided in consultation with each other. The DG noted that Globecast had mentioned that it had lost the tender to ESCL, but it did not specify that satellite services were eventually provided by Globecast to ESCL as back-end partner. The fact of the matter was that Globecast had payment issues with Nimbus. This



arrangement though exposed ESCL to payment delays, Globecast was able to provide satellite services without undertaking such risk.

75. Here again, Globecast has submitted that un-willingness to work on lenient payment terms does not indicate that Globecast manipulated the bids. It was also contended that the above-mentioned e-mails sent by Bharat to ESCL were without their knowledge. It was also stated in their submission before the DG that when Mr. Taljit of Nimbus had informed Bharat of the lower bid received from EBU, Bharat had revised ESCL's bid and not Globecast's in line with EBU's quotes.
76. On the other hand, Bharat has stated that payment terms suggested by Globecast were not acceptable to the client and the rates quoted were found to be on the higher side. In line of larger business strategy, for the purpose of strengthening the relations with ESCL, and with the objective of keeping away other competitors, it was decided that ESCL would front-end the project and Globecast would be back-end partner. Therefore, he was asked to work in close co-ordination with ESCL and to ensure that ESCL won the tender.
77. In this regard, the Commission notes that for this event, Mr. Taljit of Nimbus had asked Bharat and ESCL for quotes and space availability *vide* e-mail dated 27.01.2012. On 02.02.2012, after consultation with Bharat, ESCL provided its commercial proposal to Mr. Taljit and on 03.02.2012, it sent the revised quote suggested by Bharat to Mr. Taljit. In reply, on 09.02.2012, Mr. Taljit wrote to ESCL asking for a cheaper option. ESCL consulted regarding this with Bharat on 17.02.2012. In the meanwhile, Mr. Taljit informed ESCL of a cheaper quote from another vendor and asked it for re-consideration of its quote. In reply to ESCL, Bharat sent an e-mail forwarded to him by Mr. Taljit, which comprised an e-mail from Mr. R.K. Sinha of EBU informing that EBU would waive off the charges for set-up and idle days. After re-consideration, ESCL sent its revised offer to Mr. Taljit. When on 21.02.2012, Ms. Angeline Cheng of Globecast asked Bharat to share the reason why



Globecast lost the bid to ESCL, Bharat replied that ESCL won the bid because it didn't ask for advance payment like Globecast.

78. The Commission observes from the above e-mails that ESCL and Bharat had shared information regarding their price bid for this event. However, interestingly, the trail of e-mails also reveal involvement of Mr. Taljit of Nimbus who shared the details of bid of another competitor namely, EBU with Bharat. As a result, ESCL won the tender. Such sharing of bid price indicates that ESCL and Globecast through Bharat have rigged the bid. Hence, they are liable under the Act.

Asia Cup 2012 (March 2012)

79. For this event, the DG noted from the e-mails exchanged on 25 and 26 January, 2012 that there were discussions between Bharat, Jason and Mr. Soo Yew Weng of Globecast regarding co-ordination of bids with ESCL. Another e-mail dated 24.02.2012 to Nimbus showed Bharat was discussing quotes with ESCL and even had a comparison done between ESCL and EBU quotes who had offered lower rate. Since Globecast knew from before that it might not be able to up-front the event due to payment issues with Nimbus, it was exploring other options to get involved. The above e-mails hence, show that Globecast was co-ordinating its bids with ESCL for the project.
80. Globecast has made the same argument in this regard, as it has made above in other Nimbus events. Bharat has also made the same arguments as made above for World Series Hockey Project.
81. For this event, the Commission notes that on 19.01.2012, Mr. Taljit of Nimbus asked for a quote from Bharat, who informed about the same to Jason on 25.01.2012. Further, on 26.01.2012, Bharat informed Jason that ESCL has sent its quote to Nimbus. Thereafter, discussions took place between Bharat, Jason and Mr. Soo Yew Weng of Globecast. On 29.01.2012, Bharat sent Globecast's quote to Nimbus about which he informed Jason on 21.02.2012 stating that chances for Globecast to win are less due to payment



terms. On 24.02.2012, Bharat wrote an e-mail to Mr. Taljit providing a comparison of EBU with ESCL demonstrating that overall cost of EBU would work out to be higher than that of ESCL. On 25.02.2012, Bharat forwarded to ESCL the comparison sheet of EBU with ESCL sent to Mr. Taljit. In accordance therewith, ESCL sent its revised quote to Mr. Taljit on 26.02.2012. Eventually, ESCL won the contract.

82. From the above e-mails, it is clear that Bharat, despite being an employee of Globecast, did price calculations and comparison between EBU and ESCL's quotes for ESCL. He further stated that once Mr. Taljit is done going through, he will advise ESCL to work on a revised quote. Moreover, he even forwarded the comparison sheet sent by Mr. Taljit to ESCL and then on the next day ESCL sent the revised offer for the event. This clearly shows that Bharat was working for the benefit of ESCL so that the contract was won by ESCL. This, when seen with the discussions held between Globecast personnel, is evident of the fact that Globecast was aiming for ESCL to win this contract and then avail satellite services of Globecast. Complicity between Globecast and ESCL on this count is hence, evident which is in violation of Section 3 (3) (d) read with 3 (1) of the Act.

Cricket Tournament in Sri Lanka 2012 (June-August 2012)

83. With regard to his event, the DG observed that though Globecast and ESCL had submitted separate bids and competed with each other, the e-mails dated 13.04.2012, 16.04.2012 and 18.04.2012 exchanged between Bharat and ESCL and also e-mails dated 17.04.2012, 18.04.2012 and 26.04.2012 exchanged between Bharat, ESCL and Ten Sports clearly show exchange of commercially sensitive and confidential information amongst the OPs.
84. The Commission has noted the contentions raised with regard to this event by the OPs before the DG as well as the Commission. The Commission thereafter has perused the e-mail trail with regard to this event which started with e-mail dated 11.04.2012, whereby Mr. Manaf of Ten Sports invited



quotation from ESCL and Bharat. On 13.04.2012, Bharat sent Globecast's draft work sheets for the events (bulk deal and single event deal) to ESCL. After seeing the same, on 16.04.2012, ESCL sent its draft quote to Bharat. After that, the next day, it sent its quote to Mr. Manaf. On 18.04.2012, Bharat sent Globecast's quote as well to Mr. Manaf and the same were even forwarded to ESCL. On 26.04.2012, Mr. Manaf asked for revised quotes as it was decided that Ten Sports would go with HD for India events only and the other two events might remain SD. In reply, ESCL sent its offer to Mr. Manaf. On 27.04.2012, Bharat also sent the revised quote to Mr. Manaf. Eventually who won the contract is not clear. However, all these e-mails go to show that Bharat co-ordinated with ESCL in submission of bids for this event. Hence, from the e-mails collusion between ESCL and Globecast through Bharat with regard to this event is also established.

IPL 2012 (Sony's Feed – India Rights) (April- May 2012)

85. The Commission observes that both ESCL as well as Globecast have admitted their culpability with regard to this event by acknowledging the existence of a Teaming Arrangement, which was not made known to the broadcasters. Hence, the Commission finds that the conduct of ESCL and Globecast in relation to this event was clearly in contravention of provisions of Section 3 (3) (d) read with 3 (1) of the Act with respect to this event.

IPL 2012 (Nimbus' Feed – World Rights) (April- May 2012)

86. With regard to this event, the Commission notes the submission of ESCL and Bharat that there was teaming arrangement between ESCL and Globecast for IPL 2012 Nimbus Feed - World Rights also. Though Globecast has admitted the existence of such Teaming Arrangement with regard to IPL 2012 (both domestic and world rights), it denies the execution of the same with regard to world rights. However, the following e-mail trail indicates that the Teaming Arrangement may have been executed for Nimbus Feed also.





87. In an email dated 17.01.2012, Bharat wrote to Ms. Angeline Cheng and others of Globecast that OP-2 has decided to partner with ESCL for that year's IPL project for both Sony and Nimbus Feeds. As per this arrangement, ESCL would bring in ground services and Globecast would provide satellite resources. On 19.01.2012, Mr. Jay Sim of Globecast wrote to ESCL that Globecast would once again co-operate with ESCL on this large project. Both the parties would put in joint bid for Sony as well as Nimbus Feed. On 30.01.2012 and 31.01.2012, ESCL wrote to Mr. Jay Sim about kit deployment, bill of materials *etc.* for Sony and Nimbus Feeds. On 10.02.2012, Bharat sent an e-mail to ESCL with the attachment 'World Feed Draft Quote – Nimbus'. He also sent an e-mail to ESCL attaching Globecast's internal number sheet to enable ESCL to make a direct quote to Nimbus. Thereafter, Bharat sent the final cost-sheet of ESCL for Nimbus Feed, on the basis of his discussions with ESCL, to all the main people in Globecast. On 13.02.2012, Ms. Angeline Cheng sent an e-mail to all the above persons stating that Globecast should not give a quote to the customer with very high increment to ESCL's cost. On 24.02.2012, Bharat sent Globecast's quote for transmission of Nimbus Feed to ESCL. Next day, he sent working sheet for ESCL regarding Nimbus Feed to ESCL. On 26.02.2012, Bharat sent Globecast's quote as decided to Nimbus. On the same day, ESCL sent its quote for HD World Feed to Nimbus as well. Thereafter, on 06.03.2012, ESCL sent a revised quote to Nimbus. On the same day, Bharat also sent Globecast's revised quote to Nimbus. On 07.03.2012, Nimbus informed Bharat that it has decided to go with another space and SNG vendor for that season. Thereafter, on 09.03.2012, Bharat informed Jason that the deal has been won by ESCL. He also stated that as agreed, Globecast would support ESCL with good rates for AS5 and onward delivery to BT Tower. In reply, Jason sent an e-mail congratulating the entire team of Globecast Singapore for the success of ESCL, Globecast's partner and for EBU's loss. Hence, from the above chain of e-mails, it is evident that Globecast had deliberately sent a slightly higher quote than of ESCL to Nimbus both times, because of the Teaming Arrangement. As a result, ESCL



won this contract. Thus, the above e-mail trail clearly shows that the Teaming Arrangement extended to IPL, 2012 (Nimbus Feed) as well.

88. Thus for Nimbus feed also, the Commission finds ESCL and Globecast to be liable under Section 3 (3) (d) read with 3 (1) of the Act.

### **Conclusion**

89. Having made an event-wise analysis, the Commission finds that for each of the events examined above, Globecast and ESCL were ostensibly competing with each other for provision of broadcasting services for these events. However, there was exchange of commercially sensitive information related to bidding between the two, which enabled them to co-ordinate their bids. As a result, they did not effectively compete in the bidding process and gave a pretence of competition to the broadcasters. Such conduct adversely affected and manipulated the competitive process for bidding by eliminating/reducing the competition for bids.

90. It is observed that for all events the exchange of commercially sensitive information related to bidding took place through Bharat of Globecast and Mr. Lalit Jain, Mr. Atul Gupta and Mr. M. N. Vyas of ESCL. In case of all events, except IPL 2012 (Sony's Feed – India Rights) where Globecast had entered into a teaming arrangement with ESCL on a profit sharing basis, Globecast has averred that Bharat was not authorised to share the bidding information with any person and that he did so in his personal capacity in breach of his employment contract. Further, during the period when bid rigging took place Bharat had entered into a consultancy agreement with ESCL. On this aspect, the Commission finds that although Bharat played a key role in the exchange of information of Globecast, the fact remains that he was an employee of Globecast and was authorised to act on its behalf in participating in the bidding process, Globecast has also admitted this fact. If there was any breach of contractual obligation by Bharat, Globecast always had the option to initiate separate proceedings against him. In fact, it is noted



from the records that Globecast had initiated such proceedings in India against Bharat and against Jason in Singapore. During the hearing, Globecast submitted that such proceedings were no longer being pursued. Be that as it may, the Commission finds that as Bharat was an employee of Globecast at the time of contravention of the provisions of the Act and was responsible for submission of bids on its behalf, Globecast is liable for the conduct that took place through Bharat and which resulted in bid rigging.

91. Another contention raised by Globecast is that out of fourteen events that were investigated by the DG, it won only two events, while ESCL won ten events. Even if sub-contracts are included, Globecast provided services for four events, while ESCL provided services for eleven events showing that ESCL primarily benefited from the conduct under investigation. On the other hand, ESCL has submitted that Globecast preferred to take only those contracts where there was no risk of payment and where Globecast could sell its own satellite bandwidth on its own terms. The profits/ amounts involved in contracts bagged by Globecast were much more than profitability/ amount involved in the contracts won by ESCL. It has been submitted by ESCL that Globecast through a well devised strategy ensured that ESCL acted as per its (Globecast's) design.
92. The Commission finds that the above arguments of ESCL and Globecast are irrelevant, particularly, in light of the fact that in case of IPL 2012 (Sony's Feed – India Rights), there is a categorical admission from both parties that they entered into a teaming arrangement for 50-50 profit sharing which was not made known to the broadcasters. A collusion for even one event is sufficient for the purposes of establishing contravention of the provisions of the Act by ESCL and Globecast and when collusion is established, it is immaterial which OP derived higher benefit from the collusion. In any case, in the instant matter, both OPs have derived benefit from the cartel and won contracts for one or more events.



93. In view of the foregoing analysis, the Commission is of the opinion that ESCL and Globecast operated a cartel in the above sporting events held during the period 2011-2012. They exchanged information and quoted bid prices as per their arrangements from July 2011 to May 2012. As a result, they have committed an infringement of the provisions of Section 3(3)(d) read with Section 3(1) of the Act during this period.

**Role and Liability under Section 48 of the Act:**

*a. ESCL:*

94. So far as the individual liability of person(s)/ officer(s) under Section 48 of the Act is concerned, the Commission notes that the DG has identified following persons of ESCL to be liable for its conduct under Section 48 of the Act:

- (a) Mr. Lalit Jain, Director of ESCL;
- (b) Mr. M.N. Vyas, Director of ESCL; and
- (c) Mr. Atul Gupta, Deputy Chief Operating Officer of ESCL.

95. The observations of the DG regarding the role of above person(s)/ officer(s) of ESCL are as follows:

- (a) Mr. Lalit Jain, Director of ESCL – The DG has stated that Mr. Lalit Jain was responsible for managing the day-to-day affairs of ESCL pursuant to an express authorisation dated 19.03.2005 from the Board of Directors of ESCL. Further, from the information available, it has emerged that he was aware of the exchange of commercially sensitive information that took place between Globecast and ESCL. Evidence on record shows that several of such communications either took place through him or he was copied in such communications. Some instances have been mentioned in Para 39 and 48 above.
- (b) Mr. M.N. Vyas, Director of ESCL – Similarly, with respect to Mr. M. N. Vyas the DG has found that apart from managing the day-to-day



affairs of ESCL alongwith Mr. Lalit Jain, Mr. M.N. Vyas was also responsible for the technical and marketing functions of ESCL pursuant to an express authorisation dated 19.03.2005 from the Board of Directors of ESCL. Further, as is the case with Mr. Lalit Jain, from the information available, it has emerged that Mr. M.N. Vyas was aware of the exchange of commercially sensitive information that took place between Globecast and ESCL. Several of such communications either took place through him or he was copied in such communications. One such instance is mentioned in Para 35 above.

- (c) Mr. Atul Gupta, Deputy Chief Operating Officer of ESCL – The DG has stated in his regard that he was responsible for the business development and operations of Digital Satellite News Gathering Services (DSNG Services) of ESCL pursuant to the Board Resolution dated 21.03.2005 passed by ESCL and he was duly authorised to deal with prospective customers, furnish quotations and negotiate terms and prices. Also, he was dealing with Globecast on behalf of ESCL. It is evident from the available facts that he was handling all the operations relating to DSNG services. From available information it has emerged that he was aware of the exchange of commercially sensitive information related to bidding that took place between Globecast and ESCL. Further, from the information available, it has emerged that he was aware of the exchange of commercially sensitive information that took place between Globecast and ESCL.

96. In their objections/ suggestions to the report of the DG, the above-mentioned three individuals of ESCL have contended that investigation by the DG into the role of individuals of ESCL was beyond the scope of the Commission's order passed under Section 26 (1) of the Act as the order does not contain any direction to the DG to investigate the role of the individuals. Further, it is contended that at the relevant time, the officials of ESCL were not aware of competition laws and it was only under the garb of acquisition by Globecast that commercially sensitive information was shared with it.



97. Before deciding upon the role and liability of the individuals, the Commission deems it appropriate to deal with other contentions raised by the three individuals. It is a well settled principle of law that ignorance of law cannot be a ground for escaping liability for contravention of the provisions of the Act. Another contention of the person(s)/ officers of ESCL is that the investigation by the DG into the role of individuals was beyond the scope of the Commission's Order passed under Section 26 (1) of the Act. In this regard, the Commission notes that under Section 48 of the Act it is incumbent on the DG to identify the persons/ individuals liable under that Section and no explicit direction from the Commission is necessary.
98. Coming to the liability of the three individuals under Section 48 of the Act, the Commission notes that all the three individuals of ESCL, who are its key managerial personnel, were in-charge of and responsible to ESCL for the conduct of its business during the relevant period from 2011-2012. Hence, they are liable under Section 48 (1) of the Act. Neither of them have been able to furnish any proof that the exchange of information by ESCL took place without their knowledge or they exercised all due diligence to prevent such exchange of information. Rather, there are several e-mails on record which have been received, sent or marked to all or either of them, by Bharat of Globecast, which shows their active involvement in the exchange of such information. Hence, the liability of these officials is also made out under Section 48 (2) of the Act.
99. Consequently, the Commission finds Mr. Lalit Jain, Mr. M.N. Vyas and Mr. Atul Gupta liable under Section 48 of the Act.

*b. Globecast:*

100. With regard to Globecast, the DG has identified the following persons to be liable under Section 48 of the Act:
- (a) Mr. Bharat K. Prem *i.e.* OP-4, ex-employee of OP-2;



- (b) Mr. Jason Yeow *i.e.* OP-5, Senior Director of Sales, Head of Occasional Services of OP-3;
- (c) Mr. Vinay Sewal, Managing Director of OP-2.
- (d) Ms. Darby Sanchez, Chief Executive Officer of OP-3;
- (e) Mr. Soo Yew Weng, Head–Sales of OP-3;
- (f) Ms. Marie Seah of OP-3; and
- (g) Mr. Michelle Gossetti, Chief Financial Officer of OP-3.

101. The observations of the DG regarding the role of above person(s)/ officer(s) of ESCL are as follows:

- (a) Mr. Bharat K. Prem *i.e.* OP-4, Director – Business Development of OP-2 – During the alleged period, Bharat was an employee of OP-2. He was amongst other things, involved in and responsible for the direct sales of the entire portfolio of services to broadcasters/ sports rights agencies in the Asian regions. He was, as per Globecast, effectively the man on the ground for Globecast in India. He was responsible for providing the market related information for end-to-end broadcasting services contracts (in relation to sporting events) in the Indian sub-continent and was in direct contract with the broadcasters. He reported to Jason, Senior Director of Sales, Head of Occasional Services and the two of them together were responsible for engaging with various broadcasters to provide quotes for broadcasting services. They made all decisions in relation to engagement of consultants for procuring contracts (from India) for provision of end-to-end broadcasting services and satellite services. Based on the requirements provided by the broadcasters or the consultants, as the case may be, in relation to future events, Bharat was required to send the tender requirements to Globecast’s planning department for internal costing purposes. As per the DG, Bharat was the key person responsible for the sale of services of OP-2 to the broadcasters in India. The e-mail records examined



during investigation clearly show that the entire exchange of commercially sensitive information on behalf of Globecast that resulted in bid-rigging took place through Bharat.

- (b) OP-5 i.e. Jason, Senior Director of Sales, Head of Occasional Services of OP-3 – He was in-charge of the sales for South East Asia, Hong Kong and Macau. His duties were essentially to sell Signal News Gathering (SNG) and satellite space to various television channels to deliver sports and news. According to Bharat, he was reporting to Mr. Vinay Sewal for administrative purposes and to Jason for functional purposes. Jason was heading a team of Sales Executives across Asia who were reporting to him. He was the Product Head for contribution services, which meant that he was responsible for the overall profit and loss of this product line. His responsibility also extended to operation activities. He was fully involved in the decision making process with regard to giving quotations to clients, negotiations with clients, strategic tie-ups in order to win contracts *etc.* either independently or in consultation with/ approval from the senior management of OP-3. Even Ms. Darby Sanchez and Mr. Vinay Sewal stated that Bharat reported to Jason and discussed the quotations with him. Hence, the DG concluded that Jason had an important role in the bidding process with respect to the alleged events and he was regularly required to interact with Bharat for the same.
- (c) Mr. Vinay Sewal, Managing Director of OP-2, Ms. Darby Sanchez, Chief Executive Officer of OP-3, Mr. Soo Yew Weng, Head–Sales of OP-3, Ms. Marie Seah of OP-3 and Mr. Michelle Gossetti, Chief Financial Officer of OP-3 – Based on the examination of available documents such as e-mails, the DG has found that these five executives of management of Globecast were engaged in and responsible for the various aspects of the sales and bidding process relating to *ad hoc* sporting events. During investigation, Ms. Darby Sanchez with respect to her role particularly with reference to operations in India stated that





her responsibilities as the CEO extended to all the activities of Globecast within Asia including India. Primarily, she was concerned with setting the strategy for growth rather than overseeing the specific transactions. The DG has noted that as per ESCL and Bharat the exchange of commercially sensitive information was in the knowledge of Globecast management and was in fact done at their instructions. Moreover, Globecast was considering strategic investment in ESCL and at least in one event it was directly involved in bid rigging i.e. IPL, 2012. In any case, even for other events, being the management it was found responsible for acts and omissions of its employees.

102. In response to the DG Report, regarding his role, Mr. Bharat K. Prem *i.e.* OP-4 has submitted as follows:

- a) He was the former Director, Business Development of OP-2 from March, 2003 to June, 2012. He was involved in sales driving entire portfolio of services to broadcasters in Asia, sales direction, project co-ordination and development of markets of OP-2 and involved in projects covering many Asian countries including India. During his tenure with OP-2, he reported to senior personnel in India and in Singapore. He was not a member of the Board of Directors of OP-2 and therefore, did not take any decisions on behalf of OP-2 without prior approval from the senior personnel.
- b) Though he was the person executing the bids for OP-2, he was doing so under directions of Globecast only. His role in OP-2 was limited to preparing the bids, getting them finalised as per the instructions received from management, and then submitting the bids to relevant persons/parties.
- c) The impugned exchange of information which led to bid-rigging was done solely at the behest of Globecast management for the impending merger and not under the Consultancy Agreement. Later on, due to his relation with Globecast turning bitter, and ESCL and Globecast having business fallout, he was implicated in the present matter. Bharat never acted outside



the scope of its authority in OP-2. He was a mere victim of corporate strategy between Globecast and ESCL.

- d) His liability under Section 48 of the Act does not arise till Globecast is found liable under Section 3 of the Act. Also, whether his liability is made under Section 48 (1) or 48 (2) of the Act has not been identified by the DG. Under Section 48 (1), the DG has not found Bharat to be in-charge of or responsible for the conduct of business of OP-2. There is no evidence that Bharat was involved in any decision making of OP-2.
- e) He cannot be held liable under Section 48 (2) also. He was reporting to Jason for functional purposes and to Mr. Vinay Sewal for administrative purposes. There is no question of his consent/ connivance or complicity. The DG Report itself notes that he was required to send the tender requirements to Globecast's planning department for internal costing purposes for bids to be prepared for future events.

103. The Commission has perused the DG report and the submission made by Bharat. On examination of the e-mail evidence on record with respect to various events, it is observed that all exchange of commercially sensitive bid information by Globecast with ESCL was through the e-mail of Bharat. Bharat has himself admitted that the exchange of information which led to bid-rigging was done by him at the behest of Globecast management.

104. The Commission finds that the liability of Bharat arises both under Section 48(1) as well as under Section 48(2) of the Act. He was not only a key person of Globecast but was also actively involved in the contravention of the provisions of the Act. It is noted that Bharat held the position of Director Business Development and was, as per Globecast, effectively the man on the ground for Globecast in India. He provided the market related information for end-to-end broadcasting services contracts (in relation to sporting events) in the Indian sub-continent to Globecast and was in direct contact with the broadcasters, as is evident from several e-mails. Clearly, at the time contravention was committed, he was a key person responsible for the



conduct of the business of the company. Further, it cannot be said the conduct took place without his knowledge or he took any step to prevent the commission of contravention of the provisions of the Act. In fact, the evidence on record shows that he made the entire impugned information exchange through his personal and/ or official e-mail account. Even if Bharat was acting under instructions of the management of Globecast, he cannot evade liability under Section 48 of the Act as, clearly, the contravention of the provisions of the Act could not have taken place except with his consent and connivance.

105. In response to the DG Report, regarding his role, Mr. Jason Yeow *i.e.* OP-5 submitted that though most of the emails sent by Bharat to various parties were copied to him, he did not pay attention to them as the same did not concern him. He was not Bharat's reporting officer but Mr. Vinay Sewal. He was not privy to any meetings or arrangement between ESCL and Globecast and there is no evidence whatsoever to confirm the same. He never received any money from ESCL or Bharat between January 2011 and March 2012. In the DG Report, his role has been attributed only with regard to CL-T20. During cross-examination, he had clearly stated that final decision with regard to selection of ground service provider for CL-T20 was taken by the planning team of Globecast. Further, he was a mere pawn in the grand scheme of things engineered by ESCL and Globecast.
106. With respect to the role and liability of Jason, the Commission finds that as per Globecast as well as Bharat, Jason was the reporting officer of Bharat. Moreover, Jason was responsible for giving quotations to clients, negotiations with clients, strategic tie-ups in order to win contracts *etc.* either independently or in consultation with/ approval from the senior management of OP-3. Ms. Darby Sanchez and Mr. Vinay Sewal have stated that Jason used to discuss quotations with Bharat. There are several e-mails of impugned information exchange in which Jason has been copied by Bharat. Some instances are Asia Cup 2012 and IPL 2012 (Nimbus) as mentioned in Para 80 and 87 above. Hence, the role of Jason in the bidding process with



respect to the alleged events cannot be denied. As such, Jason is liable under Section 48(1) of the Act. However, his active involvement in terms of Section 48(2) cannot be made out from the evidence on record.

107. Next, Mr. Vinay Sewal, Ms. Darby Sanchez, Mr. Soo Yew Weng and Ms. Marie Seah have mostly taken the same grounds of argument. The common grounds raised by them are as follows:

- a) The DG's findings are based on Bharat's statement with no corroboration on the same. There is no conclusive finding by the DG against these employees. In the absence of such finding, it is difficult for them to defend themselves since the case against them is not clear.
- b) Before any officer of a company is 'deemed' guilty for anti-competitive action of the company under Section 48 (2) of the Act, the DG needs to prove that such contravention by the company has taken place with the consent or connivance of or is attributable to the neglect of such officer. In present case, DG has not discharged this burden of proof.
- c) The DG has incorrectly concluded that the management of Globecast is responsible for the acts of omission of its employees due to vicarious liability. The Act recognises liability on individuals only under Section 48 of the Act, with due exceptions. Therefore, no further liability can be read into the Act, especially because the Act is a penal statute and must be read strictly.
- d) Section 48 of the Act does not have any applicability in the present case, as a finding of contravention by Globecast is a pre-requisite for investigation of their conduct. Moreover, Section 48 of the Act cannot apply to a contravention under Section 3 of the Act. An individual covered under Section 48 cannot fundamentally be 'punished' under Section 27, as the use of the word 'turnover' (in Section 27(b)) can only be applied to a company or at best to a sole proprietorship or partnership. The said term cannot be stretched to include salaried employees. Further, the remaining provisions of Section 27 are also not applicable to



individual liability under Section 48 as they are not punitive, but corrective.

108. Apart from the above, these persons also made certain additional submissions. Mr. Vinay Sewal submitted that he was only responsible for developing partnerships on the ground for setting up a Globecast teleport/ infrastructure in India and did not handle the sales aspect of the business in India. The e-mail dated 09.07.2010 sent by Ms. Darby Sanchez to OP-3 clarifies that Mr. Vinay Sewal's role was limited to being responsible for building the infrastructure in India and he was not involved in the business decisions including the business dealings of Globecast with ESCL. Further, Bharat has also admitted that he reported to Mr. Vinay Sewal only for 'administrative purposes', while he reported to Jason for 'functional purposes'. Also, Mr. Soo Yew Weng's e-mail dated 12.04.2012 to Bharat with the attachment 'Performance Review' of Bharat stated Jason to be his manager. Mr. Vinay Sewal's involvement during the negotiations regarding NDA with ESCL attests to the fact that his primary role was to develop business partnerships.

109. It is also denied that Mr. Vinay Sewal had informed Bharat that the clients should not be aware of Globecast and ESCL's arrangement as claimed in his statement before the DG. It is pointed out that the e-mail dated 17.01.2012 sent by Bharat to Ms. Angeline Cheng, copied to Mr. Sabil Salim, Mr. Soo Yew Weng and Jason clearly shows that it was indeed Bharat who had recommended the approach of keeping the decision confidential, while Mr. Vinay Sewal was not even marked on such e-mails by Bharat. It was also denied that Mr. Vinay Sewal was aware of the Consultancy Agreement between Bharat and ESCL.

110. Mr. Vinay Sewal and Mr. Soo Yew Weng further submitted that they are not liable under Section 48 (2) of the Act and Bharat's anti-competitive actions were not with their consent/ connivance or attributable to their neglect. Mr. Soo Yew Weng argued that there is no evidence to indicate that he instructed



Bharat to enter into the Teaming Arrangement with ESCL. Though he had knowledge about the same for IPL (Sony) 2012, the e-mail dated 17.01.2012 sent by Bharat to Ms. Angeline makes it *evident* that it was Bharat's idea to partner with ESCL.

111. Ms. Marie Seah argued that she was not a part of the alleged contravention. She was not even an employee of Globecast from 2008 to 2015 and was an employee much before the alleged cartel activity. The same is corroborated from the e-mail dated 08.08.2008 of Ms. Marie Seah whereby she informs the management of Globecast that she has resigned effectively from 05.09.2008. It is also stated that she rejoined Globecast on part time basis in 2015 and on full time basis in 2016. An e-contract executed between Globecast and Ms. Marie Seah was placed on record to prove the same. Therefore, it is erroneous to initiate proceedings against her under Section 48 of the Act.
112. With respect to the role and liability of Mr. Vinay Sewal, the Commission notes that he was the Managing Director of OP-2 at the time of contravention of the provisions of the Act and Bharat was reporting to him. Although Globecast has clarified that reporting of Bharat to Mr. Vinay Sewal was for administrative purposes and to Mr. Jason Yeow for functional purposes, the fact remains that as the Managing Director of OP-2, he was the person in-charge for the conduct of business of OP-2. Accordingly, the Commission finds Mr. Vinay Sewal liable under Section 48(1) of the Act.
113. Regarding the role and liability of Ms. Darby Sanchez, the Commission notes that she was the Chief Executive Officer of OP-3 at the time of contravention of the provisions of the Act and was responsible for all the activities of Globecast within Asia including India. Accordingly, the Commission finds Ms. Darby Sanchez liable under Section 48(1) of the Act.as the person in-charge for the conduct of business of OP-3.



114. With respect to Mr. Soo Yew Weng, Head–Sales of OP-3, the Commission finds him liable under Section 48(1) of the Act as the person in-charge for the conduct of business of OP-3 at the time of contravention of provisions of the Act. Although he has argued that there was no consent, connivance or neglect on his part, his involvement is made out from the examination of e-mail trail for certain events like Asia Cup, Corporate Trophy, IPL 2012 etc. where e-mails are marked to him. Mr. Soo Yew Weng has himself admitted that he had knowledge about the Teaming Arrangement for IPL (Sony) 2012. But he only states that he did not instruct Bharat to enter into the same and that it was Bharat's idea to enter into the same.
115. With respect to Mr. Michelle Gossetti, Chief Financial Officer of OP-3, the Commission finds that he is liable under Section 48(1) of the Act as the person in-charge for the conduct of business of OP-3 at the time of contravention of provisions of the Act. However, the Commission notes that the notice could not be served upon him by the time of hearing of the case. Accordingly, the proceedings against him could not be completed.
116. Regarding Ms. Marie Seah of OP-3, the Commission notes that there is no evidence on record to show her involvement. Rather it is noted from the evidence submitted by her before the Commission that she was not even in employment of the company at the time of contravention of the provisions of the Act. It appears her name has been erroneously included by the DG. Accordingly, the Commission does not find Ms. Marie Seah liable under Section 48 of the Act.

## **ORDER**

### **Computation of Penalty:**

117. As regards the penalty to be imposed under Section 27 of the Act, the Commission finds that ESCL and Globecast, as brought out hereinabove, are responsible for infringement of the provisions of Section 3(3)(d) read with Section 3(1) of the Act and are, hence, liable for penalty.



118. On imposition of penalty, ESCL has referred to the Commission's order in *Cochin Port Trust v. Container Trailer Owners Coordination Committee & Ors.* (Ref. Case No. 6 of 2014) wherein considering the fact that the contravention was discontinued long back and the parties were not indulging in such behavior any more, the Commission did not impose any monetary penalty. In light of this decision of the Commission, ESCL has submitted that since the conduct in question between ESCL and Globecast was discontinued much before the investigation was ordered, no penalty ought to be imposed on ESCL.
119. Further, ESCL has submitted that in case the Commission is of the view that penalty ought to be imposed, then in view of the order of Hon'ble Supreme Court of India in *Excel Crop Care Limited and Ors. v Competition Commission of India 2017(8) SCC 47*, the penalty should be imposed only upon the relevant turnover/ profit of ESCL accruing from the 'DSNG' services provided by ESCL to sporting events where bids were rigged during the relevant period *i.e.* 01.07.2011 till 31.05.2012 and no other segment of business should be taken by the Commission.
120. In addition, ESCL has pointed out various mitigating factors that ought to be considered by the Commission, before, if at all, any penalty may be imposed on ESCL or its individuals. These are as follows:
- a) ESCL approached the Commission under the Lesser Penalty Regulations and provided true, vital and full disclosure;
  - b) ESCL cooperated fully with the DG throughout the course of investigation. In order to effectively assist the office of the DG during the course of investigation, ESCL got an external forensic audit of the entire organization as soon as it was made aware of the instant matter;
  - c) The disclosure made by ESCL added value and no attempts were made by it to distort the nature of the evidence;





- d) ESCL conducted competition law training sessions for the sales and marketing teams including top management which has been conducted on periodic intervals; and
  - e) ESCL is a small Indian entity with limited operations out of a facility in Noida as compared to Globecast which is a worldwide leader in content contribution, media management and is a part of the more than 40 million dollar Orange Group S.A. Any penalty imposed on ESCL would affect the day to day operations of the company and may lead to ESCL having to down-sizing its operations.
121. Globecast has submitted that, in case the Commission determines the penalty to be imposed on Globecast, the Commission should levy the same based on relevant turnover as interpreted by Hon'ble Supreme Court of India in *Excel Crop Care Limited and Ors. v Competition Commission of India (supra)*. In the instant matter the "relevant" turnover is turnover derived from the provision of service relating to *ad hoc* sporting events in India and, therefore, only the part of the turnover for Globecast or the income of the individuals which emanates from this service should be used for the purposes of Section 27 (b) of the Act.
122. Further, Globecast has stated that the Commission while levying penalty, if any, should consider the various mitigating factors enumerated below:
- a) Globecast has voluntarily placed evidence before the Commission and the DG and assisted in the detection and subsequently in the investigation of bid rigging cartel in relation to the broadcast of various ad hoc sporting events;
  - b) Globecast is being investigated for the first time by the Commission and has not previously contravened the Act;
  - c) Globecast has cooperated with the Commission/DG's investigation at all stages and has provided full and true disclosure of information.



- d) Globecast's liability arises from the conduct of its employee and not directly; and
- e) Globecast is loss making enterprise. The motive of firms to cartelize is to maximize their profits, which is an incentive to remain in a cartel. However, Globecast did not make profits as a result of the cartel and the benefits of the cartel were reaped by ESCL.

123. The Commission has considered the above mitigating factors elaborated upon by ESCL and Globecast. It is noted that at the outset, both ESCL and Globecast have contended that as they approached the Commission under the lesser penalty provisions and made a complete and true disclosure extending full cooperation with the Commission/ DG's investigation, their conduct should be considered as a mitigating factor. It is observed that all such submissions relate to grant of lesser penalty under the Lesser Penalty Regulations. Accordingly, the same have been taken into consideration while evaluating the lesser penalty applications of ESCL and Globecast in succeeding Para 127 to 132 of this order. Apart from stating such factors, ESCL has contended that setting up of compliance programme after the conduct should be considered as a mitigating factor. In this regard, it is pertinent to mention that the existence of a compliance programme and violation occurring inspite of a vibrant compliance programme is normally considered as a mitigating factor. In the instant case, what is argued is initiation of a compliance programme, which is not eligible as a mitigating factor. Moreover, although subsequent conduct can be considered a mitigating factor, it cannot absolve the infringing entity from liability. Also, carrying out a forensic audit after receipt of DG notice cannot be considered as mitigating factor. With respect to Globecast, it is noted that apart from making assertion of cooperation and full disclosure under Lesser Penalty Regulations, the other factors contended as mitigating factors are the factum of its liability arising from the conduct of its employee and not directly and benefit of cartel being derived by ESCL and not Globecast. These contentions of Globecast have already been dealt in Para 90 to 92 of this



order. Further, it is pointed out that mere fact that a party is being investigated for the first time by the Commission and has not previously contravened the Act cannot be considered as a mitigating factor, as has been claimed by Globecast.

124. On the issue of relevant turnover/ profits, the Commission notes that both ESCL and Globecast have argued that the penalty ought to be imposed on the basis of their relevant turnover/ profit. In this regard, it is noted that this argument of ESCL and Globecast emanates from the decision of the Hon'ble Supreme Court of India in *Excel Crop Care Limited and Ors. v Competition Commission of India (supra)*. In that case, the Hon'ble Supreme Court of India had applied the concept of relevant turnover in case of a multi-product company engaged in production/ provision of more than one type of products/ services. In the instant matter, the Commission notes that ESCL and Globecast have not elaborated on the aspect as to how they are multi-product companies. Also, they have not clearly indicated that the other products/ services of these companies have no connection and do not depend upon the product/ service involved in the cartelisation. Further, they have not provided details of what proportion of their total turnover includes turnover from the products/ services, which are not part of cartelisation. What they have provided is merely their turnover/ profit from the particular sporting events for which they provided services and that too only with respect to the fourteen events under investigation. Thus, what has been provided by ESCL and Globecast is restricted turnover and not relevant turnover. It is to be noted that restricted turnover is different from the relevant turn over. Hon'ble COMPAT drew this distinction in the matter of *Excel Crop Care Limited v Competition Commission of India & Ors.* (Appeal no. 79 of 2012). In that case, while accepting the argument regarding the relevant turnover, it had rejected the argument of restricted turnover. Since ESCL and Globecast have merely provided restricted turnover in the instant matter in garb of relevant turnover, these figures cannot be taken into consideration for the purposes of imposing penalty.



125. Thus, considering the totality of facts and circumstances of the present case, the Commission decides to impose penalty on ESCL and Globecast under proviso to Section 27 (b) of the Act by taking into consideration their total profit as per the financial statements filed by them at 1.5 times of the profit for the period of contravention *i.e.* from July 2011 to May 2012. The total amount of penalties which can be imposed on the OPs are set out below:

*Amount – in rupees*

<b>ESCL (ESCL)</b>		
<b>Year</b>	<b>Total Profit after tax/ Loss</b>	<b>Penalty at 1.5 times of the Profit</b>
2011-12	22,11,26,812	24,87,67,664*
2012-13	28,26,47,681	7,06,61,920**
<b>Total</b>		<b>31,94,29,584</b>
<b>OP-2 (Globecast India)</b>		
<b>Year</b>	<b>Total Profit after tax/ Loss</b>	<b>Penalty</b>
2011-12	1,18,00,000	1,32,75,000*
2012-13	(85,00,000)	Nil
<b>Total</b>		<b>1,32,75,000</b>
<b>OP-3 (Globecast Asia)</b>		
<b>Year</b>	<b>Total Profit/ Loss</b>	<b>Penalty</b>
2011	(1,12,00,000)	Nil
2012	(2,13,00,000)	Nil

\* for the period July 2011 to March 2012

\*\* for the period April – May 2012

126. So far as the individual liability of the person(s)/ officer(s) of OPs in terms of the provisions of Section 48 of the Act is concerned, the Commission has found following person(s)/ officer(s) of ESCL and Globecast liable under Section 48(2) of the Act. Resultantly, in view of the facts and circumstances of the present case, the Commission decides to impose penalty on these person(s)/ officer(s) in terms of Section 27 (b) of the Act calculated at the rate of ten (10) percent of average of their income for last three preceding financial years as follows:



*Amount – in rupees*

S. No.	Individuals	Income for FY 2010-11	Income for FY 2011-12	Income for FY 2012-13	Average Income for 3 Years	@ 10 % of average Income
1.	Mr. Lalit Jain of ESCL	74,34,381	89,87,963	126,29,930	96,84,091	9,68,409
2.	Mr. Atul Gupta of ESCL	21,33,855	25,09,265	27,08,098	24,50,406	2,45,040
3.	Mr. M. N. Vyas of ESCL	70,75,820	85,17,339	1,26,94,714	94,29,291	9,42,929
4.	Mr. Bharat Prem of Globecast	19,83,944	25,59,779	65,698	15,36,474	1,53,647
5.	Mr. Jason Yeow of Globecast *	Not available	1,74,99,785 (232,370*)	1,98,72,663 (239,372*)	1,86,86,224	18,68,622
6.	Ms. Darby Sanchez of Globecast	67,21,500 <sup>1</sup> (\$150,000)	98,54,210 <sup>2</sup> (\$185,000)	1,01,32,450 <sup>3</sup> (\$185,000)	89,02,720	8,90,272
7.	Mr. Vinay Sewal of Globecast @	2,05,26,684 (294,416*)	80,61,559 (107,045*) + 81,81,970	69,55,566	1,45,75,260	14,57,526
8.	Mr. Soo Yew Weng, of Globecast*	2,22,54,485 (319198*)	2,51,80,652 (334,360*)	2,41,45,205 (290,836*)	2,38,60,114	23,86,011

\* Income in Singapore Dollars for the Calendar Years 2011 and 2012 for Mr. Jason Yeow, Calendar Years 2010, 2011 and 2012 for Mr. Soo Yew Weng.

@ Income from OP-3 in Singapore Dollars for the Calendar Years 2010 and 2011 and Income from OP-2 for the Financial Years 2011-12 and 2012-13

Conversion rate for Singapore Dollars (SDR):

2010-11 - 1SDR = INR 69.72 annual average exchange rate as per [www.rbi.org.in](http://www.rbi.org.in)

2011-12 - 1SDR = INR 75.31 annual average exchange rate as per [www.rbi.org.in](http://www.rbi.org.in)

2012-13 - 1SDR = INR 83.02 annual average exchange rate as per [www.rbi.org.in](http://www.rbi.org.in)

<sup>1</sup> 1USD = INR 44.81 exchange rate as on 31.12.2010 as per [www.rbi.org.in](http://www.rbi.org.in)

<sup>2</sup> 1USD = INR 53.266 exchange rate as on 31.12.2011 as per [www.rbi.org.in](http://www.rbi.org.in)

<sup>3</sup> 1USD = INR 54.77 exchange rate as on 31.12.2011 as per [www.rbi.org.in](http://www.rbi.org.in)



### **Evaluation of Lesser Penalty Applications:**

127. As mentioned earlier, the Commission received Lesser Penalty Applications from ESCL as well as Globecast in the present matter. Keeping in view the sequence in which they approached the Commission under Regulation 5 of Lesser Penalty Regulations read with Section 46 of the Act, it granted First Priority Status to Globecast and Second Priority Status to ESCL.
128. The Commission observes that Globecast, the first applicant to file Lesser Penalty Application, made vital disclosure by submitting evidence of the alleged cartel and enabled the Commission to form a *prima facie* opinion regarding existence of the cartel. At the time the Lesser Penalty Application was filed by Globecast, the Commission did not have evidence to form such an opinion. Globecast furnished various vital evidences in the matter which disclosed the *modus operandi* of the cartel such as the details of sporting events and chronology of the related events in which bid rigging took place, role of ex- employees of Globecast, internal inquiry conducted by Globecast at Singapore, email correspondence in relation to preparation and submission of bids in concerted manner, email correspondence showing sharing of commercially sensitive and confidential price information, forensic report related to the electronic evidences and the mirror image of the confiscated laptops, mobiles *etc.* and email correspondence in relation to draft consultancy agreement between ESCL and Bharat. These evidences were found crucial in establishing the contravention of the provisions of Section 3 of the Act in the matter.
129. The Commission finds that Globecast co-operated fully and continuously throughout the investigation and other proceeding before the Commission. However, it is observed that initially it did not disclose the fact regarding strategic investment talk between ESCL and Globecast during the alleged period and attributed such omission to a mistake on their part stating that the same was not disclosed as according to them this had no link with the alleged



conduct. However, subsequently they furnished all related documents such as NDA, email correspondence *etc.*

130. ESCL filed the Lesser Penalty Application after receiving the notice from the office of DG. Thus, at the time ESCL approached the Commission, the Commission had already made a *prima facie* opinion and referred the matter to DG for investigation. It is noted that ESCL furnished evidence of proposed acquisition/ strategic investments by Globecast in ESCL, relationship between Globecast and ESCL from 2009-2012, signing of NDA, correspondence with Globecast for proposed acquisition, correspondence with Bharat for various events, teaming agreement between Globecast and ESCL, evidence of concerted action *i.e.* emails exchanged with clients and competitors and copy of the consultancy agreement entered by them with Bharat.
131. It is observed that in addition to corroborating the evidences furnished by Globecast, ESCL also furnished additional facts such as the proposed acquisition talks between Globecast and ESCL and related evidences such as copy of NDA and correspondence exchanged in this regard. Though these are not found vital to the establishment of the conduct of bid-rigging, they are still important as the same disclosed one of the factors in the background of which information exchange in violation of the provisions of the Act took place between the parties. The evidences furnished by ESCL, therefore, added value to the ongoing investigation.
132. Based on the aforesaid evaluation of the evidences and information furnished by Globecast and ESCL, the Commission decides to grant *100% (Hundred percent)* reduction in leviable penalty to Globecast and *30% (Thirty Percent)* reduction in leviable penalty to ESCL.



**Remedies including imposition of fines:**

133. In view of the finding of contravention against ESCL and Globecast, the Commission directs them to cease and desist from indulging in such anti-competitive conduct in future.

134. Considering that the Commission has decided to grant reduction in penalty to ESCL and Globecast under Section 46 of the Act, as recorded hereinabove, the total amount of penalty to be paid by respective OPs is as follows:

*Amount – in rupees*

S. No.	Opposite Parties	Penalty as per Para 125 above	Reduction in Penalty	Penalty Imposed and Payable
1.	ESCL	31,94,29,584	30%	22,36,00,709
2.	Globecast (OP-2+OP-3)	1,32,75,000	100%	NIL

135. The Commission directs these OPs to deposit the penalty amount within 60 days of receipt of this order.

136. Considering that the Commission has decided to grant 100% (Hundred percent) reduction in penalty to Globecast and 30% (Thirty percent) reduction in penalty to ESCL under Section 46 of the Act, as recorded hereinabove, the Commission, also decides to allow the same reduction in penalty to their person(s)/ officer(s) under Section 46 of the Act. Thus, the total amount of penalty to be paid by them is as follows:

*Amount – in rupees*

S. No.	Individuals	Penalty as per Para 127 above	Reduction in Penalty	Penalty Imposed and Payable
1.	Mr. Lalit Jain of ESCL	9,68,409	30%	6,77,886
2.	Mr. Atul Gupta of ESCL	2,45,040	30%	1,71,528





3.	Mr. M.N. Vyas of ESCL	9,42,929	30%	6,60,050
4.	Mr. Bharat Prem of Globecast (also OP-4)	1,53,647	100%	NIL
5.	Mr. Jason Yeow of Globecast (also OP-5)	18,68,622	100%	NIL
6.	Ms. Darby Sanchez of Globecast	8,90,272	100%	NIL
7.	Mr. Vinal Sewal of Globecast	14,57,526	100%	NIL
8.	Mr. Soo Yew Weng, of Globecast	23,86,011	100%	NIL

137. The Commission directs the parties to deposit the respective penalty amount within 60 days of receipt of this order.

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

**Sd/-**

**(Devender Kumar Sikri)**  
**Chairperson**

**Sd/-**

**(Sudhir Mital)**  
**Member**

**Sd/-**

**(Augustine Peter)**  
**Member**

**Sd/-**

**(U. C. Nahta)**  
**Member**

**Sd/-**

**(Justice G.P. Mittal)**  
**Member**

**New Delhi**

**Dated: 11/07/2018**