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CCI INVESTIGATES ANTI-COMPETITIVE PRACTICES IN THE CINEMA SECTOR

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BACKGROUND

On 17 September 2021, the Competition Commission of India (CCI) issued a *prima facie* order (Order) under Section 26(1) of the Competition Act, 2002 (Act) directing the Director General (DG) to investigate alleged anti-competitive clauses in agreements executed between UFO Moviez India Limited (UFO) and Qube Cinema Technologies Limited (Qube), on one hand, and cinema theatre owners (CTOs), on the other.

A. BRIEF FACTS AND DESCRIPTION OF THE PARTIES

PF Digital Media Services Limited (PF Media) and Mr. Ravinder Walia (collectively, the Informants) filed an information (Information) against UFO, Scrabble Digital Limited (Scrabble) and Qube (collectively, the OPs).

PF Media is a subsidiary of Prime Focus Limited (PFL) and undertakes the post-production processing of cinematograph films (PPP Services). Mr. Ravinder Walia is a producer, who has produced various movies, the latest being *Roam Rome Mein* for which PF Media undertook the post-production processing.

UFO and Qube are primarily engaged in the supply of digital cinema equipment (DCE) to CTOs; Scrabble is a wholly owned subsidiary of UFO and engaged in the same business as PF Media i.e., PPP Services.

B. ALLEGATIONS IN THE INFORMATION

The Informants alleged that UFO imposes various restrictions on the usage of the DCE leased by it to CTOs under an equipment lease agreement (UFO EL Agreement). Particularly, the UFO EL Agreement restricts CTOs from: (i) sourcing content from any other entity, except UFO or its affiliates; and (ii) using the DCE to exhibit content sourced from any entity, except UFO or its affiliates, amongst others. Further, pursuant to a technological update, the Informants alleged that UFO disabled the DCE supplied to CTOs from accepting / playing any cinematograph film which has not been post-production processed by Scrabble. Accordingly, the actions of UFO were alleged to violate section 3(4) of the Act.

The Informants also alleged that UFO is dominant in the market for supply of DCE to CTOs. Therefore, by including restrictive clauses in the UFO EL Agreement, UFO sought

to utilise its dominance and foreclose the market for PPP Services for the benefit of Scrabble in violation of Section 4(2)(e) of the Act.

Similar allegations were made against Qube, a DCE supplier like UFO, which entered into similar agreements with the CTOs (Qube EL Agreement). Under the Qube EL Agreements, CTOs were permitted to obtain PPP Services from other providers only in case Qube failed to provide such services. If the CTOs availed the PPP Services from other providers, they were penalised for exhibiting each piece of content per screen.

C. RELEVANT MARKET DEFINITION

Considering that the primary allegation related to leveraging by UFO, the CCI identified two relevant product markets: (i) *the market for supply of DCE by a digital cinema service provider on lease / rent to a CTO* (Relevant Market 1); and (ii) *the market for provision of post-production processing services* (Relevant Market 2). Observing that the digitisation of cinema was uniform across India and that digitised movies were provided via satellite to CTOs, the CCI held that the relevant geographic market could be defined as India.

D. CCI Observations

The CCI's observations on the allegations by the Informants can be divided into three parts: (i) whether the UFO EL Agreements violate Section 3 of the Act; (ii) whether UFO and Scrabble are dominant in the Relevant Market 1 and Relevant Market 2; and (iii) whether the Qube EL Agreements violate Section 3 of the Act.

UFO EL Agreements

- The CCI observed that the mandatory requirement to obtain PPP Services from Scrabble would *prima facie* form a tie-in relationship. For producers / exhibitors / CTOs, they need to obtain the PPP Services from Scrabble in order to get the DCE from UFO.
- Further, since UFO was in a position to restrict CTOs from approaching a competitor of Scrabble, there exists an exclusive supply agreement between the exhibitors / producers / CTOs and UFO.
- In addition, given that the DCE supplied by UFO was technologically barred from playing / displaying content, which was not post-production processed by Scrabble, such restriction would amount to a refusal to deal on the part of exhibitors / producers with service providers of PPP Services other than Scrabble.

In light of this, the CCI held that *prima facie* the UFO EL Agreement violated Section 3(4) of the Act. The rationale behind the CCI's decision is below:

- The tie-in arrangement has the potential to cause an appreciable adverse effect on competition in India (AAEC) since existing competitors of Scrabble could be driven out of Relevant Market 2. Such an arrangement hinders the entry of new market players and thwarts development and innovation in PPP Services.
- The refusal to deal also has the potential to cause an AAEC in India since content which is post-production processed by entities other than Scrabble could not be played on DCE supplied by UFO, which controls a large number of screens and locations in the market.

Abuse of Dominant Position

- While considering the market share figures submitted by the Informants, UFO, Scrabble and Qube, the CCI observed that there was a significant mismatch in the figures. However, the CCI did not delve into whether UFO and Qube were dominant in the Relevant Market 1 and simply held that they were significant players.
- Further, the CCI did not delve into whether Scrabble was dominant in the Relevant Market 2 since UFO was *prima facie* not dominant in the Relevant Market 1.

Qube EL Agreement

- The CCI re-iterated its observations on the likely adverse implications of the Qube EL Agreement on other stakeholders in this value chain, namely, producers, entities engaged in PPP services and CTOs

In view of the above, the CCI held that the restrictions covered under the UFO EL Agreement and the Qube EL Agreement *prima facie* seemed to infringe Section 3(4) of the Act. Accordingly, the CCI ordered the DG to investigate the alleged violations.

COMMENT

The celluloid space has been a steady source of complaints for the CCI. While the largest chunk of cases under the Act have been on account of concerted action by trade associations of producers or multiplexes or distributors, lately, there has been an influx of cases against intermediary players which render value-added digital services, concerning vertical restraints issues such as bundling and exclusivity.

In fact, the DCE space too has been examined by the CCI on a few occasions, albeit unsuccessfully. This order alters that *status quo* by directing a full-fledged investigation into the market conduct of the OPs.

As a general matter, the sector has grown and transformed dramatically with the advent of technology driven innovations and solutions to tackle plaguing issues such as piracy. However, consistent with the trend that we witness across digital markets, the world of cinema isn't immune to antitrust challenges that have crept in along the way.

It is perhaps the active churn of antitrust cases that prompted the CCI to launch a formal market study to examine the business practices and relationships between the stakeholders within the film production and distribution ecosystem. That being said, the revelations on reel v. real issues within the film industry and distribution space will be interesting to watch out for.

- Anisha Chand (Partner) and Siddharth Bagul (Associate)

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