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MARKET STUDY ON FILM DISTRIBUTION CHAIN IN INDIA: KEY FINDINGS AND OBSERVATIONS

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Continuing its focus on advocacy, the Competition Commission of India (CCI) on 14 October 2022, published its second market study in two months. The focus of the latest market study was the film distribution chain in India (**Market Study**). The Market Study was undertaken in order to assess the state of competition in the film industry in light of the dynamic effects of digitisation, and to highlight the potential self-corrective measures that can be adopted to mitigate the prevalent competition law related issues in the industry.

The study discusses: the role of various associations in the supply chain, at the production, distribution, or exhibition level; the superior bargaining power of some entities and the resultant imbalances; the bottlenecks that exist at various levels; unequal distribution of risks; revenue-sharing arrangements; newer technologies in cinema; and tying and bundling arrangements at the exhibition level, etc.

The salient features of the film distribution sector and the recommendations for self-regulation are summarised below:

I. Key trends of the film distribution sector

1. Characteristics of film distribution value chain

The market for films demonstrates an interplay between competition and monopoly. To elucidate, a film has the legal status of a copyright, and in that sense, it is regarded as a monopoly. However, it is grouped with other films, and together, they form an industry or field of economic activity which is competitive.

2. Risk mitigation and recoupment of investment

Industry stakeholders focus on models that allow them to maximise revenues. The following models have been found to be prevalent in the industry such as i) dynamic pricing, where the pricing of the film ticket is higher in the first week than the subsequent weeks; ii) micro-scheduling of films, where studios coordinate release dates to avoid too many competing movies from being released at the same time; iii) holdback of films, a specific clause in an agreement between a producer and an exhibitor for exclusive exploitation rights; and iv) exclusivity deals, a practice by way of which production houses undertake deals with exhibitors to show content exclusively on their platform for a fixed period of time.

II. Key findings of the Market Study and the recommendations for self-regulation

1. Bargaining Power Imbalance Between Multiplexes and Producers / Distributors

a) Key findings

- Downstream players such as multiplexes, have an upper hand in bargaining power due to a supply-demand mismatch.

- The upstream players such as producers, are required to incur the expenses for all in-theatre promotions and have to subsidise the cost for the theatre owners for the use of exhibition equipment.

- Revenue sharing arrangements such as sliding scale arrangements[1] are undertaken between the multiplexes and the producers / distributors.

b) Recommendations for self-regulation

- Standard contracts should be avoided and superseded with tailored contracts, depending upon the content-type, the scale, and other such requirements of the parties involved.

- Aggregate agreements should be preferred over existing sliding scale arrangements, where multiplexes and producers can share the aggregate revenues generated by a film based on a pre-negotiated percentage split.

- Fair and reasonable terms in relation to promotions, including sharing of such costs, should be adopted.

2. Lack of Transparency in Box Office Revenue Collections

a) Key findings

- No uniform model has been in use, for the purposes of tracking and recording box office collections. There have been reports of producers receiving box-office numbers through handwritten faxes or even via calls.

- Information asymmetry in relation to the revenue sharing agreements between the producers and single screen owners leads to reduced transparency for calculating, storing, and releasing of box office collection data.

- India has not shifted to the standards applicable globally, which would allow the film industry to receive accurate box-office figures.

b) Recommendations for self-regulation

- Adoption of uniform box office monitoring systems to generate, record, and maintain ticketing logs and reports, and the data collected by such a system should not be alterable by any stakeholder.

- Producers should invest in independent auditors who would ensure that these monitoring systems are working properly.

3. The potential antitrust concerns arising out of digital cinema: Virtual Print Fee (VPF), the cause for all anticompetitive activities

a) Key findings

- Imposition of VPF has been controversial. It is a cost levied on the producers / distributors to assist and subsidise the theatres, in being able to convert their analog projectors to digital ones.

- Producers have argued that the imposition of VPF leads to anticompetitive activities by way of (i) acting as a barrier to entry as it leads to a significant increase in the cost of releasing a movie into theatres; and (ii) the exhibitors disallowing the release of a movie if VPF is not paid.

- VPFs impose exorbitant costs on small producers, as there is no provision for a sunset clause with respect to the imposition of VPF.

b) *Recommendations for self-regulation*

- Consensus should be achieved towards introducing a sunset date for the levy of VPF.

- Imposition of VPF should be phased out. VPF paid to the multiplexes should be phased out on priority followed by single-screen theatres.

- Until a sunset period is decided, VPF charges should be decided by the Digital Cinema Equipment (DCE) providers and the producers in a mutually acceptable manner, through consultations.

4. *Anticompetitive conduct by Associations*

a) *Key findings*

- Anti-competitive conduct by associations constituted majority of the cases filed before the CCI. Such conduct includes the mandatory requirement of dealing with only association members, boycotting, and banning of films, imposition of restrictive holdback periods, etc.

b) *Recommendations for self-regulation*

- Associations must avoid bans and boycotts and must not prohibit its members from working with non-members.

- Associations should avoid other conduct that has previously been found to be anti-competitive by the CCI.

- Associations must consider utilising alternative dispute resolution channels such as mediation.

- Associations should conduct events to educate their members about the significance of market competition.

5. *Exclusive dealing in digital cinema*

a) *Key findings*

- Most theatres have been found to have undertaken exclusive deals with DCE service providers, leading to tying and bundling of services.

- Such tying and bundling has the ability to restrict the engagement of third-party service providers and amounts to causing restraint of trade and can adversely affect competition.

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[1] Under such an arrangement, a pre-established minimum screen time for a movie and the proportion in which the box office receipts collection is to be distributed, is decided.

b) Recommendations for self-regulation

- Any sort of leveraging by way of agreements between DCE service providers should not act as entry barriers for newer entities and other service providers.

- Long-term agreements with one-sided clauses should be avoided.

Comment

Having dealt with multi-faceted antitrust concerns in the film distribution sector ever since its inception, the CCI, by way of this Market Study, has attempted to set the record straight, by addressing all competition related issues prevalent in the sector, for once and for all. Whether and to what extent these self-regulatory measures will be adopted by industry stakeholders is yet to be seen. However, the comprehensive nature of the Market Study may offer a panoramic view of the prevalent irregularities and issues plaguing the industry with arguably simple enough solutions.

Finally, the Market Study stands testament to the CCI's commitment towards encouraging market corrections through self-regulatory measures as opposed to focussing solely on its enforcement prowess.

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