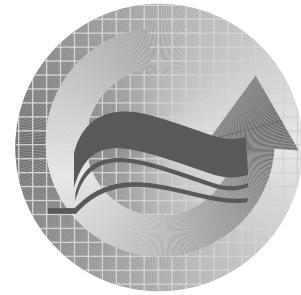




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## Disputes in the Film Industry and role of Competition Commission

### I. Background

1.1 Film industry in order to have discipline had set up self-disciplinary association or agencies. First of all the name of the film was to be registered with one of the associations. Such registration protects two films having the same name are not released at the same time. Secondly whenever a producer entered into an agreement with a distributor for a certain zone, this was also registered by an association. Publicity of this fact was given through various publications such as Trade Guide, etc. This is being done with the idea that a producer does not sell the same movie to another distributor in the same area and in this manner obtain further finance. Sometimes when the film being produced involved large amount of finance and the distributor could not finance the production another distributor was appointed for the zone or two distributors would form a joint venture to finance the film. In every zone where the distributor operated, the exhibitors and the distributors formed associations to regulate the entire business of film exhibition and distribution.

1.2 The associations were either societies or companies under Section 25 of the Companies Act. These associations or companies formulated bye-laws and they worked as dispute resolution agencies for disputes between the exhibitors, between the producers and the distributors/exhibitors and between the distributors and the exhibitors. These associations regulated

the business in the way that once a producer / distributor had agreed to give the business of exhibition to an exhibitor, the producer/distributor could not then give the rights to another exhibitor. In this manner, the pecuniary interests of the exhibitors were protected. Similarly, when there were similar disputes between the producers and the distributors/exhibitors, these associations protected the interest of their members. All the producers / distributors had to become members of the association by paying a nominal fee before a film could be released in that zone / area. They also had to register the films with the zonal associations so that the names of the producer / distributor / exhibitors were known.

1.3 These associations has no statutory backing but were created for the regulation of the entire industry and they had evolved over a period of time. Any regulator in order to effective has to have penal powers. As no statutory authority available to the Associations, they exercised the power of boycott. These associations took upon themselves the power to levy penalty which were nothing but the failure to honour contractual obligations. Failure to pay the penalty resulted in boycott by the associations and their members.

1.4 Now with the advent of new technology, migration of the Indian community to different countries and due to various other reasons the

demand for Indian films extended in various countries. This provides opportunity to the producers sell world rights, DTH and satellite rights, internet rights, etc. of the film. All this expanded the earnings of the producers. But at the same time shelf life of a film are reduced. The new technology also led to an increase in piracy and reduction in the earnings of the producers. The period for the exploitation of films got reduced as far as the exhibitors were concerned. This reduced the earning of the exhibitors. Another factor which came up was the arrival of multiplexes where multiple screens were used for screening films in a more congenial atmosphere. Multiplexes also received various direct & indirect tax concessions. These factors and the rising property prices all over India led to closure of many single screen exhibitors all over India. All these factors gave rise to disputes within the industry.

## 2. Whether practices of Self-regulatory Association are anti-competitive?

2.1 Self-regulatory associations of distributors and exhibitors asks the producers-distributors

- to compulsorily register their films before release
- force members to abide with the rules,
- directs members not to deal with the non-members,
- prescribes long holdback period for satellite, DTH and other rights in respect of exhibition of films and
- imposes bans, penalties and giving a call of boycott against those who violate the rules and regulations of the associations.

2.2 The producers has pointed that under the garb of a trade Association, these associations has become a vehicle for collusive conduct for persons and enterprises engaged in identical business of distribution and exhibition of films.

Its members have adopted a coercive mechanism for ensuring the enforcement and compliance of anti-competitive agreements amongst themselves.

2.3 Commission in the case of Eros International Media Limited observed that it is true that the activities of an association including keeping association members informed of trade developments, improving the quality of products, and working together at improving trade and industry laws, had benefited their members. It also played a significant role in encouraging and enforcing codes of ethics. But the rules and regulations, acts and conduct of the associations are not making markets perform efficiently and create restrictions on free and fair competition. Accordingly it held that various practices of the association as anti-competitive and directed the associations to cease and desist from the following practices:

- a) The associations should not compel any producer, distributor or exhibitors to become its members as a pre-condition for exhibition of their film in the territories under their control and modify their rules accordingly.
- b) The associations should not keep any clause in rules and regulations which makes any discrimination between regional and non-regional films and impose conditions which are discriminatory against non- regional films.
- c) The rules of restrictions on the number of screens on the basis of language or the manner in which a particular film is to be exhibited should be done away with.
- d) Associations should not put any condition regarding release of films through other media like, CD, Satellite, etc. these should be left to the concerned parties.
- e) The condition of compulsory registration of films as a precondition for the release of any film and various existing rules of association should be dispensed with.

### **3. Whether collective bargaining by the association with Multiplex is anti-competitive?**

3.1 Over the period of time there is integration of the business of film production and distribution. The film production units are turning into corporate entities and several film production companies are venturing and diversifying into the film distribution business. The distribution game is changing, many small distributors have been marginalized. Producers are also dealing directly with major multiplex companies for distribution deals, while other cinemas, which are largely single-screen theatres, are handled by individual distributors.

3.2 The conflict has arisen between the producers/distributors and the members of the FICCI-Multiplex Association of India on revenue sharing ratio. Generally the revenue sharing ratio is negotiated between individual producer and individual multiplex operator film by film. United Producers/ Distributors Forum (UPDF) has issued notice on March 27, 2009 to all producers & distributors, whether its member or otherwise, for not to release any new film to the members of the FICCI-Multiplex Association of India. Notice also contained a warning given to the respective members that in case of failure to comply with the instruction given in the notice, it would lead to life time suspension/ strict disciplinary action, etc. against the concerned member.

3.3 Accordingly during the period of April 4, 2009 to June 12, 2009 no films were released by producers / distributors on account of their concerted action of not releasing films to the multiplexes. This created pressure on the multiplexes forcing them to enter into a compromise. The new agreements, under the new revenue sharing arrangement, were signed on June 9, 2009, with some producers/distributors.

3.4 FICCI-Multiplex Association of India has informed Competition Commission of India that the members of the UPDF who are controlling almost 100% of the market for production and distribution of Hindi pictures in multiplexes in

India (relevant market) are acting in concert to fix prices and also limiting/controlling supply by refusing to release Hindi films for exhibition in multiplexes.

3.5 Competition Commission in its order observed that the producers/distributors with their collective market power attempted to ensure that multiplex owners did not get the business of film exhibition till they agreed to the proposal of enhanced revenue share. The plea of collective bargaining by the producers/distributors on the grounds of greater public or consumer interest, was also negated by the commission. It also observed that the new negotiated revenue sharing arrangement has given substantial enhanced revenue sharing to the producers / distributors which are permanent in nature and ultimately, this burden was passed on to the ultimate consumers who are final multiplex cinema goers for watching the films, i.e., 'the common man'. Accordingly UPDF was directed to refrain from indulging in such anti-competitive practices in future and are further directed to file an undertaking to this effect.

### **4. Is there any cartelisation by various channels to have commercial break at same time?**

4.1 The Consumer Unity & Trust Society (CUTS), a non-profit consumer advocacy group, has prepared a preliminary investigation report on television channels. It tries to establish correlation, how each channel has been going in for advertising breaks around the same time. The CUTS is planning to present this report to the Competition Commission of India. Competition Commission may launch an investigation against major television channels to find out if they have abused their dominance or formed cartels against consumer interest in programming advertising slots. Hence the TV channels may be probed for scheduling advertising slots during programmes in such a way that viewers are denied their right to choose by switching channels and are forced to watch ads.

