



COMPETITION COMMISSION OF INDIA

Case No. 13 of 2017

In Re:

Thiruvananthapuram Entertainment Network (P) Ltd.

**AMC XXV/ 300 (3) (4), Chirayinkeer Road,
Attingal, Tarivandanum – 695101, Kerala.**

Informant

And

Star India Pvt. Ltd.

**Star House, Urmi Estate, # 95 Ganpatrao Kadam Marg,
Lower Parel (W), Mumbai – 400013, Maharashtra.**

Opposite Party

CORAM

**Mr. Devender Kumar Sikri
Chairperson**

**Mr. S. L. Bunker
Member**

**Mr. Sudhir Mital
Member**

**Mr. Augustine Peter
Member**

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

**Justice G. P. Mittal
Member**

Order under Section 26 (1) of the Competition Act, 2002

1. The present information has been filed by Thiruvananthapuram Entertainment Network (P) Ltd. (hereinafter, the 'Informant') under Section 19 (1) (a) of the Competition Act, 2002 (hereinafter, the 'Act') against Star India Pvt. Ltd. (hereinafter, the 'Opposite Party'), alleging contravention of the provisions of Sections 3 and 4 of the Act.



सत्यमेव जयते



2. The Informant is stated to be a company engaged in the business of Cable Television Distribution and Establishment of Digital Head End, Distribution of T.V. Channels in the State of Kerala, particularly, Thiruvananthapuram District. It is stated to be in this business for the last 15 years. As per the information, the work of the Informant involves supplying signals for telecast of various T.V. channels including Star T.V.'s channels to customers at different places. The Informant has around 22,000 customers in the State of Kerala.
3. The Opposite Party is a broadcaster of satellite based T.V. Channels in India having multiple channels including Star Plus, Star Sports, Star Gold, Channel V, Star World, Star Movies, Star Utsav, *etc.* As per the information, for supplying the channels of the Opposite Party to its customers, the Informant has to enter into agreements with the Opposite Party from time to time whereby the Opposite Party gives its bouquet of channels to the Informant for monetary consideration, which is enhanced from time to time.
4. The allegation of the Informant is that such agreements entered into by the Opposite Party with various T.V. Channels Distributors, including the Informant, are anti-competitive in nature in as much as the Opposite Party, over a period of time, started showing price discrimination and started asking the Informant to pay more for its Bouquet of Channels which were being provided by the Opposite Party to various competitors of the Informant for lesser prices.
5. It is averred that till 2014, the rates being charged by the Opposite Party from the Informant as well as its competitors including Kerala Communicators Cable Limited (hereinafter, 'KCCL'), Asianet Cable Vision (hereinafter, 'ACV') and DEN Networks Limited (hereinafter, 'DEN') *etc.*, which are big players, were more or less uniform. However, after the Opposite Party took over the Malayalam Channels owned by Asianet Communication Limited *viz.* Asianet, Asianet Plus and Asianet Movies (excluding Asianet News) on 30.06.2014, it started charging a hefty license fee from the Informant for subscription of its



Bouquet of Channels, as compared with the fee charged from the competitors of the Informant who are big players in the State of Kerala.

6. The Informant has submitted that when it had entered into an agreement with the Opposite Party on 01.07.2014 for subscription of its 19 channels out of a bouquet of 39 channels offered by the Opposite Party, the license fee agreed was Rs. 1,11,248.12/- for around 22,000 connections (approx. Rs. 5.06/- per connection). In comparison, it is submitted that KCCL which has around 25 lac connections, was apparently paying approx. Rs. 4.40/- in terms of rate per connection during the same period. Thereafter, when on 28.12.2015, the Informant executed two subscription agreements for six months each with the Opposite Party for subscription of 20 channels, the license fee got raised to Rs. 1,15,063/- (approx. Rs. 5.23/- per connection) for the period 01.07.2015 to 31.12.2015 and then Rs. 1,47,510 (approx. Rs. 6.70/- per connection) for the period 01.01.2016 to 30.06.2016. However, in comparison, KCCL was paying approx. Rs. 5/- in terms of rate per connection during the same period. Further, it is submitted on expiration of the agreements dated 28.12.2015, the Opposite Party forced the Informant to execute the next agreement on 15.12.2016 at an even higher rate of Rs. 1,77,000/- per month (approx. Rs. 8 per connection) for the period 01.07.2016 to 31.12.2016 and for Rs. 3,12,500/- per month (approx. Rs. 14.20 per connection) for the period 01.01.2017 to 30.06.2017, for subscription to 20 channels out of a bouquet of 35 channels, by threatening to discontinue the major sports and regional channels, if such rate was not paid. Hence, the Informant, having no other option, was coerced to enter into the agreements at such high rates for further twelve months.
7. It is alleged that such disparity is shown by the Opposite Party with the intention of eliminating small-scale broadcasters from the State of Kerala and creating monopoly of only big players like KCCL, ACV and DEN. The Informant has also alleged that the Opposite Party is giving carriage fee to KCCL and ACV to have their channels in all categories as number 1 on the



broadcasting list and that the Opposite Party enters into agreements for a period of 2 years with KCCL and ACV while only for 6 months with the Informant.

8. Based on such submissions and documents, the Informant has alleged anti-competitive behaviour and abuse of dominant position by the Opposite Party in charging excessive license fee from the Informant as compared to the fee charged from the Informant's competitors who are allegedly big players in the State of Kerala. The Informant hence, prays that the Commission initiates an enquiry against the Opposite Party for contravention of the provisions of Sections 3 and 4 of the Act and passes an appropriate direction.
9. The Commission has perused the information and the material placed on record by the Informant therewith. It has studied in detail the averments/ allegations made by the Informant. The Commission observes that that the primary grievance of the Informant is price discrimination in favour of the competitors of the Informant, who are big players in the market, by the Opposite Party. In context of the same, the Informant has alleged the contravention of the provisions of both Sections 3 and 4 of the Act by the Opposite Party.
10. With regard to Section 3 of the Act, the Informant has simply alleged the subscription agreements entered into by the Opposite Party with the Informant's competitors to be anti-competitive in nature. The Commission observes that since such agreements are not entered into between parties who are engaged in identical or similar trade of goods or provision of services but rather between broadcaster and distributors, they would not fall within the scope of Section 3 (3) of the Act. Further, the said agreements do not even fall within either of the sub-clauses of Section 3 (4) of the Act as well. Hence, contravention of Section 3 (4) of the Act is also not made out. Therefore, the Commission holds that violation of Section 3 of the Act is not made out in the present case.
11. Next, to examine the allegations under Section 4 of the Act regarding price favouritism, the Commission notes that first the relevant market needs to be



delineated, second the dominance of the Opposite Party in such market needs to be tested and lastly, if the Opposite Party is found to be dominant, the allegations relating to its abuse have to be examined.

12. The Informant has not suggested any relevant market in its information or submissions. To determine the relevant market, both relevant product market and relevant geographic market have to be established. Since the Opposite Party is engaged in providing the services of broadcasting satellite based T.V. Channels in India, the relevant product market seems to be '*market for provision of broadcasting services*'. Further, since the Opposite Party is alleged to be making price discrimination between its various distributors in the State of Kerala, and keeping in mind factors such as language and consumer preferences, the relevant geographic market seems to be '*State of Kerala*'. Hence, the relevant market appears to be '*market for provision of broadcasting services in the State of Kerala*'.
13. With respect to the dominance of the Opposite Party, the Commission notes that apart from merely stating in the information that the Opposite Party is a dominant player, the Informant has provided no substantive data to establish its claim. The Informant has only stated that the Opposite Party enjoys a dominant position in the industry because it possesses T.V. channels in all major categories *i.e.* Hindi General Entertainment, Hindi Movies, Music, Sports, English Movies, Infotainment, Lifestyle, Kids, News and Regional channels as well in its bouquet.
14. Therefore, in order to ascertain the dominance of the Opposite Party, the Commission, *vide* its order dated 31.05.2017, had asked the Opposite Party to provide certain information regarding its competitors in the State of Kerala and their respective market shares. In response to the same, the Opposite Party, rather than providing the specific information sought, merely submitted that the broadcasting industry in India is highly competitive with the presence of around 881 private T.V. Channels registered with the Ministry of Information and



Broadcasting (hereinafter, the ‘MIB’) and the Opposite Party competes with all of them which are broadcasted in the State of Kerala.

15. Hence, the Commission resorted to perusing the information available in the public domain. It was observed that the Opposite Party’s Channel portfolio comprises of more than 50 channels including channels such as Star Gold, Channel V, Star World, Star Movies, Life OK, Movies OK, Star Plus *etc.* and various regional affiliate channels. Further, in the State of Kerala, apart from the Opposite Party, other broadcasters engaged in provision of broadcasting services include SUN Television Network Ltd., Sony Television Network, Malayalam Manorama Group, Malayalam Communications Limited, Zee Entertainment Enterprises Limited, Viacom 18 Media Private Limited *etc.* The Malayalam Channel portfolio of the Opposite Party includes channels such as Asianet, Asianet Plus, Asianet Movies, *etc.* Other channels that compete with the Opposite Party’s Malayalam channels include SUN TV’s channels such as Surya TV, Surya News *etc.*, Malayalam Manorama Group’s channels such as Mazhavil Manorama and Manorama News, Malayalam Communications’ channels such as Kairali TV, Kairali We, Kairali People, *etc.* and also other channels like Kiran TV, Malayalam Cinema Club, Kochu TV, Chirithira, Amritha TV, Media One, DD Malayalam, Jaihind, Mathrubhumi News, Shalom TV, Darshana TV, Kaumudi TV, Janam TV, *etc.* Moreover, while several channels by different broadcasters are available to the viewers in the State of Kerala, the Commission noted that the Broadcast Audience Research Council (BARC) viewership data for the month of April, 2017 (for top nine channels) shows that the Opposite Party’s regional affiliate Asianet (100% ownership) is apparently a leading player enjoying approx. 40-50% share of viewership ¹. SUN TV and Malayalam Manorama Group’s channels appear to be the next closest competitors of Asianet with their share of viewership being around 20% and 10% respectively.

¹ <http://www.keralatv.in/2017/04/malayalam-trp-ratings/>



16. From such information obtained and observed from the public domain, the Commission ascertains that the Opposite Party seems to be in a position of dominance in relevant market for provision of broadcasting services in the State of Kerala.
17. Having established the relevant market and the position of dominance of the Opposite Party in such relevant market, the Commission now proceeds to examine the allegation of price discrimination by the Opposite Party. The Commission noted that the information provided by the Informant indicates that the Opposite Party was indulging into price discrimination between the Informant on one hand and big players like KCCL, ACV and DEN on the other. Nonetheless, it sought to look for information regarding the actual rates being charged from KCCL, ACV and DEN by the Opposite Party in the public domain. However, information regarding the rates being charged from KCCL found in the public domain were noticed to be merely tentative. Also, similar comparison of rates being charged by the Opposite Party from any other Cable Television Distributor than KCCL (either comparable to KCCL or the Informant) was not provided in the information. Hence, the Commission sought certain information from the Informant and the Opposite Party.
18. The Informant, in response, communicated that it would like to withdraw the information filed before the Commission, since its disputes with the Opposite Party stood resolved and the Opposite Party had agreed to re-consider the tariff rates as per the total number of connections of the Informant. Pursuant to such request on part of the Informant, the Commission, *vide* order dated 17.08.2017, *inter alia* observed that the alleged contravention by the Opposite Party under the Act was being assessed and inquired into by the Commission not only from the perspective of the Informant, but also from the perspective of its abuse of dominance in the market in general. Under the scheme of the Act, a settlement between the information provided and the alleged contravening entity cannot be the basis for termination of any proceedings. Accordingly, the Informant's request for withdrawal of the information filed was rejected by the Commission.



19. On the other hand, the Opposite Party in its response, filed pursuant to rejection of the request of the Informant, denied all the allegations leveled by the Informant. With respect to the allegation that it was charging higher prices from the Informant *vis-à-vis* other Multiple System Operators (hereinafter, the ‘MSOs’), the Opposite Party submitted at the outset that under the Regulations prescribed by the Telecom Regulatory Authority of India (hereinafter, the ‘TRAI’) relating to grant of signals, interconnection between service providers, renewal of interconnection agreement, reference interconnect offer, disconnections and other related issues between various stakeholders in the value chain for distribution of television channels, it was under an obligation to provide access of signals of television channels to all the Distribution Platform Operators (hereinafter, the ‘DPOs’) on a ‘must provide’ and ‘non-discriminatory’ basis on receipt of a request for the same from them.
20. Further, it submitted that the provisions of the Act only require the dominant entity (if the Opposite Party is presumed to be dominant) to ensure that its business practices do not discriminate between similarly placed customers. To illustrate that the Opposite Party does not discriminate between similarly placed customers, the Opposite Party placed on record, an Agreement entered into by it with the Informant as the one entered into by it with another MSO *namely* Athulya Media Pvt. Ltd., stated to be similarly placed to the Informant. The Opposite Party submitted that both these MSOs operate in only one district as compared to the other large players operating in multiple districts and hence, the terms and conditions of the agreements entered into with both these MSOs, including their license fee, are largely similar.
21. Furthermore, to illustrate that the terms offered by the Opposite Party to the Informant *vis-à-vis* KCCL does not amount to discrimination or unfair treatment, the Opposite Party emphasised the fact that these two operators are not similarly placed. The Opposite Party referred to the information provided by the Informant itself wherein it was stated that the Informant operated only in the



district of Thiruvananthapuram with around 22,000 subscribers whereas KCCL operated across the State of Kerala with around 25 lac subscribers.

22. With regard to the details sought of all the MSOs in the State of Kerala who had subscription to the Opposite Party's channels and their respective subscriber base, the Opposite Party provided names of only some such MSOs. Regarding their subscriber base, the Opposite Party submitted that since generally the DPOs enter into negotiated or fixed fee contracts with the Opposite Party wherein the subscriber numbers during a year remain irrelevant for the purposes of billing, hardly any DPO submits subscriber reports to the broadcasters. Accordingly, information regarding subscriber base of its MSOs is not available with the Opposite Party.
23. Considering the response of the Opposite Party in entirety, the Commission is of the view that the response furnished by the Opposite Party is not in accordance with what was directed and the same is incomplete and inconclusive, and at times, even contradictory.
24. Firstly, regarding the two agreements entered into by the Opposite Party with the Informant and Athulya Media Pvt. Ltd., the Commission observes that the same are not comparable. While the agreement relating to the Informant is a complete agreement comprising *inter alia* of information regarding license fee, area of operation as well as number of subscribers, the agreement with Athulya Media Pvt. Ltd. furnished by the Opposite Party is merely a renewal agreement which, except license fee, contains no details to show that Athulya Media Pvt. Ltd. is similarly placed to the Informant.
25. Next, despite the specific allegation of the Informant of price discrimination by the Opposite Party between the Informant and KCCL, the Opposite Party did not furnish any information regarding the prices charged from KCCL to disprove what has been stated by the Informant in its information.



26. Further, the Commission finds the submission of the Opposite Party that the details of the subscriber base of its MSOs are not available with it as the arrangement with them is on a negotiated fixed fee basis (which is agnostic of subscriber number), to be contrary to the terms of the agreements that the Opposite Party has placed on record entered into with the Informant and Athulya Media Pvt. Ltd. It is noted from the copy of the agreement entered into with the Informant by the Opposite Party that the said agreement contains a specific clause *i.e.* Clause 15 titled 'Reports' which *inter alia* requires the MSO to maintain a 'Subscriber Management System' and provide complete and accurate opening and closing subscriber monthly reports for the channels and package containing the channels to the Opposite Party in the format set out in the agreement, else it would amount to material breach of the agreement which shall entitle the Opposite Party to terminate the agreement.
27. Even so, assuming without accepting, that such data is not submitted by the MSOs to the Opposite Party and despite that the Opposite Party has not terminated their agreements, the Commission observes that it cannot be a case that the Opposite Party is not aware of the subscriber base of its MSOs at all as it itself has submitted that even in fixed fee agreements, subscriber base is one of the factors considered during negotiations. Moreover, even if it is accepted that the Opposite Party is not aware of the subscriber base of the MSOs, it can always ask the MSOs to furnish the same to it for the purpose of filing response before the Commission as the concerned MSOs would still have such information.
28. In such circumstances, the Commission finds that the incomplete information furnished by the Opposite Party does not appear to be due to non-availability of the information. Rather, there appears to be an attempt on part of the Opposite Party to give a perfunctory response to the Commission in order to evade scrutiny.



29. On the issue of dominance also, as observed above, though the Opposite Party was required to categorically provide the details and market shares of its competitors, it has summarily brushed aside the query by only citing the number of channels registered with the MIB without giving due regard to the aspect of language, genre-wise classification or even availability of these channels in the State of Kerala. Given that the Opposite Party is an established player in the broadcasting market in India and abroad, it was expected to provide a well rounded reply in context of the channels being broadcasted by it in different genres and its competitors therein. However, no such information has been provided by the Opposite Party.
30. Overall, on going through the response submitted by the Opposite Party, the Commission finds that the Opposite Party has neither provided any cogent material nor evidence which can categorically refute the allegation of price discrimination between different MSOs in the State of Kerala thus, impeding the ability of the small-scale MSOs like the Informant to compete in the market. Further, the Opposite Party has also failed to furnish any material which can show that alleged price discrimination by it amongst the MSOs is based on any justifiable reasons.
31. Hence, upon examination of the information provided by the Informant, the responses of the Informant and the Opposite Party, and the information available in the public domain, the Commission is of the view that the Opposite Party appears to be in a position of strength in the relevant market of market for provision of broadcasting services in the State of Kerala. Further, the Commission finds that the price discrimination between different MSOs as brought out in the information coupled with the Opposite Party's speedy resolution of the Informant's grievance followed by an evasive reply to the Commission, *prima facie* indicates that the Opposite Party is acting in contravention of the provisions of the Act.



32. On the issue of the jurisdiction, the Commission is of the view that in this matter, its jurisdiction is complementary with that of the TRAI. The powers of the Commission are in addition to and not in derogation of the TRAI's mandate to regulate the practices of the broadcasters in the concerned sector. The scope of powers and functions of the Commission under the Act and that of TRAI under the TRAI Act, 1997 appear to be distinct in terms of process of investigation and inquiry as also the remedies that may arise from contravention of the provisions of the respective Acts.
33. In view of the foregoing, the Commission hereby directs the Director General (hereinafter, the 'DG') to cause an investigation into the matter to ascertain whether the Opposite Party has indulged in contravention of the provisions of Section 4 (2) (a) (ii) of the Act in the market. The DG is directed to complete its investigation within a period of 60 days from the receipt of this order and submit its report to the Commission forthwith.
34. It is made clear that, if during the course of the investigation, the DG comes across any other conduct of the Opposite Party in addition to that mentioned in the information, which it finds to be in contravention of the provisions of the Act, the DG shall investigate the same as well. Also, the DG is directed to conduct a detailed investigation without restricting and confining itself to the duration mentioned in the information.
35. The DG is also directed to investigate the role, if any, of any individuals/officials of the Opposite Party who might have been in-charge of and responsible for the conduct of the business of the Opposite Party, at the time of alleged contravention.
36. Nothing stated in this order shall tantamount to final expression of opinion on the merits of the case and the DG shall conduct the investigation without being swayed in any manner whatsoever by the observations made herein.



37. The Secretary is directed to send a copy of this order along with the information and the documents received in relation to this matter to the Office of the DG forthwith.

38. It is ordered accordingly.

Sd/-
(Devender Kumar Sikri)
Chairperson

Sd/-
(S. L. Bunker)
Member

Sd/-
(Sudhir Mital)
Member

Sd/-
(Augustine Peter)
Member

Sd/-
(U. C. Nahta)
Member

Sd/-
(Justice G. P. Mittal)
Member

New Delhi
Date: 29.12.2017