

COMPETITION COMMISSION OF INDIA

Case No. 66 of 2012

Dated: 05/11/2012

IN THE MATTER OF:

Ajay Devgn Films
Through Naik Naik and Company

Informant

v.

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| Yash Raj Films Private Limited | Opposite Party No. 1 |
| Yash Raj P.P. Associates Private Limited | Opposite Party No. 2 |
| Yash Raj Puri & Co. Pvt. Ltd. | Opposite Party No. 3 |
| Yash Raj Pal Film Distributors (Banglore) Pvt. Ltd. | Opposite Party No. 4 |
| Yash Raj Vandana Film Distributors Pvt. Ltd. | Opposite Party No. 5 |
| Yash Raj Kushagra Arts Pvt. Ltd. | Opposite Party No. 6 |

ORDER UNDER SECTION 26(2) OF THE COMPETITION ACT, 2002

The present information has been filed by Ajay Devgn Films ('the informant') under Section 19(1)(a) of the Competition Act, 2002 ('the Act') against Yash Raj Films Private Limited ('OP No. 1'), Yash Raj P.P. Associates Private Limited ('OP No. 2'), Yash Raj Puri & Co. Pvt. Ltd. ('OP No. 3'), Yash Raj Pal Film Distributors (Banglore) Pvt. Ltd. ('OP No. 4'), Yash Raj Vandana Film Distributors Pvt. Ltd. ('OP No. 5') and Yash Raj Kushagra Arts Pvt. Ltd. ('OP No. 6') (collectively referred to as 'opposite parties) alleging *inter-alia* contravention of sections 3 and 4 of the Act.

2. The informant is a sole proprietary concern of a well known Bollywood actor engaged in production of films. OP No. 1 is a company incorporated under the Companies Act, 1956, engaged in production and distribution of films. OP No. 2 to 6 are various other companies associated with OP No. 1 engaged in distribution of films all over India. As per the allegations, the opposite parties were dominant in the relevant market of 'film industry in India'. The film business mainly involves three stages—production, distribution and exhibition. A producer spends money during the making of the film. A film Distributor acquires distribution rights from the producer of the film. The distributor then makes copies

of the film, spends money on publicity, advertising, marketing, cost of prints and other distribution costs. The film distributors, either themselves or through sub-distributors, then enter into agreement with the exhibitors (owners of the single screen theatres and multiplexes) for screening of the films. The revenue generated at the exhibition stage is shared by the producers, distributors and exhibitors as per their respective revenue-sharing arrangements.

3. The informant's grievance is that the opposite party released its mega starrer film *Ek Tha Tiger* on 15th August, 2012. At that time the opposite parties were contemplating to release another untitled film later named as *Jab Tak Hai Jahan (JTHJ)* at the time of Diwali. The opposite parties before the release of *Ek Tha Tiger* had put a condition on single screen theatres that if they wanted to exhibit *Ek Tha Tiger*, they would have to simultaneously agree to exhibit the other film *JTHJ* at the time of Diwali. Any single screen theatre who did not agree to booking of his theatre for both the films would not get the right to exhibit the single film. While some theatres entered into agreement with the opposite parties for exhibition of both the films, namely *Ek Tha Tiger* and *JTHJ*, some did not agree to this and did not enter into the agreement.

4. It is contended by the informant that since *Ek Tha Tiger* was a big ticket film bound to be a block buster and its exhibition was profitable for the single screen theatres, majority of single screen theatres entered into agreement for exhibition of both the films because of the big name and dominance of opposite party. Since there was a threat that the opposite parties would not allow exhibition of even *Ek Tha Tiger* if the contract for exhibition of other film was not entered simultaneously, it amounted to abuse of dominance. The single screen theatres under compulsion had to enter into this contract. The informant alleged that this was violation of section 3 as well as section 4 of the Competition Act. The informant submitted that *Ek Tha Tiger* was released at the time of EID and *JTHJ* is to be released at the time of Diwali. This grievance of the informant arose because the informant feared that he would not get enough theatres for his own film *Son of Sardar* because of the agreement of single screen theatres with the opposite parties at the time of releasing *Ek Tha Tiger*. The informant contended that the agreement between the opposite parties and the film exhibitors for exhibition of the two films together amounted to contravention of section 3(4)(a), 3(4)(b) and 3(4)(d) as well as contravention of section 4(2)(a).

5. The Commission has perused the information and heard the counsels for the informant. The informant alleged contravention of sections 3(4) and 4 of the Act. Dealing first with section 3(4), it may be noted that the agreements between the opposite parties and single screen theatres are undoubtedly vertical in nature. The distributors and exhibitors operate at different levels in the value chain of film business, and the impugned agreement between them is vertical. The informant, *inter alia*, argued that this agreement is in the nature of a *tie-in arrangement* prohibited under section 3(4)(a) of the Act. The Commission is not convinced with the said allegation. There is a tie-in arrangement in this case whereby the opposite parties tied its earlier release with its forthcoming release. However, as per the scheme of the Act, tie-in arrangements *per se* are not violative of section 3(4)(a) of the Act. Whether such an agreement is prohibited under the Act depends upon its actual or likely appreciable adverse effect on the competition in India. The governing principle under section 3(4) is 'appreciable adverse effect on Competition in India'. The guiding factors are stated under section 19(3) to assess whether any agreement is causing or likely to cause an appreciable adverse effect on competition. The factors are as follows:

(a) creation of barriers to new entrants in the market;

(b) driving existing competitors out of the market;

(c) foreclosure of competition by hindering entry into the market;

(d) accrual of benefits to consumers;

(e) improvements in production or distribution of goods or provision of services;

(f) promotion of technical, scientific and economic development by means of production or distribution of goods or provision of services.

6. Considering the effect of the impugned agreement on the touchstone of factors elucidated under section 19(3), the Commission is of the view that the impugned agreement is not affecting the competition in the Indian markets as such. The agreement has neither created entry barriers for new entrants nor drove existing competitors out of the market, nor is there any appreciable effect on the benefits accruing to the ultimate consumers viz. the viewers. The single screen theatres were aware at the time of entering this agreement in July, 2012, that many other films were likely to be released during Diwali. At that particular time,

the single screen theatres took a business decision to screen two films of opposite parties (one during Eid and other at Diwali, respectively) rather than screening any other film that may be released. Some single screen theatres refused to enter into such an agreement and were free to screen any film they wished to, including that of the informant. This is also a competitive decision taken by the single screen theatres in their own interest. It was a legitimate commercial decision taken by the parties to the agreement at that particular time. Also, the agreements have not curtailed informant's right to screen its film altogether. Single screen theatres, as per the earlier report of DG, contribute only 35% of revenue and multiplex theatres contribute about 65% of the revenue. The multiplexes are not constrained from exhibiting informant's film. The Informant is free to exhibit its film on multiplexes and on those single screen theatres which did not enter into agreement with opposite parties. Moreover, the release of film can be preponed or postponed as per the availability of screens by a distributor. The impugned agreement is purely commercial in nature between parties promoting their economic interests and as such does not affect any particular market. The impugned agreement, therefore, does not violate section 3(4) of the Act.

7. The act of booking theatres by a distributor for its two films simultaneously when the theatre owners have the liberty either to agree or not to agree, is not a restraint on the freedom of business of theatre owners. The theatre owners can wait for other films and can refuse to book their theatres simultaneously for two films. Even otherwise the non significant position held by the single screen theatres does not cause any adverse effect on the competition. As per the information available with the Commission, even single screen theatres in some of the states are further sub-divided in category A, category B and category C and the distributors discriminate between these categories and do not allow release of new films in category B or category C theatres and only choose category A theatres. Thus the market of exhibition of new films on single screen theatres in the context of this case is not of enough significance to cause an appreciable adverse effect on the competition. Even otherwise, the market cannot be restricted to any particular period like Eid or Diwali and the market has to be considered a market available throughout the year. If many high ticket mega starrer films compete with each other to be released only on the occasion of festivals, the choice lies with the theaters and each theatre is at liberty to book its theatre even in advance and it cannot be said that this had appreciable adverse effect on the market. The subject of appreciability is of huge practical importance for the competition. The Commission cannot issue restraint orders in

respect of agreements which are of minor importance. While issuing restraint orders, the Commission has to keep in mind the overall exhibition market and not a particular period of the market.

8. As far as section 4 is concerned, the informant alleged that the opposite parties were dominant in the relevant market of 'film industry in India'. The informant however failed to substantiate how 'film industry in India' was the relevant market and how the opposite parties were dominant in this relevant market. While inquiring whether an enterprise enjoys a dominant position or not under section 4, the Commission is required to consider all or any of the following factors stated under section 19(4), namely:—

- (a) market share of the enterprise;*
- (b) size and resources of the enterprise;*
- (c) size and importance of the competitors;*
- (d) economic power of the enterprise including commercial advantages over competitors;*
- (e) vertical integration of the enterprises or sale or service network of such enterprises;*
- (f) dependence of consumers on the enterprise;*
- (g) monopoly or dominant position whether acquired as a result of any statute or by virtue of being a Government company or a public sector undertaking or otherwise;*
- (h) entry barriers including barriers such as regulatory barriers, financial risk, high capital cost of entry, marketing entry barriers, technical entry barriers, economies of scale, high cost of substitutable goods or service for consumers;*
- (i) countervailing buying power;*
- (j) market structure and size of market;*
- (k) social obligations and social costs;*
- (l) relative advantage, by way of the contribution to the economic development, by the enterprise enjoying a dominant position having or likely to have an appreciable adverse effect on competition;*
- (m) any other factor which the Commission may consider relevant for the inquiry.*

9. The informant did not place on record data either of market share or of economic strength to show how the opposite parties were dominant in the proposed relevant market on the basis of above stated guiding factors. It was argued by the counsels for the informant that the opposite parties were dominant because OP No. 1 was big banner production house and

had big name and had given several block buster films. No enterprise can be considered dominant on the basis of big name. Dominance has to be determined as per law on the basis of market share, economic strength and other relevant factors stated under section 19(4) of the Act. The Commission is unable to accept such a narrow approach while determining the relevant market. A large number of movies are released in India every year. As per the information available in public domain, in Bollywood itself, 107 and 95 films were released in 2011 and 2012 (till now) respectively. Out of this, the opposite parties produced only 2-4 films each year. This cannot be said to amount to dominance even in the Bollywood industry, leave aside film industry in India. Therefore, the claim of the informant that opposite parties were dominant players in the market 'film industry in India' cannot be accepted. There is *prima facie* no contravention of section 4 of the Act.

10. In view of the forgoing, the Commission is *prima facie* of the opinion that there is no contravention of the provisions of the Act in the present case. This case is, therefore, fit for closure under section 26(2) of the Act.

11. The Secretary is directed to communicate the decision of the Commission to all concerned accordingly.

sd/-
H.C. Gupta
(Member)

sd/-
R. Prasad
(Member)

sd/-
Geeta Gouri
(Member)

sd/
Anurag Goel
(Member)

sd/-
M.L. Tayal
(Member)

sd/-
Justice S.N. Dhingra (Retd.)
(Member)