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Fair Competition  
For Greater Good

**COMPETITION COMMISSION OF INDIA**

**Ref. Case No. 03 of 2014**

**In Re: Reference under section 19(1)(b) of the Competition Act, 2002 filed  
on behalf of Ministry of Tourism, Government of India, Transport  
Bhawan, Parliament Street, New Delhi-110001.**

**Against**

**M/s Span Communications**

**Opposite Party**

**CORAM**

**Mr. Ashok Chawla  
Chairperson**

**Mr. M. L. Tayal  
Member**

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

**Mr. Sudhir Mital  
Member**

**Mr. Augustine Peter  
Member**

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



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**Appearances:** Shri Ujjwal K. Jha and Shri Manish Kumar, Advocates for the informant with Ms. Usha Sharma, Additional Director General and Ms. Hena Usman, Director of the informant.

Shri Ramji Srinivasan, Senior Advocate with Shri G.R. Bhatia, Advocate for the opposite party and Shri Naresh Kheterpal, Proprietor of the opposite party.

**Order under section 26(2) of the Competition Act, 2002**

1. The present reference has been filed under section 19(1) (b) of the Competition Act, 2002 ('the Act') by Ministry of Tourism ('the informant') against M/s Span Communications ('the opposite party') alleging *inter alia* contravention of the various provisions of the Act.
2. Facts, as gathered from the reference, may be briefly noted:
3. The reference has been filed by Ministry of Tourism which annually undertakes and launches centralized media campaigns globally in several leading international print, TV and online media under the brand line 'Incredible India' in key source markets across the world. The objective of these campaigns is stated to generate awareness about the tourism products and destinations of the country and to promote Incredible India as a preferred tourist destination in source markets overseas in a sustained manner and to augment tourist arrivals to the country increasing the share of India in world tourist arrivals.
4. It is averred that the Ministry invites technical and financial bids from advertising agencies/ media buying houses for executing the campaigns in accordance with the media plans finalized. It is stated that the technical



proposal *inter alia* stipulates that it shall contain several documents including letters from publications/ channel/ portals or from their authorized representatives that the bidder has obtained quotes from them or letter from the authorized representative of the publications stating that the quotes have been obtained from them.

5. It is further stated that after conclusion of the tender process, work orders are issued to the lowest bidder (L-1) in the respective tender.
6. Reference has been made to the tender issued by the informant for the Global TV Campaign 2012-13 dated 11.10.2012. In response thereto, it is stated that various tenders were received and the bid price of the opposite party was found to be the lowest and accordingly, a Letter of Intent dated 30.01.2013 for the campaign was issued to it after its acceptance for undertaking the campaign as per the terms and conditions of the bid document. Accordingly, a work order was placed upon the opposite party for the said campaign.
7. It is the case of the informant that it received an anonymous complaint against the opposite party alleging the following:
  - (i) M/s Span Communications, M/s Media Mansion and M/s Media Junction are owned jointly by the same family/ partners.
  - (ii) M/s Media Mansion and M/s Media Junction are suppliers to the agency (M/s Span Communications) for the Global Television 2012-13 campaign, which is further billed to Ministry of Tourism, hence M/s Span Communications made dual profit, first as agency for Ministry of Tourism and through M/s Media Mansion and M/s Media Junction, while selling media to M/s Span Communications at an obvious profit.



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(iii) The above arrangement severely undermined the bidding process and created a monopoly situation, resulting in rate escalation and loss to public exchequer.

(iv) As per public records, M/s Media Junction is a firm jointly held by Mr. Vikas Goyal (R/o B-229, FF, Lok Vihar, Pitam Pura, New Delhi-110034) and Mr. Rohit Khetrpal (R/O B-174, East of Kailash, New Delhi-110065).

(v) As per public records, M/s Media Mansion and M/s Media Junction are registered at the same address *i.e.* B-229, FF, Lok Vihar, Pitam Pura, New Delhi-110034. Ms Atika Goyal partner/ member in M/s Media Mansion has the same surname as that of Mr. Vikas, who is the co-owner of M/s Media Junction.

(vi) TAN Numbers of M/s Media Mansion (DELM15506B) and M/s Media Junction (DELM15505) are in sequence- most likely filed on the same day.

(vii) Further, on the same address M/s Airwaves Telefilms Pvt. Ltd. and M/s Waves Telefilms Pvt. Ltd. are registered that makes it a dummy address actively used by Directors of M/s Span Communications and their vested interests. Mr. Naresh Khetrpal and Ms. Atika Goyal are listed as Directors in M/s Airwaves Telefilms Pvt. Ltd. whereas in M/s Waves Telefilms Pvt. Ltd., Mr. Rohit Naresh Khetrpal and Mr. Vikas Goyal are listed as Directors.

(viii) The website of M/s Media Mansion is working on Span's digital arm's website domain and as evident from M/s media Mansion's URL *i.e.* <http://www.spandigital.in/media-mansion/index.html>, it is part of M/s Span Communications and the two organizations have a very close working relationship. *Prima facie*, it looks like M/s Media Mansion was



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created just to handle Incredible India campaign(s) and that it never had any other client *per se*.

(ix) The complainant has also enclosed Income Tax papers of M/s Media Junction for the Assessment Year 2013-14, which lists the names of Mr. Vikas Goyal and Mr. Rohit Khetrpal and shows them as shareholders in the company.

8. A show cause notice is stated to have been issued to the opposite party to seek clarifications on the above allegations. It is stated that in the replies given by the opposite party it was mentioned that M/s Span Communications is a sole proprietorship firm individually owned by Mr. Naresh Khetrpal. It was further stated that M/s Media Mansion was an independent firm owned by Mr. Ravinder Kumar Negi and Ms. Atika Goyal and M/s Media Junction is a partnership firm owned by Mr. Vikas Goel and Mr. Rohit Khetrpal.

9. The informant further examined the allegations by scrutinizing the documents submitted by the opposite party as part of the bid and third party bills submitted alongwith the invoices raised in connection with the TV campaign. Based on the same, the informant drew the following conclusions:

(i) M/s Span Communications and all other bidders in their bids for the Global TV Campaign 2012-13 had submitted support letters of M/s Media Mansion in respect of ESPN Channel. In the bids, a letter by the concerned channel confirmed that M/s Media Mansion was its sole representatives for ESPN Star Sports and had therefore the exclusive right to supply rate proposals to Ministry of Tourism.

(ii) M/ s Media Mansion for releasing TV spots on ESPN channel had quoted US\$ 1,43, 000 to M/s Span Communications and US\$ 8,15,000



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to the L-2 bidders- about 469% more which gave L-1 bidder an advantage over the other bidders. As such, it reveals as to how M/s Span Communication in connivance with the media house namely M/s Media Mansion stifled its competition.

(iii) For the TV campaign 2012-13 the supporting letters and the third party bills for some of the channels were not submitted by the same agency by M/s Span Communications.

10. Similar allegations have been made by the informant with respect to the other campaigns and it is not necessary to recapitulate the allegations in detail. Moreover, in addition to M/s Media Mansion, the informant has pointed out that two more media houses viz. M/s Cutting Edge Media and M/s Asia Today Ltd. had quoted widely differing rates to the opposite party and other advertising agencies.

11. Based on the above, the informant has alleged that the opposite party in connivance with the media houses manipulated the competition in its favour. It is alleged that such unethical trade practice is not only legally unsustainable but also anti-competitive due to rigging of the bids and becoming L-1 bidder by the opposite party from 2009-10.

12. The informant has also alleged that the opposite party has abused its dominant position and substantial market power for advertisement given by Ministry of Tourism for foreign/ overseas promotion of tourism.

13. In view of the above averments and allegations, the informant has prayed to the Commission:

- a) To make inquiry of the anti-competitive conduct/ practice adopted by the opposite party on the basis of the facts and grounds stated in the reference;



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- b) To declare that the opposite party has abused its dominant position and has adopted anti-competitive practice and as a result of such abuse has caused loss and injury to the informant;
- c) To restrain the opposite party from adopting the anti-competitive practice;
- d) To impose penalty upon the opposite party as may be appropriate keeping in view of the facts and circumstances of the present case;
- e) To direct the opposite party to function in a manner as may be specified by the Commission in order to ensure freedom of trade carried on by the participants in the market; and
- f) To pass any other order as it deemed fit.

14. The Commission has perused the material available on record including the additional submissions filed by the informant and reply thereto filed by the opposite party besides hearing the counsel and the representative(s) of the parties who appeared before the Commission.

15. It may be noted that though the informant has made diverse allegation against the opposite party, essentially, grievance is made of the fact that the opposite party, by rigging the bidding process for international campaigns of the Ministry, has emerged as L-1 bidder through 2009-10 to 2012-13. In particular, it is the case of the informant that the opposite party by manipulating the bids has emerged successfully in 10 out of 14 campaigns launched by the informant since 2009-10.

16. From the information, it appears that the informant invited proposals from advertising agencies/ media buying houses for executing the global



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campaigns (print/ electronic/ online). The informant has made specific allegations with regard to Global Television Campaign 2012-13 of the Ministry in which the informant emerged successful being L-1 bidder. The informant, based on some anonymous complaint received by it against the opposite party, has alleged that the opposite party in connivance with M/s Media Mansion and M/s Media Junction (which are stated to be suppliers to the informant) manipulated the bidding process by quoting favourable (lower) rates to the informant for releasing TV spots on the channels in comparison to the other bidding advertising agencies.

17. The entire case of the informant is based upon the assumptions arising out of the anonymous complaint received by it that the opposite party, M/s Media Mansion and M/s Media Junction are jointly owned by the same family/ partners. In fact, a show cause notice was also issued by the informant to the opposite party after getting the same vetted from Ministry of Law & Justice to seek clarifications on the allegations contained in the said complaint.

18. From the averments made in the reference, it appears that the said notice was responded to by the opposite party stating therein that M/s Span Communications is a sole proprietorship firm individually owned by Mr. Naresh Khetrapal. It was further stated that M/s Media Mansion was an independent firm owned by Mr. Ravinder Kumar Negi and Ms. Atika Goyal and M/s Media Junction is a partnership firm owned by Mr. Vikas Goel and Mr. Rohit Khetrapal.

19. It appears that no action whatsoever was initiated or taken by the informant in terms of the integrity clauses of the tender relied upon by the informant in the reference. Moreover, in light of the reply furnished by the opposite party to the show cause notice, it does not stand established that the two named firms alongwith the opposite party firm are jointly owned by the same family/ partners.



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20. From the reference, it appears that no case of bid rigging at the level of advertising agencies (bidders to the tenders of Ministry of Tourism) has been made or otherwise alleged.
21. So far as the issue of any bid rigging at the level of media buying houses (the intermediaries who buy slots/ spots from the media channels) is concerned, it may be mentioned that except making a very bald and vague suggestion, no material whatsoever has been placed on record to indicate any concerted action. It may be observed that the opposite party has filed a detailed reply to the allegations made in the reference denying and disputing the averments made therein. Besides, as noted earlier, the opposite party has also filed its reply to the additional submissions filed by the informant denying the contents thereof.
22. The Commission observes that the quotes were not directly obtained by the opposite party from the television channels but were obtained through third party media buying agencies, which, in turn, can either be owned by the advertising agencies themselves or can be owned by the television channels. All those agencies engaged in business of buying and selling of airtime space from the television channels will be engaged in the provision of identical or similar services.
23. Further, as the opposite party obtained quotes from third party agencies, these agencies in turn have quoted favourable rates to the opposite party but quoted an extremely high rates for other bidders as summarised below:

Campaign Year	Media Space Buying House	Television	Bids		Difference (approximate)
			L1 (SPAN)	L2	
Global TV Campaign (2012-13)	Media Mansion	ESPN channel	\$1,43,000	\$8,15,000	469%



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Europe TV Campaign (2010-11)		CNBC	Rs.1,36,89,216	Rs.2,35,00,800	71.67%
APAC TV Campaign (2009-10)		CNBC	Rs.52,35,596	Rs.1,19,00,202	127%
	Cutting Edge	Telemundo, NBC	\$14,63,200	\$21,41,000	46.3%
	Asia Today Ltd	Zee TV USA & Middle East	Rs.52,00,500	Rs.85,00,000	63.44%
Europe TV Campaign (2010-11)	Cutting Edge	Euro New Channel	\$10,67,500	\$15,12,000	41.63%

24. It may be observed that though the differences in the rates quoted between the lowest bidder and the second lowest bidders in different bids as shown above are wide, there is nothing more on record to suggest any concert in the process.
25. In these circumstances, even at this level and in light of the general nature of the allegations, there is not sufficient material on record to establish contravention of the provisions of the Act. On a careful perusal of the reference and the material available on record, the Commission is of opinion that the informant has failed to adduce any material which can be suggestive of any collusive or abusive action wherefrom even a *prima facie* satisfaction of contravention of any of the provisions of the Act may be recorded. Accordingly, the reference is ordered to be closed forthwith in terms of the provisions contained in section 26(2) of the Act.
26. The Secretary is directed to inform the parties accordingly.

**Sd/-**  
**(Ashok Chawla)**  
**Chairperson**



**Sd/-  
(M. L. Tayal)  
Member**

**Sd/-  
(S. L. Bunker)  
Member**

**Sd/-  
(Sudhir Mital)  
Member**

**Sd/-  
(Augustine Peter)  
Member**

**Sd/-  
(Mr. U.C. Nahta)  
Member**

New Delhi  
Date: 29/10/2014