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# **ANTI-TRUST IN MEDIA AND ENTERTAINMENT INDUSTRY: LEGAL IMPLICATIONS OF MARKET CONSOLIDATION**

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## **ABSTRACT**

The media and entertainment industries have undergone extraordinary concentration in recent years, creating serious legal issues about antitrust legislation. This essay investigates the numerous ramifications of market consolidation in the industry, with an emphasis on the complex interplay between corporate mergers, competition regulations, and consumer welfare.

Drawing on a thorough study of relevant case studies and regulatory frameworks, this paper investigates the numerous techniques used by media conglomerates to enhance their market dominance, as well as the issues these strategies offer for fair competition. It also examines the role of regulatory authorities such as the Federal Trade Commission (FTC) and the Department of Justice (DOJ) in combating anticompetitive behaviours and protecting against monopolistic tendencies.

This article examines recent legal precedents and enforcement actions to shed light on the changing environment of antitrust regulation in the media and entertainment industries, highlighting crucial implications for policymakers, industry stakeholders, and consumers alike. This study intends to guide conversation and develop regulatory responses that encourage innovation, diversity, and equitable access within the dynamic media ecosystem by fostering a more in-depth understanding of the legal implications of market concentration.

**Introduction:**

The primary regulatory framework for competition in India is established by the Competition Act<sup>1</sup>, which is enforced by the Competition Commission of India (CCI). Nevertheless, M&E mergers are influenced by special rules such as the Cable Television Networks (Regulation) Act<sup>2</sup> and the Cinematograph Act.<sup>3</sup>

Mergers are assessed by the Competition Commission of India (CCI) with regards to their influence on competition, considering many variables like market share, barriers to entry, and vertical integration. The assessment procedure also takes into account media-specific factors such as the variety of content, the presence of multiple perspectives, and the autonomy of editorial decisions.

That is exactly where it is supposed to stop doing the rounds. The fact that the film business is a regular feature in the entertainment industry does not really put a break on the phenomenon. In these circumstances of competition, particularly in reference to the horizontal concentration and vertical integration of firms involved in the markets for their products and services, the conditions have thrown many new problems and questions. That is at a rate of technological change that is always accelerating. In Indian film business self-regulatory groups or bodies have been developed those aim to govern the operational activities of exhibitors in the overall in an efficient manner through wide arrays of procedures while safeguarding the interests of the producers. Such type of groups gets involved in the activities of registration of the titles of films so that simultaneous releases can be reduced, supervision of contracts amid the producers and the distributors, other than financial administrative procedures of developing a movie and its release. An unarguably front-running country in world movie-making, India's problem is maximization of revenues from movies in theatres due to infrastructural limitations.

Hence, it is increasing towards these trends of strike deals and trading also the digital rights of films across different formats, prior to release. Of course, with the concern of piracy, yet it is quite inexpensive, easily accessible to the stolen contents, and hence preferred over the inclination of consumers to invest in the streams with proper right. The trends have therefore gotten greater significance into the recalibration of the sector itself. Designing the fixes can

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<sup>1</sup> Competition Act 2002.

<sup>2</sup> Cable Television Networks (Regulation) Act of 1995

<sup>3</sup> Cinematograph Act of 1952

drive towards the fluid challenges and opportunities that can be innovated into a sector that has the potential of harnessing the spectrum of the communication age. Media and Entertainment (M&E), in India, have now got redefined with broad reach levels and consumer markets witnessing a rapid spread associated with high penetration of the internet and rising levels of income among people - especially the youth segment.

The above growth has increased the level of mergers and acquisitions (M&A) activity significantly with fears about the possible adverse effects over competition being on a high. In this regard, Indian legal and monitoring and evaluation (M&E) industries professionals have responsibility towards effectively dealing with their growth, regulation in the system and dynamic with market elements.

### **Understanding Market Consolidation and Motives:**

Consolidation is a procedural step that takes place whenever a merger and acquisition transaction take place. The phrase is commonly employed to denote the phenomenon that occurs when specific industries see a reduction in fragmentation, typically allowing a small number of corporations to gain influence through mergers or acquisitions, sometimes referred to as consolidation.<sup>4</sup>

**Enhancing Market Dominance:** Acquiring a greater market share has benefits such as economies of scale that smaller competitors may encounter difficulties in attaining. The aforementioned benefits encompass improved visibility, increased purchasing capacity, and decreased expenses related to gaining new clients.

**Improving Buyer Ability:** Many a time, the consolidation process focuses on leveraging economies of scale with an intention to yield major cost improvements and thereby gain enormous sales volume. This can easily gain factored due to that a more significant unit is able to operate with a lower cost structure compared to the smaller competitors, hence increase competitive forces.

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<sup>4</sup> Sourav K, 'What's Consolidation in Stock Market and How It Can Help You Spot Breakouts' (Business Standard, 26 March 2020) <[https://www.business-standard.com/article/markets/what-s-consolidation-in-stock-market-and-how-it-can-help-you-spot-breakouts-120032600180\\_1.html](https://www.business-standard.com/article/markets/what-s-consolidation-in-stock-market-and-how-it-can-help-you-spot-breakouts-120032600180_1.html)> accessed 23 March 2024.

**Synergy:** At times, consolidation bids are made with the cause of accomplishing the benefit of synergistic advantages but largely, this reason is over-stated. The most glaring presence of the synergistic effects is in the vertical consolidations where organizations acutely combine to maximize operations and to draw upon the benefiting capabilities that are likely to increase the general productivity in great amounts.

### **The Consequences:**

**Greater Market Dominance:** The process of consolidation leads to the formation of larger companies, so granting them enhanced authority and impact in the market. The aforementioned hegemony encompasses multiple facets, including consumer price, vendor expenses, and the general structure of the industry. In essence, larger corporations possess greater sway over market conditions, hence possibly engendering monopolistic inclinations.

**Reduced Consumer Choices:** Due to consolidation and growing market control, customer freedoms typically decrease. Due to a reduction in the number of enterprises functioning in the economy, customers are faced with a restricted range of options in terms of goods and services. The decrease in available choices results in a decrease in consumer agency, as their ability to exert control over conditions or inclinations diminishes. In essence, consolidation might result in a diminished level of competition in the marketplace, thus lacking advantages for customers.

**Reduction in consumer profits:** It implies that the decline in customer choices and power eventually leads to diminished consumer gains. Consumers may encounter reduced purchasing capacity or value for their cash as a result of fewer options and potentially elevated prices resulting from market domination. This observation underscores the immediate influence of sector consolidation on individual consumers and their financial well.

**Causing Regulatory response:** This highlights that regulatory involvement is frequently prompted by the confluence of heightened competitiveness and detrimental consequences for consumers. Governmental anti-monopoly authorities usually intervene when an industry becomes unduly consolidated in order to resolve issues and encourage increased competition. This underscores the significance of oversight by regulators in upholding equitable market procedures and safeguarding consumer welfare.

The objective of regulatory intervention is to foster increased competition within the sector through the mitigation of monopolistic activities and the establishment of equitable conditions

for everyone operating in the market. Regulatory organisations aim to provide users with access to a wide range of alternatives and equitable pricing by dismantling cartels or implementing measures to mitigate anti-competitive conduct.<sup>5</sup>

## **CASE STUDIES OF VARIOUS MERGERS IN ENTERTAINMENT AND MEDIA SECTOR THROUGH COMPETITION LAW LENS**

### **PVR-INOX Merger: A Successful Arrangement**

Indian multiplexes suffered greatly from the COVID-19 pandemic and the lockdowns that followed. Consumers were forced to stay at home, which led to the closure of theatres and other public places, which significantly reduced income. Although it was anticipated that things would get better after the shutdown, the emergence of OTT services such as Netflix and Prime offered substitute entertainment choices and lured a significant section of the populace away from conventional movie theatres. This change in customer behaviour, brought on by OTT content's availability and cost, made multiplex earnings much more difficult to recover. As a result, big multiplex chains like PVR and INOX decided to merge due to financial difficulties, which was a huge step forward for the entertainment sector.

Applying sections 3&4 of the Competition Act,<sup>6</sup>the Indian non-profit Consumer Unity and Trust Society (CUTS) filed an application with the CCI, claiming that the suggested merger among the two companies would negatively impact competition in the film exhibition business. They asked for a comprehensive analysis of the merging companies.<sup>7</sup> In order to avoid monopolies from forming and to preserve fair competition, Section 3(1) of the Competition Act forbids agreements that can negatively impact market within India. The Act gives the Competition Commission of India the authority to examine arrangements that, within a year of their formation, are likely to have a significant adverse effect on competition (AAEC).<sup>8</sup> The CCI, nevertheless, dismissed the allegations, claiming that it was not appropriate to investigate the possibility of an entity that has not merged engaging in AAEC. The court stressed that a deal between two or more parties that potentially result in AAEC is necessary for Section 3(1)

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<sup>5</sup> Evan J (Consolidating market meaning - what is a consolidating market? ..., 7 January 2019) <<https://www.forex.com/en-us/glossary/consolidating-market/>> accessed 23 March 2024

<sup>6</sup> Competition Act 2002, s3.

<sup>7</sup> Srivats KR, 'Competition Panel Dismisses Cuts Plea against PVR-Inox Merger' (BusinessLine, 14 September 2022) <<https://www.thehindubusinessline.com/companies/cci-dismisses-cuts-plea-against-pvr-inox-merger/article65888919.ece>> accessed 23 March 2024

<sup>8</sup> Ibid, s 3(1).

to apply. To prove a case, one must do more than just express concerns about future behaviour that could lead to AAEC. In *Satyen Narendra Bajaj v. PayU Payments Pvt. Ltd.*,<sup>9</sup> the commission made it clear that although the Act forbids abusing a dominant status, the act does not regard the mere existence of dominance to be anti-competitive behaviour in the absence of preliminary proof of abuse.

The (NCLAT) rejected a request asking for the CCI, the fair trade regulator, to look into the combination of two prominent multiplex According to the Informant, this corporation will hold a dominant position under Section 4 of the Act, with 1646 of the approximately 3200 screens in India being owned by it.<sup>10</sup> The complainant claims that because there is a limited amount of space available at strategic places for fresh entrants to open multiplex theatres, the intended Arrangement is likely to cause AAEC in the appropriate market and create obstacles to access. The NCLAT noted that Section 4 of the Act deals with the misuse of a dominant position, and the regulator has correctly noted that even in the event that a merger is approved, per se dominance doesn't attract section 4 rather it must be anti-competitive.<sup>11</sup>

### **ZEE-SONY Merger: A Failure**

On October 4, 2022, the Competition Commission of India (CCI) provisionally authorised the merger of Zee Entertainment Enterprises Limited (ZEE) and Sony Group Corporation (SGC) in India, a momentous step that would create the biggest television network in India. The decision came after both sides submitted voluntary divestitures to resolve initial issues highlighted by the CCI, leading to a phase one approval of the transaction that had been suggested.<sup>12</sup> The CCI emphasised that both ZEE and SGC operated throughout the whole broadcasting process in the Indian subcontinent, covering content development, aggregation, transmission, and content dissemination. Nevertheless, the commission highlighted worries regarding market dominance, especially among Hindi language-based media outlets, where both sides would control an aggregate market position of 40-45%, with Disney Star snatching

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<sup>9</sup> Case No. 23 of 2019, order delivered on February 5, 2020

<sup>10</sup> Competition Act 2002, s 4.

<sup>11</sup> Kashyap R, 'CCI Dismisses Allegations against PVR Limited and INOX Leisure Limited' (azb, 13 January 2023) <<https://www.azbpartners.com/bank/cci-dismisses-allegations-against-pvr-limited-and-inox-leisure-limited/>> accessed 23 March 2024

<sup>12</sup> Singh H, 'Zee-Sony Merger: Assessing the Competition Concerns' (CCLE) <<https://www.icle.in/resource/zee-sony-merger-assessing-the-competition-concerns/>> accessed 23 March 2024

the first position.<sup>13</sup> The CCI originally thought the merger would result in to a considerable detrimental impact on competition in the country due to the merged entity's significant presence in the market. In particular, the amalgamated business would have enormous influence over downstream actors such as "distribution platform operators" (DPOs), which could lead in higher costs for advertising, DPOs, and consumers. Therefore, on August 10, 2022, the CCI sent a notice to the companies, urging them to demonstrate why the regulator should not launch a phase two inquiry into the transaction that was suggested.

In their response, Zed and Sony proposed voluntary solutions that did not include any structural modifications, but rather proposed two strategies aimed at modifying behaviour. The steps that were implemented encompassed the merged entity's provision of obligatory price incentives and rebates to all channel distributors, in addition to guaranteeing equitable and unbiased terms for a designated period following the merger.<sup>14</sup> Furthermore, in order to address apprehensions surrounding the entity's prevailing influence among advertisers, the involved parties put out a proposition to develop and oversee "independent advertising verticals" for a specified duration.

As a result, the Competition Commission of India (CCI) has given its permission to the planned merger, subject to compliance with the suggested amendments. Both Star India Private and Viacom 18 Media Private Limited were prohibited by the CCI from obtaining the voluntary remedy package. The prospective buyer must own no previous or ongoing associations with the resulting company and its subsidiaries, guaranteeing autonomy. Star India Private Limited and Viacom18 Media Private Limited have been explicitly removed from consideration as potential bidders.<sup>15</sup>

Furthermore, the purchaser must not have held any previous or current positions as an employee or director of the company. In order to establish and strengthen the various channels as a competitive force in the relevant market, it is vital for the buyer to be equipped with the finances, the necessary knowledge, and a strong determination to achieve success. The quick

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<sup>13</sup> Joshi S and Mathur S, 'Voluntary Remedies Win CCI Approval for Zee-Sony Merger' (Lexology, 23 February 2023) <<https://www.lexology.com/commentary/competition-antitrust/india/talwar-thakore-associates/voluntary-remedies-win-cci-approval-for-zee-sony-merger>> accessed 23 March 2024

<sup>14</sup> Jain S, 'The Sony-Zee Affair: A Market Opportunity or a Competitive Disadvantage?' (CBCL, 11 December 2022) <<https://cbcl.nliu.ac.in/competition-law/the-sony-zee-affair-a-market-opportunity-or-a-competitive-disadvantage/>> accessed 23 March 2024

<sup>15</sup> Chopra R, 'Zee- Sony Merger- A Journey through Challenges and Triumphs - Shareholders - India' (Zee-Sony Merger- A Journey Through Challenges And Triumphs - Shareholders - India, 25 August 2023) <<https://www.mondaq.com/india/shareholders/1359368/zee--sony-merger--a-journey-through-challenges-and-triumphs>> accessed 23 March 2024

implementation of the CCI's order and the avoidance of immediate issues over competition are of utmost importance in ensuring the integrity of the divestiture process. In addition, it is imperative for the purchaser to obtain all requisite regulatory authorizations in order to procure and manage the networks.<sup>16</sup>

The aforementioned decision highlights the increasing proficiency of the CCI in managing substantial transactions that carry competitive consequences, especially among the media and entertainment industry, specifically in the field of broadcasting. Furthermore, this demonstrates the CCI's dedication to expediting the company's activities through the prompt resolution of combination evaluations during phase one, on the condition that the involved parties present appropriate solutions to resolve every issue indicated by the authority.

### **Anti-Trust Issues Pertaining to Entertainment and Media Industry:**

Competition law functions as a device to promote the dispersion and fair allocation of resources, while additionally prohibiting the entities from monopolising specific industries. This statement pertains to the issues of associations of producers or distributors, emphasising the possibility of these alliances unintentionally impeding competition. While the primary objective of these associations is to promote the interests of their particular sectors, the lack of well-defined regulations can result in acts that have a detrimental impact on competition, sometimes referred to as appreciable adverse effects on competition (AAEC). The use of competition law within the Indian film industry has received scant examination, despite its current developmental period. The present analysis centres on Section 3 of the Competition Act, 2002, which pertains to the Anti-Competitive Agreement, and its pertinence to the Indian film/entertainment industry.

The prohibition of AAEC in the relevant market, which includes the manufacturing, supply, and dissemination of products and services, is stipulated in Section 3 of the Act. Production and distribution organisations, which possess significant influence, have the ability to create agreements that enforce arbitrary limitations, thereby violating the provisions of the Act. Internationally, corporations or organisations are prohibited from engaging in collusion to manipulate prices, regulate production, or distribute market shares according to geographical proximity. In addition to prohibiting bid rigging, the Act also provides exemptions for joint

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<sup>16</sup> n 11.



ventures that are intended to improve efficiency. Furthermore, agreements that limit production, limit the availability of goods, or assign specific market regions for the selling of commodities may also be considered anti-competitive according to Section 3 of the Act.

### **Whether AAEC will be induced through revenue sharing arrangements?**

Disputes pertaining to income sharing among distributors, producers, and film organisers are prevalent throughout the film industry in India. The Film Guild of Producers, an autonomous trade association, initiated legal proceedings against the authorities, focusing on matters pertaining to income distribution, entertainment taxation, and prepayments. Various groups, such as PVR, INOX, and Fun Cinemas, engage in collaborative efforts to address both internal and foreign trade conflicts. Nevertheless, there are apprehensions regarding the lack of transparency regarding release details and the potential for entertainment tax deductions, even in jurisdictions where it has been eliminated.

Notwithstanding the claims made by multiplex groups that their contribution to income is limited to 25%, ongoing conflicts persist around the negotiation of revenue. The Copyright Act of 1957 confers to copyright holders the authority to determine the commercial conditions for their intellectual property, hence prohibiting multiplexes from imposing the requirement of screening criteria.<sup>17</sup> Competition cases within the film industry frequently entail conflicts between parties and associations that advocate for diverse stakeholders within the industry. The crucial factor to evaluate in such circumstances is Section 3(3)(b) of the Competition Act, which explicitly forbids agreements that restrict or manipulate the supply of goods or services. The applicability of section 3(4) of the Act, which pertains to vertical agreements, presents a challenge because to the varied roles played by distributors, producers, and exhibitors within the vertical network of the business.

### **Media & Entertainment Industry and Section 4 of Competition Act:**

This study aims to examine the operational mechanisms of Section 4 of the Act within the context of the entertainment industry. This section pertains to those who exploit their position of power for personal gain. Market dominance is a concept that does not have a single,

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17 Jadhav A 'Antitrust Issues in Entertainment and Film Industry (Part 2) - Broadcasting: Film, TV & Radio - India' (Antitrust Issues In Entertainment And Film Industry (Part 2) - Broadcasting: Film, TV & Radio - India, 14 February 2022) <<https://www.mondaq.com/india/broadcasting-film-tv--radio/1161084/antitrust-issues-in-entertainment-and-film-industry-part-2>> accessed 23 March 2024

universally agreed-upon definition. However, it is commonly defined as a company's ability to establish an advantageous position in advance, thereby limiting the options available to competitors. This advantage allows them to employ real dangers in order to frighten competitors and limit their behaviour, thus obtaining a competitive advantage. According to the definition provided by the Act, a corporation achieves a state in which it is capable of independently managing its activities, impeding effective competition within its market, and possibly causing injury to customers or competitors by establishing standardised industry standards.

The assessment of a company's market dominance is limited to the specific market in which it functions, as the amount of dominance is determined by factors such as commodity or geographical location. Evaluating whether a corporation is taking advantage of its dominant position requires comprehending its operating market, which is the first stage in assessing dominance. Section 2(r) of the Act defines the relevant market, and the Competition Commission of India (CCI) has the authority to designate the market of concern. A pertinent market is determined by the presence of interchangeable products or services that possess comparable attributes, pricing, and usefulness.

The legal dispute between Reliance Big Entertainment and the Karnataka Film Chamber of Commerce (KFCCC) is around the issue of biased practices that exhibit a preference for Kannada films over non-Kannada ones. This inclination is justified by the premise of fostering indigenous culture, challenging the prevalence of high-budget Bollywood and Hollywood films, and recognising the more restricted geographical scope of Kannada films in relation to the wider popularity of Bollywood. Nevertheless, this form of prejudice violates constitutional tenets that prohibit bias rooted in caste, creed, or language.<sup>18</sup>

According to Sections 4(2)(a)(i) and 4(2)(b)(i) of the Act, associations are allowed to give priority to market services based on cultural grounds, as long as it does not harm others. Instead than hindering other competitors in the market, it is advisable to focus on improving the quality of films. <sup>19</sup>Furthermore, there are issues that arise in relation to the digital rights of films and

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<sup>18</sup> [2012] 108CLA 116 (CCI)

<sup>19</sup> Jadhav A, 'Antitrust Issues in Entertainment and Film Industry (Part 1) - Antitrust, EU Competition - India' (Antitrust Issues In Entertainment And Film Industry (Part 1) - Antitrust, EU Competition - India, 14 February 2022) <<https://www.mondaq.com/india/antitrust-eu-competition-/1161082/antitrust-issues-in-entertainment-and-film-industry-part-1>> accessed 23 March 2024

their television broadcasting for the purpose of generating revenue, mostly due to the limited duration of films in theatres.

There are uncertainties around the holdback conditions for abuse of power in relation to DTH satellite rights, which has led filmmakers to expedite the release of films. The Commission responds to this scenario by implementing measures, such as imposing restrictions on future film releases from producers who fail to meet their obligations. In order to address these concerns, it is imperative to design an appropriate holdback period that effectively balances the interests of all parties involved.

### **Shifting Market Trends and CCI's Response:**

**Convergence and Consolidation:** In the media and entertainment (M&E) sector, there has been a noticeable increase in the confluence of traditional media platforms like radio and television with digital entities like over-the-top (OTT) and online gaming platforms. Disney's acquisition of Star India is a prime example of this tendency, which blurs the distinctions between various media. Notwithstanding the possible advantages of this kind of consolidation, questions about content neutrality and competition have been raised. The Disney-Star India merger was approved by the Competition Commission of India (CCI), subject to several stipulations designed to protect competition in sports television and maintain content impartiality. This indicated the extent to which such regulations are implemented to achieve the balance in the maintenance of competition, the fairness of customers, and competitiveness in the markets.

**Rise of Tech Giants:** In this changing environment, M&E is also getting influenced by big global tech companies like Google and Amazon foraying into digital space. The CCI noted how this tech monopoly could influence the market and started inquiring about changes in the policy of Google's Play Store. The need for the oversight of the regulators, however—it may be added—does just as much for competition and consumer interests, which has already become quite clear to be a shot across the bow for regulators, warned of the heightened influence of the internet giants in the M&E sector.

**New Subscription-Led Business Models:** The growth of such aggregation platforms, led by the likes of Disney+ Hotstar, in line with new subscription-based models akin to Netflix and Hotstar, has only added to the change in consumer preference amid the digital play of entertainment services. At an axiomatic level, though, this has not translated to the legislative

standards regarding these emergent and dynamic company structures in the M&E industry. Set up of a regulatory framework appropriate for the evolving market conditions of the late development and establishment by the CCI of clear standards in relation to subscription and aggregation platforms.

**Local vs. Global Content:** How to balance the promotion of local content while encouraging competition from foreign contenders has been a major headache to most potential regulators and lawmakers. It passed laws where the government demands the stimulus to local content production according to one's cultural interests, which can be seen in the recent changes to the Foreign Direct Investment (FDI) laws limiting the participation by foreign stakeholders in the news media sector. This brings out the present or current situation that is resulting from the globalization of M&E, considering possible aspects of the content of the regulation of a transmission and the advancement of local episcopal expressions of culture. **Changing Regulation Strategy:** At the same time, facing the new challenges and adjust in changing market conditions, even the regulatory strategy of CCI M&E sector changes.

Recent regulatory clearances—as evidenced, for instance, in the Zee-Sony Pictures merger—indeed point to more nuanced and mature regulation than merely share tallying; this includes scrutinizing market share along with a set of other variables that may affect potential competition concerns and safety for consumers. The shift now is towards the proactive regulator that works to make sure a competitive but sustainable M&E ecosystem is in place. It just goes on to show how important adaptive legislation can be.

### **Producer's Association under Regulator Eyes:**

The question that was interpreted majorly by the Competition Commission of India (CCI) in the legal reference, *Motion Pictures Association versus Reliance Big Entertainment Pvt Ltd.*,<sup>20</sup> was whether the association of producers was covered within the provisions given u/s 2(h) of the Act. It is in this respect that the CCI furnished a negative inference in this point, but it pointed out that it can be cast only in the sense of "persons" or "associations of persons". The conditions imposed by the agreement forming such a trade association were unfair as well as unreasonable because no distributor could have avoided getting himself registered with the association. Failure to do so could entail penalties or imposition of an embargo. The

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<sup>20</sup> 2013 CompLR 466( CompAT).

Competition Commission of India (CCI) held the view that the restriction of control, supply, and production of films contained in the said restrictions of the Association was anti-competitive. Subsequently, the ruling was placed under review by Compat, since in tune with the nature gave a judgment that the association did qualify as an "Association of person" or "enterprises". Thus in this nature that the act of the association was indeed restrictive, the verdict that was placed by CCI was then confirmed.

According to the Theatres and Multiplexes Association, Competition Commission of India (CCI), in their analysis, had the MoU put on its radar and pointed towards the various clauses and whether they are in tune with the provisions of the Competition Act. The requirements of restraints and control in Clauses 6 and 18 of the MoU therefore seem to pose a problem in the sense that it seems to limit the supply of films and distribution of the films. These restrictions are manifested through the requirement of no objection licences and the limitation of producers' services. The anti-competitive nature of these terms was determined to be in violation of Section 3(3)(b) of the Competition Act.<sup>21</sup> Nevertheless, it was determined that Clause 8, which dealt with wage fixation and additional shifts, did not contravene the Act in relation to lawful trade union operations concerning labour conditions. However, the Competition Commission of India (CCI) has characterised the Restrictive Resolutions as problematic due to their adverse effects on workforce recruitment, control over service provision, and allocation of regional resources. As a result, it was determined that these resolutions violated Sections 3(3)(b) and 3(3)(c) of the Competition Act.<sup>22</sup>

The Kerala Film Exhibitors Federation, which represents more than 350 theatres in Kerala, had substantial influence over its registered members in the aforementioned case. The association's financial power resulted in the prohibition of unregistered theatres from screening films. The Competition Commission of India (CCI) concluded that the tactics implemented by the Federation were deemed anti-competitive due to the association's significant market hegemony. Consequently, the Competition Commission of India (CCI) implemented penalties in accordance with Section 27 of the Act, imposing a punishment equivalent to 10% of the total

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<sup>21</sup> Competition Act, s 3(3)(b).

<sup>22</sup> Joshi A, 'CCI Reprimands Film Industry Trade Unions for Engaging in Anti-Competitive Behaviour' (Competition Law, 14 February 2022) <<https://competition.cyrilamarchandblogs.com/2017/11/cci-reprimands-film-industry-trade-unions-engaging-anti-competitive-behaviour/>> accessed 23 March 2024

average income.<sup>23</sup>

**Conclusion:**

In summary, competition law has very serious and varied legal implications for the media and entertainment space in India. No competition regulators will really act as an effective lynchpin in reining in the rapid developments and the changing nature of the industry driven by growing internet penetration and enlarged demand from consumers.

Mergers and acquisitions in media and entertainment are governed by an advisory and legal framework enforced by the Competition Commission of India (CCI), pursuant to the Competition Act since 2002. Although wide in its contours, the Act works as accessory legislation to particular influences of M&E mergers, like the Cable Television Networks (Regulation) Act of 1995 and the Cinematograph Act of 1952. End of February 2020.

The Competition Commission of India (CCI) is vested with powers to regulate mergers, with the overall concept of such an elaborate approach on reviewing proposed merger combinations to include considerations on market shares, potential for making entry barriers (vertical integration), and markets, among others. With particular media considerations such as content diversification, pluralism, independence of journalism, and ensuring that in so doing, related merger and acquisition deals made in the sector do not smother competition or reduce consumer behaviour.

This equally comes out as a very important prerogative for the legal practitioners, industry players, and regulatory agencies, as the effectiveness of competition law is going to be very pivot in India's success in businesses in media and entertainment and, more so, studies in media and entertainment. Competition's role in handling the interrelation between market rivalry, development of sector development, and creativity will set the new benchmarking and horizon of the future for monitoring and evaluation (M&E) in India.

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<sup>23</sup> Competition Act 2002, s 27.