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COMPETITION COMMISSION OF INDIA

Case No. 11 of 2020

In Re:

PF Digital Media Services Ltd.

Informant No. 1

Building H, 2nd Floor, Mainframe IT
Park, Royal Palms,
Near Arrey Colony
Goregaon, East,
Mumbai-400065

Ravinder Walia

Informant No. 2

10th Floor, Menoti Mahal,
Behind Being Human Showroom,
Santacruz (West)
Mumbai-400054

And

UFO Moviez India Ltd.

Opposite Party No. 1

Plot No. 53/1, Road No.07,
Marol MIDC, Andheri (East),
Mumbai-400093

Scrabble Digital Ltd.

Opposite Party No. 2

Plot No. 53/1, Road No.07,
Marol MIDC, Andheri (East),
Mumbai-400093

Qube Cinema Technologies Pvt. Ltd.

Opposite Party No. 3

No.42, Dr. Ranga Road
Mylapore
Chennai-600004



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CORAM

Ms. Ravneet Kaur
Chairperson

Mr. Anil Agrawal
Member

Ms. Sweta Kakkad
Member

Mr. Deepak Anurag
Member

Present

<i>PF Digital Media Services Ltd.</i> <i>(Informant No.1)</i> <i>Mr. Ravinder Walia (Informant No.2)</i> <i>UFO Moviez India Ltd. (OP-1)</i>	:	<i>Ms. Tarini Khurana, Advocate</i> <i>Mr. Arun Kathpalia, Senior Advocate</i> <i>Ms. Riddhika Dumane, Advocate</i> <i>Ms. Bhavika Chhabra, Advocate</i> <i>Mr. Avinash Amarnath, Advocate</i> <i>Mr. Tejveer S. Bhatia, Advocate</i> <i>Mr. Sanjay Jain, Head-Legal</i> <i>Ms. Diksha Gupta, Advocate</i>
<i>Scrabble Digital Ltd. (OP-2)</i>	:	<i>Mr. Arun Kathpalia, Senior Advocate</i> <i>Mr. Rahul Rai, Advocate</i> <i>Mr. Binit Agarwal, Advocate</i> <i>Ms. Diksha Gupta, Advocate</i> <i>Ms. Riddhika Dumane, Advocate</i> <i>Ms. Bhavika Chhabra, Advocate</i> <i>Mr. Avinash Amarnath, Advocate</i>
<i>Qube Cinema Technologies Pvt. Ltd</i> <i>(OP-3)</i>	:	<i>Mr. Sajan Poovayya, Senior Advocate</i> <i>Mr. Bharat Budholia, Advocate</i> <i>Mr. Deepanshu Poddar, Advocate</i> <i>Ms. Vayshnavi Ganesh, Advocate</i> <i>Ms. Prathima S., Director- Legal</i>



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Order under Section 27 of the Competition Act, 2002

1. In the present case, an information was filed by PF Digital Media Services Ltd. (“**PF Digital Media/Informant No. 1**”) and Mr. Ravinder Walia (“**Informant No. 2**”) under Section 19(1)(a) of the Competition Act, 2002 (the “**Act**”) against UFO Moviez India Ltd. (“**UFO Moviez/Opposite Party No. 1/OP-1**”), Scrabble Digital Ltd. (“**Scrabble Digital/Opposite Party No. 2/OP-2**”), Qube Cinema Technologies Pvt. Ltd. (“**Qube Cinema Technologies/Opposite Party No. 3/OP-3**”), Globe Theatres Pvt. Ltd. (“**Globe Theatres /Opposite Party No. 4/OP-4**”), Imperial Cinema Pvt. Ltd. (“**Imperial Cinema/Opposite Party No. 5/OP-5**”), FICCI Multiplex Association of India (“**MAI/Opposite Party No. 6/OP-6**”) and Indian Film and TV Producers Council (“**IFTPC/Opposite Party No. 7/OP-7**”) alleging contravention of the provisions of Sections 3 and 4 of the Act. Subsequently, *vide order* dated 28.01.2021, Globe Theatres, Imperial Cinema, IFTPC and MAI, were deleted by the Commission from the array of parties since no allegations or any specific reliefs were sought against them in the Information.

Brief Facts of the Case, as per the Information

2. The Informant No. 1, *i.e.* PF Digital Media, a listed company incorporated under the Companies Act, 1956, is a subsidiary of Prime Focus Limited (“**PFL**”) and is engaged in the business of Post-Production Processing (“**PPP**”) of cinematograph films. It converts cinematograph films from their traditional formats to digital formats. The Informant No.1 is now known as DNEG India Media Services Limited.
3. The Informant No. 2, *i.e.* Mr. Ravinder Walia, a producer, who produced a movie by the name “*Roam Rome Mein*”. He has been in the field of cinematograph films for more than 15 years and has produced many movies. PF Digital Media has carried out post-production processing for his film “*Roam Rome Mein*”.
4. Opposite Party No. 1, *i.e.*, UFO Moviez, is a company incorporated under the Companies Act, 1956 and is, *inter alia*, involved in the supply of Digital Cinema Equipment (“**DCE**”) to Cinema Theatre Owners (“**CTOs**”).



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5. Opposite Party No.2, *i.e.* Scrabble Digital is the wholly owned subsidiary of UFO Moviez and does the same work as PF Digital Media. It has been stated in the Information that as per the statement of Scrabble Digital, available on its website, it controls almost 90 per cent of the post-production activities in the country. Hereinafter, OP-1 and OP-2 are collectively referred to as “UFO”.
6. Opposite Party No. 3, Qube Cinema Technologies, a company incorporated under the Companies Act, 1956 is also a supplier of DCE and is alleged to be under the control of UFO Moviez. It was stated that a merger of UFO Moviez and Qube Cinema Technologies was attempted but was withdrawn in terms of order dated 24.10.2019, passed by the Hon’ble National Company Law Appellate Tribunal in Company Appeal (AT) No. 48 of 2019.
7. It was alleged that OP-1 entered into anti-competitive agreements with CTOs to help and assist the business of Scrabble Digital, which is in violation of provisions of the Act.
8. The Informants were aware of only two equipment lease agreements executed between OP-1, Globe Theatres and Imperial Cinemas, which contain exclusivity clauses. Accordingly, only two CTOs were arrayed as parties in the information, which were subsequently deleted by the Commission *vide order* dated 28.01.2021.
9. As per the Information, the journey of a cinematograph film starts from its shooting at the locations, to its post-production processes in the laboratory, to distribution to the CTOs, to the ultimate public viewing. There are various entities involved at each stage of the journey of a cinematograph film. Due to the advent of technology, the distribution of a cinematograph film to various CTOs has transitioned to digital distribution from distribution through cinematograph film rolls. The digitally distributed cinematograph film can be played by CTOs only through a DCE, and only a digitised version is played. Such compatible digitisation is achieved through post-production processing by digital cinema laboratories like PF Digital Media and Scrabble Digital.
10. Digital distribution of cinematograph films could be achieved only if all the DCEs were to follow a particular international standard. To maintain a level playing field amongst



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the various entities involved, standardisation of digital formats is necessary. In order to achieve standardisation, an association of all major producers formed an entity called Digital Cinema Initiatives (“DCI”), which consisted of seven motion picture studios, namely, Disney, Fox, MGM, Paramount Pictures, Sony Pictures Entertainment, Universal Studios and Warner Brothers Studios. This association was formed to establish uniform specifications for digital cinema. DCE, which is compliant with international standards dictated by DCI, displays every digital print of any cinematograph film in compliance with such international standards.

11. It was alleged that no person is entitled to tamper with these standards to claim a monopolised market. Accordingly, no fetter can be imposed by any party on such digital display of a cinematograph film through a software lock. Any such lock placed by the equipment supplier would defeat the purpose of digitisation and the efforts of DCI.
12. DCE can either be purchased outright or taken on lease. In view of the fact that DCE is an expensive equipment to be purchased by a CTO, it is usually taken on lease. UFO Moviez executed an equipment lease agreement with the CTOs if DCE is taken on lease from it. One such equipment lease agreement contains the following clauses:

“E The Exhibitor, in consideration of the Lessor giving Equipment(s) on lease basis, irrevocably agrees to exclusively source the Content from the Lessor or its Affiliates and further permits and grants the right to Lessor or its Affiliates to exclusively collect and retain Virtual Print Fee (defined hereinafter), on the terms and conditions as enumerated herein below in this Agreement.

5.1 Throughout the Equipment Lease Term, the Exhibitor shall not do or prevent from doing or omit to do any act which may result in a failure of a Contracted Property to be DCI Compliant Property, if at the time of installation of the Equipment(s) in such Contracted Property is declared as a DCI Compliant Property (including, without limitation, uninstalling any Equipment(s) that has been installed by the Lessor.

5.2 During the Agreement Term, the Exhibitor shall not exhibit any Content other than Content provided by the Lessor or its Affiliates and shall use the Equipment(s) only for the purposes of exhibiting the Content supplied exclusively by the Lessor or its Affiliates.

7.1 The Parties agree that UFO shall have the exclusive right to provide the Content to all the Theatre Auditorium(s)/Screen(s) in the Contracted Properties



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of the Exhibitor. The Exhibitor hereby irrevocably agrees to exclusively source the Content from UFO and undertakes neither to engage itself, nor to engage the services of any third party for providing the Content in any of their Theatre Auditorium(s)/Screen(s) in the Contracted Properties.

7.2 In consideration of the Equipment being provided by UFO on lease to the Exhibitor and UFO's exclusive right to provide the Content to the Exhibitor, the Exhibitor shall during the FPF Term irrevocably agrees to exclusively source the content from the UFO and further permits and grants the exclusive right to UFO to collect and retain the Virtual Print Fee with respect to the provisioning and delivery of the content to the Exhibitor at the Theatre Auditorium(s)/Screen(s) in the Contracted Properties as detailed in "Schedule-3" to this Agreement.

.....
7.4 During the Agreement Term, the Exhibitor shall use the Equipment(s) deployed by the Lessor only for the purposes of exhibiting the Content exclusively provided by UFO or its Affiliates and shall not exhibit any Content other than the Content provided by UFO.

13. OP-2 was stated to be in the business of post-production processing of cinematograph films. It was alleged that OP-1 disabled the ones supplied by it on lease to CTOs, preventing such DCEs from accepting or playing any cinematograph film not post-production processed by Scrabble Digital. This prohibition is achieved through the acceptance of a Key Delivery Message ("KDM") generated only by Scrabble Digital, which is incorporated in the digital format of a cinematograph film. KDM is necessary for displaying the film on DCE as per DCI's standard. Thus, the KDM supplied by Informant No. 1 is not accepted by the DCE supplied by OP-1. According to the Informants, the illegal conduct of Opposite Parties No. 1 and 2 was evident from emails dated 18.03.2019 issued by Scrabble Digital to Viacom 18 and Zee Studios, wherein the following was stated:

"Considering the fact the DCE are owned by UFO and VPF collection is to be done by UFO, in order to synchronise this activity, it is an agreed position that UFO's DCN will exclusively receive KDM and exhibit content which are processed and/or supplied by UFO or its authorized labs, which also ensures that the digitized content is played on UFO owned DCEs in a seamless manner and is not affected by any quality of services and/or technical issues. We also ensure content released in cinemas is free from any legal encumbrance and in respect of which many times we are approached by financiers and processing labs to assist in their business process. In the



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absence of any control over the content and KDM delivery, we are left in a very precarious position.

It had come to our knowledge that certain unauthorized parties, surreptitiously and illegally have been supplying content to UFO's DCN, by intentionally concealing from the producers/ distributors that cinemas under UFO's DCN have a contractual arrangement with UFO whereby only the content provided by UFO can be exhibited through the DCEs owned and installed by UFO in the cinemas under UFO's DCN. Even cinemas under UFO's DCN were unaware that the content and KDM had been supplied by such unauthorized parties. In this regard, we have already cautioned the cinemas under UFO's DCN and have also notified the concerned unauthorized party. Despite our best efforts, such third parties are deliberately and mischievously supplying the film contents and KDM to UFO's DCN with an intent to cause wrongful loss to UFO and derive wrongful gains for themselves. It is also not out of place to state that in the past, there have been issues in quality of services provided by such unauthorized parties as well as technical issues in exhibition of such content on screens which form part of UFO's DCN, which had caused wrongful losses not only to UFO but also to cinemas under UFO's DCN and to the producers and distributors, Left with no alternative due to the continuous misuse of our DCE, we are constrained to curb the misuse of the DCEs owned and installed by UFO in cinemas under UFO's DCN and in this regard we wish to inform you that we are upgrading our systems pursuant to which, any content and KDM processed and supplied by any unauthorized party and played on DCEs owned and installed or where UFO is collecting the VPF, will not be compatible with our upgraded security systems. In a nutshell, the upgraded technology will restrict any misuse by DCEs by unauthorized parties, and should you use the services of such unauthorized third parties, the playback of your film might not be exhibited in the process. We have also taken this step as a necessity to ensure that the quality of the services provided to UFO's DCN is maintained and we do not suffer any loss of reputation because of the issues in the content supplied by unauthorized parties. The above is applicable with immediate effect.

We request you to kindly take note of the above and caution you to not fall prey to any attempts made by unauthorized parties to illegally seek out your content for display in cinemas under UFO's DCN. In view of this communication, UFO shall not assume any liability or responsibility for any consequences that may follow from any unlawful attempt to exhibit content processed by unauthorized parties on UFO's DCN, including non-exhibition of the film.

We wish to inform you that Scrabble Digital Limited (SDL) having its office at 703-704, Janaki Centre, 7th Floor, Off Veera Desai Road, Andheri (West), Mumbai 400053 is presently authorized by UFO to deliver content and KDM on behalf of UFO, its subsidiaries and its affiliates to UFO's DCN.



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We also request you to inform us immediately if any unauthorized party approaches you for content processing, delivery of KDM and/or supplying/ delivering any content to UFO's DCN....”

14. With respect to the alleged illegal conduct of Opposite Parties cited above, the Informants filed a Civil Suit before the Hon'ble Delhi High Court being CS (Comm) No. 233 of 2019, titled “*Ravi Walia and another vs M/s UFO Moviez India Ltd. and another*”. On 01.10.2019, the Informants withdrew the suit filed before the Hon'ble Delhi High Court for filing the present information before the Commission. As per the Informants, disabling of DCEs given on lease, has been admitted by UFO Moviez in its affidavit dated 15.05.2019 and written statement filed before the Hon'ble Delhi High Court.
15. It has been stated that the PPP fee charged by PF Digital Media per digital print of a cinematograph film is Rs. 1800/-, whereas Scrabble Digital charges a higher fee of Rs. 2400/-.
16. In view of the foregoing, it was alleged that Opposite Parties are in contravention of provisions of Sections 3 and 4 of the Act.
17. UFO Moviez was stated to be dominant in the relevant market of cinema theatre screens playing the digital format of cinematograph films. It was alleged that the impugned agreement between UFO Moviez and CTOs resulted in denial of access to all cinematograph films which were not post-production processed by Scrabble Digital, resulting in a contravention of the provisions of Section 4(2)(c) of the Act. The conduct of Opposite Parties was alleged to be in contravention of provisions of Section 4(2)(e) of the Act, for protecting the other relevant market of Scrabble Digital, *i.e.* the market for post-production processing through the dominant position of UFO Moviez. Scrabble Digital was stated to be controlling 90 per cent of the PPP market and is thus dominant in the relevant market of PPP of cinematograph films. Accordingly, the Informants alleged abuse of dominant position by the Opposite Parties.



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18. It was further alleged that the agreement between UFO Moviez and Scrabble Digital, to promote the latter's business by disabling the DCE from accepting or playing any cinematograph film which had not been post-production processed by Scrabble Digital, was covered under Section 2(b) read with Section 3(3)(c) of the Act.
19. The Informants stated that Clauses 5 and 7 of the Equipment Lease Agreement executed between UFO Moviez and CTOs supplying DCE is in the nature of a tie-in arrangement, exclusive supply agreement, exclusive distribution agreement and refusal to deal as provided under Section 3(4) of the Act and also resulted in appreciable adverse effect on competition ("AAEC") under the provisions of the Act.
20. The Informants sought interim relief from the Commission under Section 33 of the Act, *inter-alia*, to the effect of staying the operation of the impugned anti-competitive agreements executed by UFO Moviez and Scrabble Digital with the CTOs where the DCE was supplied by UFO Moviez during the pendency of proceedings before the Commission.
21. The Informants, *inter alia*, prayed to the Commission to undertake an investigation with regard to the alleged anti-competitive agreements executed between UFO Moviez and Scrabble Digital with CTOs for exhibition of content on DCE supplied by UFO Moviez and post-production processed by Scrabble Digital and pass an order under Section 27 of the Act directing UFO Moviez to amend and alter all agreements executed between itself and any CTOs.

***Prima-facie* order of Commission under Section 26(1) of the Act dated 17.09.2021**

22. The Commission defined the market for '*provision of services of supply of DCE by a digital cinema service provider on lease/rent to CTOs in India*' and the market for '*provision of PPP services in India*', as first and second relevant market, respectively. The Commission noted that while OP-1 and OP-3 *prima facie* appeared to be significant players in the first relevant market, OP-1 did not appear to hold a position of dominance in this relevant market as delineated. The Commission also observed that dominance of OP-2 was not relevant to be determined as it only appeared to be the beneficiary of



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alleged anti-competitive practices of OP-1. Furthermore, as OP-1, was *prima facie* not dominant in the first relevant market, the Commission did not ascertain the dominance of Scrabble Digital in the second relevant market.

23. With respect to assessment of vertical restraints, the Commission was of the view that the provisions of Section 3(4)(a) read with Section 3(1) of the Act were attracted, as imposition of such clauses *prima facie* becomes a tie-in-relationship for Producers/Exhibitors/CTOs, since they would have to avail PPP (tied product) for getting DCE (tying product). The Commission also noted that, *prima facie*, there was a violation of Section 3(4)(b) read with Section 3(1) of the Act as well, as there existed an exclusive supply agreement in the facts and circumstances of the case between exhibitors and OP-1, since the purchaser of services appeared to be restricted by OP-1 from approaching a competitor of OP-2. Further, the Commission was of the view that Section 3(4)(d) read with Section 3(1) of the Act were *prima facie* attracted in the facts and circumstances of the case, as by virtue of restrictive clauses in the Equipment Lease Agreement, there seemed to be an effective refusal to deal on part of exhibitors/producers with service providers of post-production services other than that of OP-1. The Commission also noted that, *prima facie*, provisions of Section 3(4)(c) were not attracted since the facts of the case, did not disclose the existence of any exclusive distribution agreement, as the Equipment Lease Agreement entered into between OP-1 and CTOs neither restricted or withheld supply of goods nor was it in the nature of allocation of any area or market for disposal or sale of goods. The Commission also observed that OP-3's practice of supplying DCE along with film content and putting fetters on CTOs/producers/distributors on procurement of such content from another entity also appears to constitute a restrictive tie-in arrangement, results in an exclusive supply agreement and has elements of refusal to deal with other content providers.

24. Thus, the Commission, *vide* order dated 17.09.2021, directed the Director General ("DG") to cause an investigation to be made into the matter under the provisions of Section 26(1) of the Act. The Informants' application under Section 33 of the Act seeking interim relief, *inter-alia*, to the effect of staying the operation of the impugned



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anti-competitive agreements executed by OP-1 and OP-2 with the CTOs, was rejected by the Commission *vide* order dated 11.10.2021.

Findings of Investigation

25. The DG submitted the Investigation Report on 14.08.2023, in confidential and non-confidential versions, after seeking extension of time. For the sake of brevity, the evidence relied upon by the DG would be referred to and dealt with appropriately while analyzing the case on merits. A brief of the findings of investigation by the DG is as under:

- a. Investigation revealed that there was a vertical relationship between DCE suppliers and CTOs, along with a vertical relationship between producers, PPP service providers and CTOs. Thus, the conduct of the OPs has been investigated under Section 3(4) of the Act.
- b. Investigation identified the following markets for examination of market power and conduct: (i) market for the supply of DCE on lease/rent to CTOs in India and (ii) market for PPP services in India. In the market for the supply of DCE on lease/rent to CTOs in India, the emphasis of the investigation has been on DCI-Compliant DCEs.
- c. Investigation revealed that OP-1 had a market share of almost 40 % in the market for leased DCI-Compliant DCEs, as per data submitted by Central Bureau of Communication (formerly known as Bureau of Outreach and Communication, “BOC”) and thus have market power in the relevant market. Investigation further revealed that agreements between OP-1, OP-2 and CTOs, along with the conduct of OP-1 and OP-2, constituted a tie-in arrangement, an exclusive supply agreement and an instance of refusal to deal, which led to exclusion of other players from the market for supply of content to DCEs, especially for activities of Digital Cinema Package (“DCP”) cloning and supply of content. Thus, the investigation found OP-1



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and OP-2 to have infringed Section 3(4)(a), Section 3(4)(b) and Section 3(4)(d) of the Act.

- d. Investigation revealed that OP-3 has almost 48% share in the market for leased DCI-Compliant DCEs, as per data submitted by BOC, thus having market power in the relevant market. Investigation further revealed that agreements between OP-3 and CTOs, along with conduct of OP-3 was found to have constituted a tie-in arrangement, an exclusive supply agreement and an instance of refusal to deal, all of which led to exclusion of other players from the market for supply of content to DCEs, specifically for activities of DCP cloning and supply of content. Thus, OP-3 was found to have infringed Section 3(4)(a), Section 3(4)(b) and Section 3(4)(d) of the Act.
- e. Investigation also assessed if agreements between CTOs and OP-1/OP-2 and OP-3 resulted in AAEC. After analysis of factors enumerated under Section 19(3) of the Act, it was found that conduct of OP-1, OP-2 and OP-3 caused AAEC in the market as it results in creation of barriers to new entrants in the market, drives existing competitors out of the market, forecloses competition by hindering entry into market and hinders any potential improvement in production or distribution of services.

Subsequent Developments

26. *Vide* order dated 13.11.2023, the Commission considered the Investigation Report submitted by the DG and directed to forward an electronic copy of the non-confidential version of the Investigation Report to the parties for filing their respective objections/suggestions, if any, to the Investigation Report latest by 27.12.2023 with an advance copy to each other, under intimation to the Commission. Thereafter, the parties were directed to file replies, if any, to the suggestions / objections filed by the other parties, latest by 10.01.2024, with an advance copy to each other, under intimation to the Commission. The Opposite Parties were also directed to furnish their audited financial



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statements including Balance Sheets and Profit & Loss accounts for the Financial Years 2020-21, 2021-22 and 2022-23 latest by 10.01.2024.

27. Thereafter, two separate applications dated 01.12.2023 were filed by UFO Moviez & Scrabble Digital and Qube Cinema Technologies, respectively, seeking creation of confidentiality ring and grant of access to confidential case records sunder Regulation 35(6) of the CCI (General) Regulations, 2009, as amended.
28. *Vide* order dated 20.12.2023, the Commission considered the aforesaid applications filed by Opposite Parties. The Commission decided to set up a confidentiality ring in the matter in terms of Regulation 35 of the General Regulations to grant access to the confidential version of the Investigation Report and confidential case records to the Opposite Parties. With respect to the request of OP-1 and OP-2 to not grant access to the confidential version of the Investigation Report and confidential case records to the Informants in the present case, the Commission noted that in terms of Regulation 35(8) of the General Regulations, the Informant is not a part of the confidentiality ring; however, in appropriate cases if the inclusion of the Informant in the confidentiality ring is considered necessary or expedient, the Commission may include the Informant in such ring. The Commission further directed the Opposite Parties to complete the inspection of such confidential records and seek certified copies thereof expeditiously within a period of four weeks from the receipt of this order, subject to the compliances mentioned above. In view of the setting up of the confidentiality ring, the parties were directed to file their objections/suggestions, if any, to the Investigation Report latest by 07.02.2024, with an advance copy to each other, under intimation to the Commission. The parties were also directed to file replies, if any, to the suggestions / objections filed by the other parties, latest by 21.02.2024, with an advance copy to each other, under intimation to the Commission. The Opposite Parties were also directed to furnish their complete financial details, as sought vide order dated 13.11.2023, latest by 21.02.2024.
29. Subsequently, two separate applications dated 01.02.2024 and 05.02.2023 were filed by the Qube Cinema Technologies and UFO Moviez & Scrabble Digital Limited seeking extension of time by eight weeks and six weeks, respectively, for filing their objections



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to the Investigation Report. On 21.02.2024, the Commission considered the above-mentioned applications and decided to grant extension of four weeks' time to the Opposite Parties to file their objections/suggestions. The Informants were also directed to file replies, if any, to the suggestions/objections filed by the other parties, within two weeks thereafter.

30. OP-1 and OP-2 filed their objections (in confidential and non-confidential versions) on 04.03.2024. OP-3 (in confidential and non-confidential versions along with application seeking confidentiality over certain information in their response) filed its reply on 26.03.2024. OP-3 also filed its reply in response to OP-1 and OP-2's reply (confidential and non-confidential versions) to the Investigation Report on 15.04.2024. In terms of order dated 13.11.2023, OP-1 & OP-2 filed their financial details including Balance Sheets and Profit & Loss accounts for the Financial Years 2020-21, 2021-22 and 2022-23 on 05.02.2024. OP-3 also filed their financial details including Balance Sheets and Profit & Loss accounts for the Financial Years 2020-21, 2021-22 and 2022-23 on 22.12.2023.
31. The Informants did not file their objections/suggestions to the DG Report despite due service of the Investigation Report.
32. On 14.08.2024, with the permission of the Chair, the Commission considered the matter and decided to hear the parties on the Investigation Report on 21.08.2024. On 21.08.2024, the Commission considered the applications of the Opposite Parties and rescheduled the hearing on the Investigation Report to 18.09.2024.
33. On 18.09.2024, the Commission heard the authorized representatives of OP-3 at length on the Investigation Report. However, due to paucity of time, OP-1, OP-2 and Informants could not be heard on that day. Accordingly, the Commission scheduled the hearing on the Investigation Report to 18.10.2024.
34. On 18.10.2024, the Commission heard the authorized representatives of OP-1 and OP-2 on the Investigation Report. However, due to paucity of time, the Informants could not



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be heard on that day. Accordingly, the Commission scheduled the hearing on the Investigation Report to 06.11.2024.

35. The Informant No. 1, through its authorized representative, *vide* email dated 04.11.2024 stated that they are in concurrence with the findings of the DG and neither intend to file additional submissions nor make oral submissions in the scheduled hearing. The Informant No.1 has accordingly requested the Commission to dispense with any need for oral arguments and also requested the Commission to consider their pleadings as complete and reserve the case for judgment. In view of the above request, the Commission decided to dispense with the hearing scheduled on 06.11.2024. The Commission directed the Parties to file written submissions/synopsis of their arguments along with documents, if any, within one week from 06.11.2024. The Commission also directed the Opposite Parties to file their respective standalone and consolidated financial details including relevant turnover in the '*market for supply of DCI-Compliant Digital Cinema Equipment, on lease/rent to CTOs in India*' and '*market for post-production processing services*' for the Financial Years 2020-21, 2021-22 and 2022-23 in terms of the Competition Commission of India (Determination of Monetary Penalty) Guidelines, 2024 ("**Penalty Guidelines**") within one week. The Commission further decided to pass an appropriate order in due course.

36. In terms of order dated 06.11.2024, OP-1 and OP-2 filed their respective written submissions along with financial details, in confidential and non-confidential versions, on 14.11.2024. OP-3 filed its written submissions along with financial details, in confidential and non-confidential versions, on 18.11.2024. The contentions/submissions made by the Opposite Parties in their objections/written submissions along with the arguments raised by the Opposite Parties during the course of hearings would be dealt with appropriately while analyzing the case on merits.

Analysis of the Commission

37. The Commission has perused the material available on record as well as the submissions made by the parties during the course of hearing on various dates.



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38. Upon consideration, the Commission notes that the present matter concerns alleged imposition of restrictions in the DCE given on lease by OP-1 and OP-3 to CTOs through execution of agreements. In these agreements, vertical restraints in the form of exclusivity on the supply of content have been imposed by OP-1 and OP-3 upon the CTOs which have taken the DCE on lease, which are alleged to be in violation of the provisions of Section 3(4) of the Act.
39. The issue which arises for consideration before the Commission is whether OP-1 and OP-3 are in contravention of provisions of Sections 3(4)(a), 3(4)(b) and 3(4)(d) read with Section 3(1) of the Act through imposition of restrictive clauses in their agreements with the CTOs and whether imposition of such restrictions has resulted in AAEC.
40. With respect to applicability of provisions of Section 3(4) of the Act, the Commission is of the view that CTOs seek the services of DCE suppliers such as OP-1 and OP-3 for exhibiting cinematographic films. Thus, CTOs are *inter se* in a vertical relationship with the DCE suppliers.
41. The Commission notes that the DG has delineated two markets: (a) market for the supply of DCE on lease/rent to CTOs in India; and (ii) market for PPP services in India.
42. In relation to delineation of relevant market, OP-1 and OP-2, in their objections/suggestions, stated that DG has misunderstood the three different modes through which OP-1 offers access to DCI-Compliant DCEs (“**DCI-DCEs**”) to CTOs, with varying financial positions and commercial requirements - (1) lease of DCI-DCEs as a service comprising an integral part of a bouquet of Digital Cinema Services (“**DCS**”), along with other services such as in-cinema advertising, content delivery through PPP services, and collection of VPF; (2) outright sale of DCI-DCEs; and (3) simple lease of DCI-DCEs on rents commensurate to the underlying value of the equipment (Flat-Rate Lease). The DG has disregarded the key characteristics of DCS as an indivisible bouquet of services, while conflating it with Flat-Rate Lease which has led to erroneous delineation of relevant market. The DG has also not carried out the test



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of substitutability between lease of DCI-DCEs at Flat Rate Lease and provision of DCS from the perspective of CTOs, with regard to factors such as provision of DCI-DCE on relatively lower rent. It has been submitted that CTOs do not find these substitutable given the unique nature of DCS under which rent is charged within the range of Rs [REDACTED], as opposed to Flat-rate lease (costing upto Rs [REDACTED] a month) or an outright purchase (requiring an immediate investment of Rs. 25,00,000 to 50,00,000). Through its DCS offering, UFO helps CTOs to access the DCP content by compressing, mastering and cloning the DCP, and managing the KDM, while simultaneously providing DCI-DCEs at a nominal rent along with allied services such as advertising and VPF collection. Given the quick succession of above mentioned activities and the need to bring efficiency to these processes to reduce the costs for CTOs, UFO identified that these services can be offered as one single product - a bouquet of DCS service. On the other hand, under Flat-Rate Lease, it only participates in the exhibition stage of the economic value chain (unless the CTOs contractually secure other services from OP-1, for example, in-cinema advertisement) by making DCI-DCEs accessible to the CTOs.

43. In relation to delineation of relevant market, OP-3 has submitted that the market defined in the Investigation Report is restricted to supply of DCI-Compliant DCE under the lease model only and the DG failed to consider two competing alternatives: (a) supply of E-Cinema equipment; and (b) supply of equipment under the sale model. There are two categories of DCEs provided by Digital Cinema Service Providers (“DCSPs”): (a) E-Cinema (Non-DCI Compliant) technology; and (b) D-Cinema (DCI-Compliant) technology. It is stated that in India, E-Cinema is more popular in smaller cities due to lower cost of the equipment. The DG ought to have therefore included the market for supply of E-Cinema DCEs in its analysis and no cogent reasons have been provided for not doing so. While, from the perspective of the CTOs, there is no difference in the characteristics and the intended use of the product, the same DCI-Compliant DCEs are offered to CTOs by way of a different distribution model. The DG also failed to appreciate that, from the viewpoint of PPP service providers, the market cannot be narrowed down to only include the, “*market for the supply of Digital Cinema Equipment, on lease/rent to CTOs in India*”, as the overall contestable market for a PPP service



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provider is the entire set of DCI screens in India, and not just those where DCEs are installed on the lease/ deployment model.

44. While delineation of precise relevant market is not essential for establishing contravention under Section 3(4) of the Act, the Commission notes that demarcating the same may be useful in understanding the impact of the alleged vertical restraints imposed by the Opposite Parties. As per the DG, in the first market, there is a significant difference in price of procuring a DCE on lease (15,000 to 45,000 per month) and purchasing it through a DCE supplier/manufacturer (Rs. 25-50 lakhs). In this regard, OP-1 has submitted that the DG conflated DCS as an indivisible bouquet of services with Flat-Rate Lease, which led to erroneous delineation of relevant market. The Commission notes that there is a huge difference in costs associated with lease *i.e.* DCS as an indivisible bouquet of services on Flat-Rate lease, and outright sale of the DCE. However, the difference is not so much between two kinds of lease. The CTOs of two different kinds (*i.e.* those with financial strength to purchase DCEs on their own, and those who would need to opt for the lease model) would fall under the market for sale and market for lease of DCEs, respectively and narrowing down the lease market further is not warranted. The Commission is in agreement with the DG in respect of delineation of first relevant market as mentioned above. The Commission further notes that as the information was aimed at the conduct exhibited in furtherance of agreements for DCI-Compliant DCEs, the investigation focussed on the same. Therefore, OP-3's argument that the relevant market should include E-Cinema (Non-DCI Compliant) technology as well is rejected.

45. The Commission further agrees with the second market identified by the DG as the market for PPP services in India. Within this market, there are four different activities, *i.e.*, (a) mastering of content; (b) creation of cloned copies of content; (c) ensuring process of encryption and decryption through KDM of such cloned copies and (d) delivery of encrypted digital cinema/content to the CTOs. These four activities are connected with each other as a set of processes and thus form the larger market of PPP services.



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46. The DG has also observed that the Informant No.1, OP-1 and OP-3, in their responses filed during the course of investigation submitted that restrictions are imposed from the stage of creation of cloned copies *i.e.* DCP cloning and any other player including Informant No.1 is free to create a master copy which can be supplied to OP-1 and OP-3 for cloning.
47. Now, coming to the market power enjoyed by OP-1 and OP-3, the Commission notes that the Director of the Informant No.1, in his statement before the DG, stated that out of 10,000 screens, OP-1 and OP-3 together control 90% of the screens.
48. As per the information provided by OP-1 before the DG, it is observed that OP-1 has a market share of 34% in January, 2022 when DCI-Compliant DCEs on lease are considered. As per the DG, OP-3 has a market share of 47% in the market for DCI-Compliant DCE on lease.
49. As per the data provided by BOC, the DG noted that within the market for leased DCI-Compliant DCEs for the year 2023, market share of OP-1 and OP-3 is almost 40% and 48% respectively of the total screens, which is tabulated as under:

Table 1

Year	UFO	OP-3	TSR	K. Sera Sera	PXD	Total
2023	1263	1536	215	132	34	3180

50. In relation to market power, OP-1 submitted that it lacked market power. It was also stated that DG's conclusions on UFO's alleged market power are incorrect as market shares are insufficient to infer market power. Notwithstanding the above mentioned claim, the DG's assessment was stated to be arithmetically wrong. It was further stated that the Investigation Report solely relied on UFO's existing market share (as of 2022) in DCI-DCE leasing market to evaluate its market power, which is an incorrect and inconclusive assessment of market position. There are various other economic factors



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indicating an absence of sufficient market power. It was stated that the CTOs, with their ability to negotiate terms and switch providers, hold significant bargaining power, which is amplified by the influence exerted by the film producers, who possess complete control over content and are aware of UFO's upfront investment risk. Lack of power *vis-à-vis* key stakeholders is reflected in OP-1's pricing structure for PPP services, VPF and lease rent which have remained stagnant or even declined in the past 8-15 years despite rising costs, inflation and Covid-19. It has been further submitted that while UFO holds a respectable market position, OP-3 dominates leased DCI-DCE market with significant market share of 49.7% as of December, 2023. Several other players such as TSR, E-City Digital Cinemas, K Sera Sera, *etc.* are also stated to be emerging as competitors. It has been stated that UFO's market share and profitability has declined over the past few years. Its market share in the year 2020 was 23%, which declined to 19.3% in December, 2023. Without prejudice to the fact, that as per the DG Report, market share of OP-3 is 47%/48%, even if the market shares of UFO are considered as 34%/40%, the market share of OP-3 is materially higher. Further, it has been stated that post August 2022, there has been reduction in provision of PPP services from UFO to PVR, which also receives such services from OP-3, which shows that the competitive dynamics between UFO, OP-3, and other competitors are intense and vibrant. Given the presence of these competitors and the limited number of screens serviced by UFO, its market share cannot be reflective of any market power. Also, it is stated there is no restraint or foreclosure for any competitor in either market.

51. OP-3 has submitted that from the data provided in DG Report, the total number of DCI screens in India are 5491, out of which the total screens for which OP-3 and OP-1 provide DCEs on a Deployment model are 1505 and 1076, respectively. The DG has been stated to have delineated a narrower relevant market where other competing alternatives that are equally substitutable, have not been considered, leading to a skewed assessment. The DG's delineation of the market and corresponding market power attributed to OP-3, is stated to be erroneous and unreliable.

52. The Commission notes that while market share alone is not the sole determinant of market power, it is definitely a starting point to gauge the presence of a particular player



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in the market. In this regard, the DG has found that OP-1 and OP-3 enjoy market power, not just based on the market shares but also on a host of other factors. The investigation has brought out that OP-1 and OP-3 have a widespread presence covering even remote locations across the country. Both the players have significant presence in multiplexes as compared to other players in the leased DCI-Compliant DCE market for the year 2023, thus establishing coverage of a much higher population compared to competitors in the market. In this regard, the responses provided by producers such as Super Cassettes Industries Private Limited (“**T-Series**”), Viacom18 Media Private Limited (“**Viacom18**”) and Zee Entertainment Enterprises Limited (“**ZEEL**”) to substantiate the market power enjoyed by OP-1 and OP-3 during the course of investigation are noteworthy. T-Series, in its response, stated that it prefers to work with OP-1/OP-2 and OP-3 since they have the widest coverage owing to their respective agreements with widest number of CTOs. Viacom 18, in its response, stated that they are forced to work with OP-1 and OP-3 owing to their wide coverage of CTOs combined with the agreements enforcing exclusivity. ZEEL, in its response, submitted [REDACTED]

[REDACTED] Pickle Entertainment, a distributor of films, also made submissions to the DG that they preferred to deal with OP-1 and OP-3 owing to their wide coverage of cinemas. The investigation has also revealed that the number of DCE’s installed by OP-1 on lease has continued to rise or stayed constant over the last ten years, with 2020-21 acting as an exception, [REDACTED]

[REDACTED] The investigation further revealed that OP-1 also has strong vertical integration, as it operates its own lab through OP-2 which provides PPP services. OP-1 also has various other companies in its fold providing services across the entertainment sector, such as Nova Cinema Private Limited (providing cinema consultancy), Zinglin Media Private Media (providing social media platform) etc. OP-3 is also vertically integrated as it provides PPP services along with having a significant stake in M/s Just Tickets Private Limited, a company involved in movie ticketing business. The investigation brought out that OP-1 and OP-3 have almost 6 and 7 times, respectively, the number of screens than any other player which is operating in the lease model for provision of DCI-Compliant DCE. OP-1 and OP-3 are close competitors in the relevant market. Thus, the arguments raised by UFO and OP-3 in relation to market power cannot



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be accepted. Accordingly, the Commission concludes that OP-1 and OP-3 are players of significant influence, having market power in the market for supply of DCI-Compliant DCE on lease/rent to CTOs in India.

53. Now, the Commission proceeds to examine the conduct of OPs to ascertain whether they have been involved in tie-in arrangements, exclusive supply agreement and refusal to deal in violation of provisions of Sections 3(4)(a), 3(4)(b) and 3(4)(d) read with Section 3(1) of the Act and whether the conduct of OP-1 and OP-3 has resulted in AAEC in India.

54. In this regard, it is apposite to mention the relevant provisions of the Act, which are extracted as under:

“Anti-competitive agreements

3. (1) No enterprise or association of enterprises or person or association of persons shall enter into any agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition within India.

(4) Any agreement amongst enterprises or persons at different stages or levels of the production chain in different markets, in respect of production, supply, distribution, storage, sale or price of, or trade in goods or provision of services, including—

- (a) tie-in arrangement;*
- (b) exclusive supply agreement;*
- (c) exclusive distribution agreement;*
- (d) refusal to deal;*
- (e)*

shall be an agreement in contravention of sub-section (1) if such agreement causes or is likely to cause an appreciable adverse effect on competition in India.

Explanation.—For the purposes of this sub-section,—

- (a) “tie-in arrangement” includes any agreement requiring a purchaser of goods, as a condition of such purchase, to purchase some other goods;*
- (b) “exclusive supply agreement” includes any agreement restricting in any manner the purchaser in the course of his trade from acquiring or otherwise dealing in any goods other than those of the seller or any other person;*
- (c)*
- (d) “refusal to deal” includes any agreement which restricts, or is likely to*



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restrict, by any method the persons or classes of persons to whom goods are sold or from whom goods are bought”

Tie in arrangement by OP-1 and OP-2

55. The Commission noted that OP- 1 is involved in the supply of DCE to CTOs. As per submissions of OP-1 and OP-2, OP-1 holds 100% shares in Scrabble Entertainment Limited which in turn is the 100 % owner of OP-2, which is engaged in provision of PPP services.
56. Commission notes that Explanation (a) to Section3(4) defines ‘tie-in arrangement’ to include any agreement requiring a purchaser of goods, as a condition of such purchase, to purchase some other goods.
57. The Commission notes that the Informants had submitted that Clauses 5 and 7 of OP-1’s Equipment Lease Agreement with CTOs indicate that OP-1 is imposing a tie-in arrangement as the CTO is bound by the subsidiary obligation of obtaining the film content in the form of a digital cinematograph film which is so supplied by it. The agreement/understanding between OP-1 and OP-2 for promoting OP-2's PPP business, is then added as a tie-in arrangement with the CTOs to somehow augment OP-2’s PPP business in the cinematograph film world.
58. In relation to the imposition of tie-in arrangement in respect of OP-1 and OP-2, the DG observed that business model of OP-1 comprises of providing DCE on sale and lease. The lease model comprises (i) DCI-Compliant DCE and repair/maintenance service on a nominal rent, (ii) provision of cinematographic film in appropriate format and (iii) in-cinema advertisement. OP-1, in its submission before the DG, also stated that in addition to the sale and lease model, it also had a lease model wherein lease payment could be made in terms commensurate with the value of the DCE, which was available with customised set of services differing from bouquet of services. In certain circumstances, it had transfer of ownership model wherein it charges a relatively higher rental amount for the agreed period after which the ownership is transferred to CTO. In this model, CTOs may choose to continue availing associated services within the lease from OP-1



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or choose a different service provider. The DG observed that if any CTO wishes to lease a DCI-Compliant DCE from OP-1, the CTO would be required to obtain content from OP-1. The DG observed that renting or leasing of DCI-Compliant DCE is one service, whereas provision of content is another service. These are two separate services that are capable of being tied-in, and imposition of restrictions on supply of content is a mandatory condition for procurement of DCI-Compliant DCE on lease from OP-1, which constitutes a tie-in arrangement. It has also been established by investigation that OP-1 has market power in the tying product *i.e.* lease of DCI-Compliant DCE. [REDACTED]

[REDACTED] In this respect, Portion E and Clauses 5 and 7 of one such Equipment Lease Agreement, also provided in the Information (quoted in Para 12) has been relied upon.

59. OP-1 and OP-2, in their objections as well as post hearing written submissions have stated that Section 3(4) of the Act provides that some form of coercion by the seller/supplier, which is a result of its market power, must be present for there to be an anti-competitive tie-in agreement. Further, the DG has to establish that it is due to such coercion that CTOs are purchasing the bouquet of DCS from UFO and not of their own free will. It is stated that the DG failed to adduce any evidence of coercion in its Investigation Report. Mere inclusion of a clause in the agreement with CTOs does not indicate that the clause was forcibly imposed. OP-1 itself accepted that such clauses are very explicitly present in its agreements (for the DCS model) since it offers an indivisible bouquet of services comprising DCS. CTOs are stated to be attracted to this offering because of its low cost, streamlined services, and reduced operational requirements for them. They are free not to choose the DCS service and instead either lease/rent DCI-DCEs at Flat-Rate Lease or outrightly purchase DCI-DCEs. It has been further submitted that [REDACTED] [REDACTED] which were not interviewed by the DG. None of these CTOs have come forward alleging imposition of restraints by UFO. It is stated that the DG interviewed 10 large CTOs, none of which submitted that they were constrained to procuring DCS from UFO.



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60. In this regard, it is noted that the Commission in *Sonam Sharma And Apple & Ors. (Case No. 24 of 2011)*, held that “a tying arrangement occurs when, through a contractual or technological requirement, a seller conditions the sale or lease of one product or service on the customer’s agreement to take a second product or service. In other words, a firm selling products X and Y makes the purchase of product X conditional to the purchase of product Y. Product Y can be purchased freely on the market, but product X can only be purchased together with product Y. The product that a buyer is required to purchase in order to get the product the buyer actually wants is called the tied product. The product that the buyer wants to purchase is called the tying product”. The Commission further set out the following ingredients to be satisfied for a tie-in arrangement: (i) presence of two separate products or services capable of being tied, (ii) sale or an agreement to sell one product or service on the condition that the buyer purchases the other product or service (or the buyer agrees not to purchase the product or service from another supplier), (iii) seller must have sufficient market power with respect to the tying product to appreciably restrain free competition in the market for the tied product, and (iv) the tying arrangement must affect a "not insubstantial" amount of commerce.
61. The Commission notes that the Informant No.1 in its submission before the DG stated that the post processing of the cinematograph film generates KDM, which is necessary for displaying the film on DCE. The Opposite Parties have enabled a firewall on DCE wherein the content of the Informant No.1 or any third party cannot be processed or viewed on the DCE installed by Opposite Parties. The Commission also notes the Informant’s submission dated 29.05.2023 filed before the DG wherein it has been stated that restrictions have been imposed from the point of cloning in the PPP process. It is noted that the Informant No.1 also submitted that there were several instances where OP-1 and OP-3 accepted master copies of movies which were mastered in its lab, but were not allowed to play cloned copies on their DCEs. The respective claim has also been corroborated by OP-1, in its submission dated 30.05.2023, wherein it stated that all players, including Informant No.1, could supply a master copy of the film to OP-1, however, all cloning and delivery of films to respective CTOs under the lease arrangement shall only be done by OP-1.



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62. Informant No.1 also submitted that the business of supplying DCI-Compliant DCEs on lease and business of carrying out PPP process on films is mutually exclusive businesses. It has been stated that the cloning and distribution for CTOs can be done by any player, including Informant No.1 and Opposite Parties, who offers better prices, thus placing them on the same footing.

63. The Commission took note of the agreements for lease of DCI-Compliant DCE's submitted by OP-1 during the course of investigation. [REDACTED]

[REDACTED]

[REDACTED]

64. Commission notes that a bare perusal of the above clause makes it clear that the DCE provided by OP-1 would be used only for exhibition of content exclusively supplied by it, with a restriction imposed on playing content from any other third party.

65. The Commission took note of an agreement of OP-1 with [REDACTED] which has been claimed to fall under the model wherein the CTO pays lease commensurate with the price of DCE and is free to seek content from elsewhere. The Commission, however, notes that terms under [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

66. The Commission took note of the submissions of representatives of three CTOs, namely, Seble Cinemas, Globe Theatre Private Limited and Ritz cinemas, wherein it was stated that their agreements with OP-1 for procurement of DCE on lease impose the requirement that content to be played on such DCEs are to be procured from OP-1 only.



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The relevant extract from the statement of Mr. Gurmeet Singh Seble, Partner of Seble Cinemas dated 20.01.2022 made during the course of investigation is as under:

“Q.5: Brief description about the exhibition of movies you engaged in?

Ans:

It is to be noted that I have opted to have an agreement with UFO moviez and as per the agreement they **only** will supply the content I am not aware as to whether I can play the content supplied by any other party. Indeed I have never explored that option. Whatever I want to play till date, the content was available with UFO.

.....
UFO/ anybody on their behalf would load the film in the DCE. The loading happens through satellite link generally and at times it might happen through a hard disk carried in person. The distributor authorizes the service provider (in our case UFO Moviez) to provide license to us for the movie we booked. The license is a small software that comes into the server of DCE through satellite link. Without that license the movie cannot be played.”

67. The relevant extract from the statement of Mr. Naville Nadir Mistry, Director, Globe Theatres Private Limited, dated 13.01.2022 recorded during the course of investigation is reproduced below:

“Q.5: Brief description about the exhibition of movies you engaged in?

Ans: We screen the content (Movies/Films). The content for screening is provided by the authorized distributor. UFO Moviez India Ltd. provides the KDM. The content can only be played after receipt of KDM. KDM, which stands for Key Delivery Message is a small software sent by the service provider/content provider (In this case, UFO Moviez India Ltd.). The KDM software is generally sent on email. The KDM software shall be downloaded in the server and after matching the KDM with the content, it is played.

..... As per the agreement, we are bound to source the content from UFO Moviez India Ltd. only. However, I remember to have played the content from other parties also and the details of how many times we played such content can be provided to you at the earliest and not later than 17th January, 2022. We have not got any permission from UFO Moviez India Ltd. to play the content of other parties even though we informed them.



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However, I did not remember they have made any objection to this.....

Q.10: Do you have any restrictions in playing the content?

Ans: Yes. We have to obtain KDM for playing the content from UFO Moviez India Ltd. only. However, on rare occasions we have played the content of others without express permission from UFO Moviez India Ltd

68. The relevant extract from the statement of Mr. Om Prakash, Manager, Ritz Cinema, dated 19.01.2022 recorded before the DG, is as under:

“Q.5: Brief description about the exhibition of movies you engaged in?

Ans:In the agreement with distributor it is mentioned that we have to obtain the film/ movie from UFO. We are not permitted to play content/ movie other than that was supplied by UFO.....”

69. The Commission noted that Mr. Richard Louis Chettiar, Deputy General Manager (Programming), Miraj Entertainment Limited, in his statement dated 15.02.2022, stated that since they are in agreement with OP-1 for lease of equipment, they are not supposed to obtain content from any other party and that they coordinate with OP-1 to obtain content.

70. The Commission also took note of the statement of Mr. John K.A., Office Executive, Delite Theatre dated 19.01.2022 wherein it was stated that it had a lease agreement for DCI-Compliant DCE with OP-2 for one of its two screens, along with an agreement to purchase DCI-Compliant DCE from OP-2 on a ‘subsidized’ price for its other screen. The relevant extract from the statement is as under:

“Q.5: Brief description about the exhibition of movies you engaged in?

Ans:We play the movies through Digital Cinema Equipment (DCE). In one of the screens (Delite Diamond) it is owned by us and in the other screen it is on lease from Scrable/UFO. We have different agreements in both the cases.In the one, which was on purchase



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basis, the conditions of the agreement include maintenance and in the one which was on lease basis the agreement has rental clause along with maintenance. Apart from that, we have separate agreement on advertisements in both the cases..... In both the agreements viz. the one on purchase and the one on lease, the conditions of agreement stipulates that we shall obtain content from Scrabble/UFO.....

71. From the above submissions of the CTOs, the Commission notes that OP-1 and its affiliates have imposed exclusivity conditions on procuring content in their lease agreements with the CTOs.

72. OP-1, in its submissions have argued that the entire package or bundle provided by it is a ‘composite service’, and the same cannot be termed as a ‘tie-in arrangement’ comprising of several different products. In this respect, the Commission agrees with the DG that a composite service or a ‘bundle’ may qualify as a tie-in arrangement, especially if these services are artificially not made available separately from each other. In the present case, the provision of content has been tied with the lease of DCE which can be separately made available as is evident from the statement of CTOs, as well as sale model, wherein OP-1 is willing to sell the DCE and let content be sourced from another party. The statement of Mr. John K.A., of Delite Theatre is noteworthy, wherein OP-1 has imposed exclusive content supply rights on even ‘sale’ of certain DCEs, where the sale is on a ‘subsidized price’. The Commission notes that the model offered by OP-1 is making lease of one product conditional on procurement of content from it. More so, the Commission agrees with the DG that all models of lease agreements including where the lease is claimed to be commensurate with the price of DCE imposes a requirement of content to be supplied by OP-1 or its affiliates.

73. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] of UFO, has been enclosed wherein it has been stated that CTOs with Flat-Rate Leases are free to source content from any provider. The Commission notes that UFO had ample opportunities to place its



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submissions before the DG as also before the Commission. Placing submission regarding non-enforcement of clauses in the executed agreement at this stage appears to be an afterthought.

74. In view of the foregoing, the ingredients of tie-in arrangement as provided in Section 3(4)(a) of the Act are satisfied. Therefore, the contentions and arguments of OP-1 in this respect including that CTOs' are not being coerced or restrained to procure DCS, which includes delivery of content cannot be accepted. Accordingly, the Commission concludes that OP-1 is indulging in tie-in arrangement with respect to provision of DCI-Compliant DCE on lease, by tying-in supply of content along with it.

Imposition of tie-in arrangement by OP-3

75. The Informant had alleged that OP-3 has exclusive content agreements wherein on DCEs supplied by them, only those cinematographic films can be exhibited for which cloning and mastering is also provided for by them.
76. With regard to the allegations of imposition of tie-in arrangements by OP-3, the DG observed that if any CTO wished to lease a DCI-Compliant DCE from OP-3, they would be required to obtain content from OP-3 as well. With respect to the argument made by OP-3 regarding ability to exhibit content on any screen for payment of fee of Rs. 20,000/-, the DG noted that this does not vest an effective choice with CTOs to procure content from elsewhere. It only comes into picture when OP-3 is 'unable' to procure the content itself. It was brought out that restriction on supply of content from other PPP service providers continues to persist, along with the requirement that all supply of content shall be by OP-3. OP-3 had submitted that Rs. 20,000/- is the maximum charge for displaying content on screen (*i.e.* VPF). As per the DG, this mechanism deters producers and distributors from availing alternative service providers, and effectively forces them to use OP-3's services of DCP cloning and provision of content. The DG also noted that renting or leasing of DCI-Compliant equipment and provision of content are two different services which are not available separately from each other and are capable of being tied-in. Thus, such an agreement constitutes a tie-in arrangement. It was also noted that imposition of restrictions on supply of content is a mandatory condition



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for procurement of DCI-Compliant DCE on lease from OP-3. It has also been established that OP-3 has market power in the tying product *i.e.* lease of DCI-Compliant DCE.

77. OP-3 has submitted that the DG incorrectly conflated '*provision of PPP services*' with '*delivery of content and issue of KDM*' and concluded that all the components of PPP services (including mastering) are tied with supply of DCEs. It has been submitted that OP-3 supplies DCEs on lease to CTOs at monthly rent which covers 1% of the cost of DCEs, keeping in mind the weak financial position of most of the CTOs in India, with the exception of large multiplexes. It has been submitted that OP-3 is able to subsidize its rent by charging producers of content a VPF, which allows it to recoup its investment in the DCEs leased by it. If for any reason OP-3 is unable to issue KDM for the content played on its leased DCEs, it charges the CTOs a fixed VPF (in lieu of the VPF that it would otherwise have been able to collect), which does not amount to a penalty and does not deter CTOs from procuring the content from other service providers.
78. It is submitted that the collection of VPF is made possible by the issuance of KDMs by DCSPs (like OP-3). To implement this process, it is necessitated that the delivery of content is also routed through the DCSPs, so as to ensure that the content is screened only after entering the KDM issued by them, which in turn, is essential for accurate calculation of VPF. In the absence of this process, *i.e.*, if the content is delivered to CTOs directly by the entity that masters the content, then the content may be screened using the KDM that is issued by such mastering lab, which would effectively lock OP-3 out of its own network of equipment, and impair its ability to collect VPF.
79. It is further submitted that PPP service providers earn a majority of their revenue from provision of mastering (which is a highly technical process), while other elements (cloning, encryption and delivery) only contribute to a small fraction of the revenue. Cloning, delivery and issue of KDM are stated to be extremely simple processes that do not require any niche technical expertise or high-tech equipment. Both cloning and issue of KDM are stated to be free of charge, while delivery costs is stated to only include the actual logistical costs incurred in transportation. Accordingly, any requirement imposed by OP-3 to procure cloning/delivery of content or KDM from them cannot be said to



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cause any economic loss to other PPP service providers, especially since OP-3's agreements with CTOs in no manner restricts the CTOs from procuring content that is mastered from any mastering lab, which is also acknowledged in the DG Report. OP-3 further stated that issues concerning quantum of VPF are no more *res integra*, as they have already been dealt with in *Unilazer Ventures Private Limited v. PVR Ltd & Ors.*, Case No. 10 of 2019 (“**Unilazer case**”), wherein the Commission observed that to determine as to what should be the appropriate fee and till what time period it may be equitable to charge the same, is a question which does not fall within the domain of the Commission, so long as VPF is not the result of concerted activity and is independently arrived at as a result of commercial negotiations, it is not anti-competitive.

80. The Commission notes that OP-3 employs a variety of packages for its sale and deployment model. In all its deployment models for DCI-Compliant DCE, the content rights are vested with OP-3, which is evident from the statement of Mr. Harsh Krishna Rohatgi, CEO of OP-3 recorded during the course of investigation. The Commission also took note of the agreement entered into between OP-3 and GM Picture Palace, Banagapally, wherein it is observed that OP-3 would have the sole and exclusive right to deliver the digital film content. The relevant clauses of the said agreement are as under:

*“The theatre owner affirms that in consideration of the investment by QCT in providing the DCE for the theatre/s on the basis of this arrangement, including commercial arrangement detailed in Schedule-I hereto, from the date of signing this LOU, all cinema content and advertising content shall compulsorily be played only digitally through QCP. The right of QCT to deliver digital film content of whatever type would be unconditional and unfettered and there are no or would be no third-party rights impeding this in any manner whatsoever. From the date of signing of letter of understanding, the theatre owner shall accord QCT **the sole and exclusive right to deliver digital film content** and advertising content (as applicable) through multiple modes to the Theatre and to solely retain any revenues earned from delivery of digital film content (VPF) and playback/display of advertisements (Advertising Revenue).”*



81. Mr. V.N. Ramesh, COO, Cinematica, in his statement dated 05.01.2022, stated that it acquires its DCE's from OP-3 and deploys them on leasehold basis across Telangana. It has been stated that all content is to be supplied by OP-3, along with maintenance, in furtherance of the agreements between Cinematica and OP-3. In case OP-3 cannot provide content, it can be sourced from other players, provided an amount is paid to OP-3. The relevant clause of the agreement between OP-2 and Cinematica has been reproduced as under:

Clause 8 of MOU between Real Image Media Technologies Private Limited (RIMT) and Cinematica Digitals Pvt. Ltd (CDPL).

8) For each Network Theatre so equipped, CDPL shall:

a) Vest in RIMT the sole and exclusive right to deliver digital film, advertisement and other content to the Theatre/Screen

b) Ensure that all feature film content, where made available by RIMT in the digital format, shall compulsorily be played in the digital format and only through the QCP
.....”

82. Reliance is placed on the statement of Mr. Himanshu Bhagat, Vice President (Digital Cinema Operations), E-City (third-party vendor of OP-3), dated 18.02.2022, wherein he stated that they have exclusive rights to supply content on all DCE that it deploys on rental/lease basis. He also stated that if a producer/distributor possessed a DCI-Compliant format and paid VPF to them, then they were free to provide the content directly at a CTO for playing. Mr. Nikhilesh Kumar, Manager of Batra Reels Cinema, in his statement dated 21.02.2022, stated that they have agreements with E-City for procurement of DCI-Compliant DCE, which also requires content to be procured from E-City itself. He stated that while Indian cinema content is provided by E-City, in case of foreign movies, the content is sometimes provided by distributors directly to Batra Reels Cinema. Similar claims have been made by Mr. Rakesh Kumar, Manager of Gagan Theatre and Mr. Richard Louis Chettiar, Deputy General Manager (Programming), Miraj Entertainment Limited, in their respective statement dated 14.02.2022 and 15.02.2022, wherein it is stated that they have agreements with E-City for procurement



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of DCI-Compliant DCE on lease, which impose exclusivity for procuring content for their deployed DCI-Compliant DCE screens.

83. In his statement dated 30.01.2022, Mr. Yogesh Raizada (Authorized Signatory) of Wave Infratech Pvt Ltd which operates Wave Cinemas, stated that they have 12 cinemas in 3 locations wherein OP-3 provided DCI-Compliant DCE's to it on a 10-year rental contract in 2013 and the ownership of the DCE transferred to Wave Cinemas after a period of five years. The Commission observes that OP-3 continued to enjoy the exclusive supply rights for content to the DCE post transfer of ownership. Relevant extract from the response has been reproduced as under:

“Q.5. Who owns the DCE present in the theatres operated by you?

Ans. All the DCEs (the complete set including Server and Projector) used in all the 12 theaters of Wave Cinema are taken on rent from Real Image (presently Qube Cinemas) in the year 2013 for a period of 10 years. As per the agreement, Wave Cinema was paying rent for the initial 5 years. One agreement has been entered with Real Image for all the 12 screens, I will provide a copy of the agreement.

Q.8. What is the source of the content played in your theaters?

Ans. We are getting content from Real Image because they are the service provider.

Q.9. Do you have any restrictions in playing the content?

Ans. If any distributor wants to play in our theater, he makes an agreement with us and provides content through Real Image. Distributor has only one choice, i.e. Real Image, to play content in our screen. The KDM is provided by Real Image only.”

84. In view of the submissions and statements mentioned above, the Commission notes that in all deployment models for DCI-Compliant DCE, the content rights are vested with OP-3. It is further noted that the third-party vendors of OP-3 such as Cinematica and E-City, which acquire DCE's from OP-3 and deploy them on leasehold basis have stated that they have exclusive rights to supply content on all DCE that it deploys on rental/lease basis. Certain CTOs which have agreement with OP-3/third party vendors of OP-3 such as Wave Cinemas have stated OP-3 continued to enjoy exclusive supply rights for content to the DCE even after transfer of ownership of DCE to them. Other



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CTOs such as Miraj Cinemas, Batra Reels, Gagan Theatre which have agreement with E-City have stated that the agreements for procurement of DCI-Compliant DCE on lease impose exclusivity for procuring content for their deployed DCI-Compliant DCE screens. CTOs such as PVR Cinemas, Cinepolis and Inox have stated that they have no restrictions on playing content from a player as long as it has been supplied by the authorized service provider. The Commission also noted that renting or leasing of DCI-Compliant equipment and provision of content are two different services which are not available separately from each other. Thus, the ingredients of tie-in arrangement as provided in Section 3(4)(a) of the Act are satisfied. The contentions and arguments of OP-3 with respect to VPF cannot be accepted since the allegations in the present case do not pertain to anti-competitive practices pertaining to VPF and the reliance upon the *Unilazer* case by OP-3 is not appropriate. Accordingly, the Commission concludes that OP-3 is indulging in tie-in arrangement with respect to provision of DCI-Compliant DCE on lease, by tying in supply of content along with it.

Imposition of exclusive supply agreement by OP-1

85. The Informants also alleged that OP-1 restricts CTOs in their course of trade from acquiring or otherwise dealing with any cinematographic film other than that which has been processed by OP-2, since the clauses state that only films which have PPP conducted by OP-2 would operate on the DCE supplied by OP-1.
86. Section 3(4)(b) of the Act provides that ‘an exclusive supply agreement’ includes any agreement restricting in any manner the purchaser in the course of his trade from acquiring or otherwise dealing in any goods other than those of the seller or any other person.
87. The investigation revealed that the Equipment Lease Agreements of OP-1 with the CTOs submitted by the Informant and OP-1 bring out that an exclusive supply agreement existed between OP-1 and CTOs for supply of digital film content to the leased DCEs by virtue of clauses explicitly stating that the right to supply content is reserved by OP-1 along with forbidding supply of content by any other player on DCE leased from OP-1. The DG concluded that OP-1 is indulging in an exclusive supply agreement, wherein



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it is requiring CTOs to only accept content supplied by it (or its affiliates, including OP-2) on OP-1's leased DCEs and restrict supply of any content from other PPP service providers.

88. OP-1, in its submissions, has stated that the standard sale agreements of OP-1 for DCI-DCEs are customary equipment sale agreements which do not impose any obligations on CTOs to purchase other services from UFO. CTOs are free to choose their preferred suppliers for other services, including content delivery. It is stated that OP-1 only requires exclusivity in content delivery when it is required to collect VPF, either when providing a DCS bouquet or when the CTOs enter into an agreement requiring OP-1 to collect the VPF on their behalf and transfer the same to them, after retaining a portion of it as service fees. This exclusivity is stated to be necessary to enable OP-1 to collect VPF from the producers. Under such agreements, OP-1 does not retain the VPF rather

89. It is submitted that the DG has not identified any restriction on buyers' choice. The DCS model is stated to be an economical choice for most smaller CTOs who find it difficult to lease/rent DCI-DCEs at Flat-Rate Lease or purchase DCI-DCEs. It is further stated that a certain offering appealing to potential customers, who decide not to purchase other offerings, does not amount to an exclusive supply agreement. CTOs are not restricted from selecting the DCS provider of their choice. Within the DCS bouquet, to ensure the supply of DCI-DCEs at far lower lease rent (in comparison to a Flat-Rate Lease), OP-1 and CTOs agree to a well-crafted and balanced bouquet of services which helps to offset the cost of leasing (at lower rents) of DCI-DCEs through revenues from other sources (such as VPF, in-cinema advertising, and PPP services). Larger CTO chains such as Inox and PVR, are stated to have purchased DCI-DCEs from OP-1, and have not been imposed with any concerned restrictions.

90. The Commission notes that by virtue of Clause 5 and Clause 7 of the Agreement between OP-1 and CTOs, as mentioned in preceding paras, OP-1 restricts CTOs in their course of trade from acquiring or otherwise dealing with any cinematographic film other than that which has been processed by OP-2.



91. The Commission notes that during the course of investigation, in his statement, Mr. Niraj Sanghai, Director of Informant No.1, stated that restrictions were being imposed by OP-1 in playing of movies at it's DCI-Compliant DCEs, which were processed by non-OP-2 entities. Relevant extract from the statement is as under:

“Q14. Presently the entire issue revolves around somebody coming to you with a film and you would convert it into a particular format which can be played in theatres. Right?”

Ans. We don't convert sir. The film is made. When the film is finished the final master of the film is called DCP. It is on hard drive. Now the hard drive is to be distributed to various theatres across the world to play it in the theatres. So, every file is encrypted because if you send an open source file, that file will not be played in the theatres. Everybody can play it. So, you should have control on the file as to what content plays in which theatre. For that there is a key called KDM key. So what we do is, the key used to be the DCP the final master which gets made. It gets distributed through courier services to various theatres and we used to control it by a password called a KDM key. So we will decide as per the directions from the producers what content we play at what time in which theatre. It's called a KDM. It prevents piracy because if you don't have that key, if you don't give the key to theatre that content will not play in that theatre.

UFO and Real Image, they have installed projectors in all these theatres and they have entered into an agreement with these theatres that they will accept the content only and only from UFO and Real Image.

Q23. Please go ahead

So what happened sir when we started the business we had contact with all of the distributor and producers that we will supply the content to the theatres. What UFO and Qube did is, when we supply the content they came to know that this business is being taken over by Prime Focus. They inserted a firmware which is like blockage into the server because of which any content which is given by Prime Focus will not play in the theatre. So they even wrote emails to the companies like Y com that they cannot work with PF and if they work with PF then their content will not be played in the theatres. So they put this firewall in the software so that if PF sends any content to the theatres it will not play.



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This DCP (Digital Cinema initiative) it is an open source software developed by the international studios which is a free software. Nobody can tamper with it. It is like the internet. But UFO and Scrabble, these companies put a firmware into this so that my KDM which I generate it does not play in the theatre.

And then they are threatening the producers that if they work with PF they will have to pay more money to them for digitalisation including cloning.

What happens is there is something called a VPF. If you remember that was another case in CCI which was filed by Ronnie Screwvala in which these two companies collect VPF from the producers. VPF is nothing but a charge that UFO and Real Image charges to the producers for every show which plays into the theatre. Now, because they want this charge they want the control of KDM which is the business we are into. We are not into VPF business. So if the control of KDM goes away from their hand to my hands then their main business which is VPF collection business that takes a ..because the producers and exhibitors may not give them the correct data as to how many shows are played in a day and what VPF should be collected. So they are desperate that they don't lose the control of the market through this KDM. So they are not allowing people like us to enter into the market and they are putting all this.

.....It is the producer's prerogative who they want to work with. Nobody can force anybody to work. But because they put the firmware into their system the content that is given by me, my KDM does not work.”

92. The Commission notes that restrictions are being imposed from the point of cloning in the PPP process. Reliance has been placed upon the submissions of OP-1 and OP-2, as has mentioned in the section pertaining to tie-in arrangements and are not reproduced herein for brevity.
93. Reliance has been placed upon the submissions of representatives of CTOs namely Mr. Yogesh Raizada, Mr. Seble of Seble Cinemas, Mr. Mistry of Globe Theatres, Mr. Om Prakash of Ritz cinemas, Mr. Richard Louis Chettiar of Miraj Cinemas, Mr. John K.A. of Delite Theatre, which have been discussed in section relating to imposition of tie-in arrangements by OP-1.



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94. The Commission took note of the submissions filed by Yash Raj Films Ltd. ('YRF') dated 23.01.2023, wherein it stated that KDM required to exhibit movies must be mandatorily generated by OP-1 and OP-2 for displaying movies in the chain of cinemas controlled by them. It was further submitted that multiple third-party labs like Informant No.1 are capable of supplying DCP and generating KDM but the same is blocked by OP-1 and OP-2 for their equipment. Thus, even where the film has been processed by any other company, YRF will be forced to resubmit the film to OP-1 and OP-2 for redistribution to cinemas in their networks where only OP-1 and OP-2 can generate KDM. Further, YRF is stated to be forced to hand over their master copy to these parties. Relevant extracts from the submissions are as under:

“(iv) If you are availing services of Scrabble Digital Ltd./UFO Moviez India Pvt. Ltd. or Qube Cinema Technology India Pvt. Ltd for exhibiting your digital content, then please elaborate about the challenges, if any, are faced by you in term of DCS charges, quality of services, non-negotiable terms and conditions & bargaining power on the part of DCSPs etc .

Reply - While availing services of Scrabble Digital Ltd./UFO Moviez India Pvt. Ltd. or Qube Cinema Technology India Pvt. Ltd, YRF faces the following issues:

a. The Key Delivery Message (ICD.M) required to exhibit movies must be mandatorily generated only from UFO Moviez India Ltd., Scrabble Digital Ltd., and/or Qube Cinema Technology, Ltd. to be able to display the films in the chain of cinemas controlled by them (i.e., through the digital cinema equipment (“DCE”) deployed by the aforementioned companies).

b. Even if 3 parties are in agreement i.e., the studio that wants to screen the film, the cinema that want to exhibit the film and the audience that wants to watch the film, the film cannot be released in the cinemas controlled by the said companies unless the KDM is generated through only the said companies.

c. The film studio/ multiple third-party labs Like Prime Focus, etc. are capable of supplying the DCP and generating the K.D.M, but the access of such third-party K.D.M is blocked by the digital service provider (UFO, Qube, Scrabble) for their equipment.

d. In some cases, even if the films have been processed through any other company, then UFO Moviez India Ltd, Scrabble Digital Ltd., and Qube Cinema Technology Ltd will not allow YRF or any other distributors to deliver the film to their cinemas unless YRF:



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- Resubmits the film to facilities owned by UFO Moviez India Ltd/ Scrabble Digital Ltd./ Qube Cinema Technologies Ltd. to be redistributed to the cinemas where only they can issue K.D.Ms.
- Share the master K.D.M of the film which gives total control over the film to the party that possesses the said master K.D.M.
- Pay film processing charges (as applicable for non-DCI Compliant format (E cinema releases).”

95. Reliance Entertainment, in its submission dated 04.02.2023, stated that KDM provided by OP-1 would not work in the DCEs because of some encryption done between OP-1 and CTOs. Relevant extracts of their submission are as under:

“With respect to point no (iv) of the Notice, I say and submit that, while availing the services of Scrabble Digital Ltd., we find that their charges are much higher than other service providers. While Prime Focus charges around Rs. 1500 plus taxes per print (for National chain cloning services), Scrabble Digital Ltd charges an increased rate of Rs. 2200 plus taxes (for non-national chain cloning services). Scrabble Digital is not open to price negotiation unless we avail cloning for all Chains cinema with Scrabble Digital in that case they are ready to charge the original rate of Rs. 2,000/- per print. Further in non-national chains, when we tried to avail services of Prime Focus, the KDM provided by Prime Focus would not work in the DCEs because of some encryption done between UFO Moviez and theatres, causing the shows to be cancelled and huge losses to distributor/Producer.”

96. Viacom18, in its submission dated 04.02.2023, stated that if they wish to work with another lab for digital or PPP services provided at a lower price, they are restricted to do the same as the movies processed by any other DCSPs are restricted to run at the DCEs provided by OP-1. It has been stated that OP-1 has also established a firewall installed in the DCE which prevents playing of movies encrypted or for which KDM has been generated by any other lab apart from OP-1 or OP-2. Relevant extract from the submission is as under:

“point (iv): If you are availing services of Scrabble Digital ltd./UFO Moviez Indie Pvt. Ltd, or Qube Cinema Technology India Pvt. Ltd. for exhibiting your digital content, then please elaborate about the challenges, if any, are



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faced by you in terms of DCS charges, quality of services, non-negotiable terms and conditions & bargaining power on the part of DCSPs etc.

Response: While availing services of Scrabble Digital Ltd. UFO Moviez India Pvt. Ltd. or Qube Cinema Technology India Pvt. Ltd ('Concerned DCSPs') various challenges have been faced by us over time which are as under:-

- Ad-hoc increase in delivery charges are imposed by the Concerned DCSPs in relation to movies without any prior discussion or negotiations, and the same have to be accepted in order to ensure smooth functioning and exhibition of films.
- In case we decide to work with any other lab for digital services/post-production processing services that is agreeable to provide the same services at a lesser cost than the Concerned DCSPs, We are restricted from doing the same. We are forced to work with the Concerned DCSPs as the movies processed via any other lab are disabled from being run on the DCE supplied by the Concerned DCSPs to CTOs.
- The DCE provided by the Concerned DCSPs have a firewall installed in the equipment that disables the DCE from accepting or playing the movies/content that have not been encrypted/KDM generated either by the Concerned DCSPs themselves or their preferred integrators/labs.

As a result, the studios and producers are forced to accept charges that are sometimes higher or commercially unviable to work with the Concerned DCSPs or the specific labs/integrators that have arrangements with the Concerned DCSPs.

It is also pertinent to note that as an official distributor of Paramount Pictures, the discriminatory and restrictive trade practices as mentioned above are only faced in relation to Indian movies. The KDM generation restrictions on the DCE supplied by the Concerned DCSPs are only limited to Indian films and no such restrictions are imposed by the Concerned DCSPs while dealing with a Hollywood film and all foreign studios like Disney, Sony, Paramount, Universal etc.”

97. ZEEL, in its submission dated 07.02.2023, stated that [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Relevant extract from the submission is reproduced as under:

[REDACTED]



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98. In their submissions AA Films Private Limited, a distributor of films, which also distributes Indian films internationally through 'Cinestaan AA Films', has stated that they are not aware about any exclusivity-related restrictions pertaining to content on DCI-Compliant DCEs in international markets. They have also stated that KDM supplied by any service provider is compliant with any DCI-Compliant DCE internationally.
99. In view of the above submissions, the Commission notes that an exclusive supply agreement exists between OP-1 and CTOs for supply of digital film content to the DCEs leased by the CTOs, which is brought out by the clauses in the said agreements. OP-1, during the course of investigation, stated that all cloning and delivery of films to respective CTOs under the lease agreement shall be done by OP-1 only. CTOs such as Seble Cinemas, Globe Theatres Private Limited, Ritz Cinemas, Miraj Cinemas, Delite Theatres, have also stated that content was to be supplied only by OP-1 for their leased DCEs. Submissions made by various producers such as YRF, Reliance Entertainment, Viacom 18 and ZEEL also bring out that KDM generated by other PPP service providers was not playing on the DCE supplied by OP-1 on lease due to some encryption/firewall installed by OP-1 in the DCEs provided by them. Due to this firewall, the KDM generated by only OP-1 is accepted and the ones which are generated by any other lab are rejected. The contentions and arguments raised by OP-1 and OP-2 in this respect do not hold any ground and are thus rejected. In view of the foregoing, the Commission concludes that OP-1 is indulging in an exclusive supply agreement in terms of Section 3(4)(b) of the Act wherein it is requiring CTOs to only accept content supplied by it (or its affiliates including OP-2) on OP-1's leased DCEs and restrict supply of any content from other PPP service providers.



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Imposition of exclusive supply agreement by OP-3:

100. The DG observed that the agreements by OP-3 indicate that an exclusive supply agreement exists between OP-3 and CTOs for supply of digital film content to the CTOs in the DCEs leased by OP-3, which is imposed by virtue of clauses which explicitly state the right to supply content being reserved by OP-3, along with forbidding supply of content by any other digital player on DCEs leased from OP-3.
101. OP-3 has submitted that its agreements with CTOs do not tie mastering with the supply of DCEs, and CTOs are free to procure it from any service provider, even when DCE is procured from OP-3 under a lease model. OP-3 generates Qube specific KDMs using distributor-KDM (“**Master KDM**”), which is generated after mastering the film, and sends such KDMs to individual CTOs free of cost, as per the VPF option chosen and paid for by the distributor. Therefore, there is no restriction as such, on accepting content mastered by third-party service providers. In fact, around 54% of Bollywood and Hollywood content exhibited through OP-3’s leased DCEs between 2016 to 2023, were mastered and cloned by third party PPP service providers other than OP-3. It has been submitted that OP-3 mandates procurement of other PPP services (cloning, encryption and delivery) under its Deployment Model to ensure that the content is screened only after entering the KDM issued by them, which in turn, is essential for accurate calculation and collection of VPF. It has been submitted that only when OP-3 is not able to provide content and issue KDMs, OP-3 charges a fixed one-time amount of Rs. 20,000/- from the CTOs for screening third party content. If OP-3 does not ensure collection of VPF, then the following counterfactuals arise: (a) If CTOs, which are primarily small proprietorship firms and MSMEs, are forced to pay increased rent (proportionate to the loss of revenue through VPF), their financial situation would worsen if they had to absorb the VPF charges through payment of higher rents; (b) If OP-3’s revenue from VPF ceases, and such cost is not passed on to its CTO clients, it would increase OP-3’s bankruptcy risk due to substantially reduced revenues, rendering its business models financially unviable. It is also pertinent to note that issues concerning quantum of VPF are no more *res integra*, as they have already been considered by the Commission in the Unilazer case.



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102. The Commission notes that statements of Informant No.1 recorded during the course of investigation bring out that restrictions were imposed by OP-3 in playing movies at its DCI-Compliant DCE, which were processed by non-OP-3 entities. In its submission, the Informant No.1 has also stated that restrictions were being imposed by OP-3 from the point of cloning in the PPP process. This has also been clarified by OP-3 in its submissions. It is apposite to place reliance upon the statement of Mr. Harsh Krishna Rohatgi, CEO of OP-3 recorded during the course of investigation wherein it has been stated that a distributor/producer having mastered copy available with him is not allowed to directly supply the same to a theatre supplied with OP-3's DCE, even if VPF is paid, unless there is an agreement or amendment to the original agreement which allows otherwise. Relevant extract from the statement is as under:

“Q.16. Do you allow any distributor/producer having a mastered copy of film to supply directly to a theatre having equipment supplied by you?”

Ans. Yes, we do if we do not have a content supply agreement with that theatre as seen in A(iii), A(iv) and B(v) above in response to question 8. In case where we have a content supply agreement, we do not allow any distributor/producer having a mastered copy of film to supply directly to a theatre, unless the agreement allows for it otherwise. In the case of KSFDC (Anneure-4 executed in September, 2021) which is a sale model with non exclusive right for providing film content such provision exists.

Q.17. Do you allow any distributor/producer having a mastered copy of film to supply directly to a theatre having equipment owned by you if VPF is paid in advance? Whether such enabling provision exists in the agreements you had with theatre operators?

Ans. Our contract provisions do not allow any distributor/producer having a mastered copy of film to supply directly to a theatre having equipment owned by us if VPF is paid. However, if both parties to the agreement decide so to have a suitable amendment in the agreement it can be done.”

103. The Commission notes that DG has examined several Equipment Lease Agreements with CTOs and found the clauses relating to exclusive supply of content by OP-3. One of the clauses of such agreements, for example is extracted at Para 12. The Commission also places reliance upon the statements of third party vendors of OP-3 namely, Cinematica and E-City, recorded during the course of investigation, for substantiating the imposition of this vertical restraint, which has been referred to earlier in the section



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relating to tie-in arrangements of OP-3 above, and thus are not repeated for the sake of brevity. The Commission refers to the statements of Mr. Yogesh Raizada, Authorised signatory of Wave Cinemas and representative of Batra Reels, recorded during the course of investigation, which have been reproduced above in the section pertaining to tie-in arrangements of OP-3. The said submissions and extracts of the statements have not been reproduced herein for the sake of brevity.

104. The Commission notes the reply of OP-3 stating that it places no restriction relating to mastering of the content, which is the main revenue earning activity of PPP services. In this regard, the Commission agrees with the finding of the DG which state that restriction imposed by OP-3 relating to content is applicable on the processes subsequent to the mastering process. Accordingly, the contention raised by OP-3 that 54 % of the content which has been exhibited on the DCEs provided by it have been mastered by the third party service providers is not relevant. Further, the Commission noted the submission made by OP-3 that as per the agreement contents of any third party can be run on DCE provided by it subject to payment of Rs.20,000 by the CTOs in case it is unable to provide content. In this regard, the Commission does not find the said argument tenable in view of the finding of the DG that the clause does not vest any choice with the CTO to procure content from third parties. Further, the said clause comes into picture only when OP-3 is unable to procure the content itself. In respect of the submissions made on VPF, the Commission notes that implementation of VPF *per se* is not an issue either raised by the Informant or investigated by the DG in the facts of the present case.

105. In view of the foregoing, the arguments raised by OP-3 in this connection are not found to be tenable and the Commission concludes that OP-3 is indulging in an exclusive supply agreement in terms of Section 3(4)(b) of the Act, wherein it is requiring CTOs to only accept content supplied by it on OP-3's leased DCEs and restricts supply of any content from other PPP service providers.

Imposition of refusal to deal by OP-1



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106. The Informants alleged that the impugned agreement directs the CTOs, who have leased DCE from OP-1, to refuse to deal with any producer of a cinematograph film who has not got his cinematograph film's PPP services done by OP-2. Thus, there was a refusal to deal on behalf of the CTOs.
107. In this respect, the investigation has revealed that the imposition of exclusivity through the agreement restricts any other player, including Informant No. 1, from supplying cloned copies of the mastered film to any CTO who has leased its DCI-Compliant DCE from OP-1. The Informant No.1, in its submissions before the DG highlighted that a firewall is created by OP-1 on their DCEs which restricts KDM of Informant since the year 2019. CTOs have also stated that content was to be supplied by OP-1 only, for their leased DCEs. The DG accordingly concluded that OP-1 is indulging in refusal to deal, wherein it is restricting CTOs operating under its lease network to receive supply of content cloned by any other PPP service provider.
108. OP-1 and OP-2, in their submissions have stated that the DG has to first establish the presence of restrictive conditions, and thereafter the appreciable adverse effect caused due to these conditions. It cannot be said that OP-1 has imposed or implemented any form of exclusivity restrictions. In any case, it is incorrect to claim that players such as Informant No.1 are restricted from supplying cloned copies of the mastered film. They are free to supply such services to every CTO that does not procure DCI-DCEs as a service comprising an integral part of the DCS bouquet. In any event, there cannot be an anti-competitive refusal to deal until and unless there is AAEC. While UFO has never refused to deal with any PPP service provider, the DG has not highlighted any observable or hypothetical AAEC, except for a repetition of the finding that *“KDM generated by other PPP service providers was not playing on the DCE supplied by OP-1 on lease, owing to the imposition of restriction on server”*. This finding is based primarily on the claims by producers that they *“suffer financial losses owing to cancellation of shows arising out of the exclusive supply obligation and lock-in arrangement created by OP-1/OP-2 specifically”*.



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109. The Commission notes that under Section 3(4)(d) ‘refusal to deal’ includes “*any agreement which restricts, or is likely to restrict, by any method the persons or classes of persons to whom goods are sold or from whom goods are bought*”.
110. The Commission has already observed that restrictions were being imposed by OP-1 in playing movies which have not been processed by OP-2 entities. In this regard, it is pertinent to peruse the statement dated 23.11.2022 of Mr. Suresh Kumar, Sr. Vice-President (Digital Cinema), Informant No.1, who stated that there was a firewall imposed by OP-1 on their DCEs which restricted KDM provided by Informant No.1 since 2019. In the said statement it has been submitted that no such restrictions existed while playing on DCEs owned by CTOs such as PVR, Inox, Cinepolis. Relevant extracts from the statement are as under:

“Q.6) Which are the other players in the market engaged in the business of DCPs related service?”

Ans) So far as I know, till 2018 there were only 2 significant players namely Scrabble Digital Ltd. and Qube Real Image Ltd. engaged in the business of DCPs related services for Bollywood movies. We entered in this market in 2018 and carried out DCP work for some movies which were exhibited in multiplexes and single screens till 2019. However, in 2019, the other 2 players UFO/Scrabble and Qube/Real Image inserted a firewall in the lease based DCEs wherein KDM provided by us will not be played. Therefore, that market was closed for us in those CTOs where UFO/Qube have provided DCEs on lease basis. Presently, we are doing the DCP related work for the multiplexes only.

Apart from these entities, there are few players such as K Sera Sera, Prasad Labs, TSR, OST, which have provided DCEs to some of the CTOs and they sometimes do the DCP related work on their own and sometimes they outsource the work. We also provide DCP related work to K Sera Sera, Prasad Labs, TSR, OST (only for 2K screens). To the best of my knowledge, there is no restriction even where DCE is provided on lease basis by these small entities.”

Q.10) Is it a fact that there does not exist any restriction on CTOs where the DCE is sold on Outright Sale Model? If it is so, details of market strategy adopted to capture this market.

Ans) I am not aware if they have put any restriction on CTOs where the DCE is sold on outright sale model basis. In case of multiplexes chain like PVR, INOX, Cinepolis, there is no such restriction and we are dealing with these multiplexes.”



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111. The Commission places reliance upon the submissions of OP-1 and OP-2 as has been relied upon in the section pertaining to tie-in arrangement and exclusive supply agreement.
112. The Commission takes note of response dated 18.03.2022 of OP-1 filed during the course of investigation stating that for CTOs which have procured DCEs from it on leasehold basis, the content must be provided by OP-1 as well. It has been submitted that even on assurance of payment of VPF, the arrangement would fall short of the contractual obligations arising from the agreement between OP-1 and CTOs. Relevant extract from the response is as follows:

“(11) If a distributor/producer having a mastered copy of a film in a compatible format and sufficient number of replicas with a KDM (Key Delivery Message) is ready to pay VPF to you in advance; as per your agreements can he be allowed to supply his cinema/film directly at the theatre? If not, the reasoning for the same.

Ans)....However, in case of CTOs which have procured DCEs from UFO or any of it's competitors on a leasehold basis (which includes the contractual commitment to procure content from UFO and accompanying entire bouquet of DCS), then the content (movies) must be provided only through UFO or the relevant DCE provider to the respective CTOs. The provision of content to the CTOs who have procured DCEs from UFO (or it's competitors) by any third party, including a producer/distributor on the assurance that they would pay the VPF, would fall short of the commercial and contractual obligations agreed between UFO and CTOs.....In such cases, denial of any one stream of revenue for UFO (and also, its competitors) would unravel the carefully balanced contractual arrangements that were negotiated with the financial viability of both CTOs and UFO in mind. Indeed, if any one revenue stream is denied, then the performance of the entire contract and the sanctity of the entire business arrangement would be jeopardized, not just to the detriment of UFO but also the CTOs and producers/distributors.”

113. The Commission relies upon the submissions of competitors of OP-1, i.e. K Sera Sera and SDC Techmedia Limited, which have been reproduced earlier in section pertaining to tie-in arrangements and exclusive supply agreements. The Commission relies upon the submissions and statements of representatives of CTOs, Seble Cinemas, Globe Theatres, Ritz Cinemas as reproduced above in the section pertaining to tie-in arrangements. Reliance is also placed upon the submissions of Mr. Chettiar of Miraj



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Cinemas, representative of Delite theatres, Mr. D'souza of PVR cinemas, Mr. Mayank Shroff of Cinepolis, Mr. Rajendar Singh of Inox in support of imposition of restraint pertaining to refusal to deal, as has been referred to in the section pertaining to tie-in arrangements and exclusive supply arrangements above. The Commission also refers to submissions of YRF, RES and Viacom 18, ZEEL and AA Films as has been mentioned to in the section pertaining to exclusive supply arrangements. The extracts of these statements and submissions are not reproduced again for the sake of brevity.

114. The Commission also considers the submission dated 04.02.2023 of Viacom 18, wherein it has been stated that they were forced to suffer financial losses owing to cancellation of shows arising out of the exclusive supply obligation and lock-in arrangement created by OP-1/OP-2. The relevant extract from their submission is as follows:

“xiv. Whether your Company has ever suffered any monetary or financial loss due to activation of firewall of UFO wherein KDM of other DCSP will not be accepted in DCEs of UFO in the middle of exhibition of your digital content or at the time of release? If so, please furnish details and quantify the loss so suffered by you?”

Response: Yes, We has suffered losses due to the arbitrary holdback of the film(s) by UFO. At the time of release of the film – ‘Manto’ (21ST September 2018), we had raised an objection towards the payment of VPF to UFO. As a retaliation, UFO had disabled/blocked the exhibition of the film with DCPs and KDMs issued/processed by Prime Focus labs on all it's 2k Solaries sites/screens through it's DCE firewall. As a result of which all the morning and early afternoon shows of the film ‘Manto’ were not screened on these sites. Owing to the indiscriminate blocking of the film, we suffered a loss of around Rs. 1 crore.”

115. The submission dated 07.02.2023 of ZEEL is noteworthy. In the said submission, it has been stated [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

The relevant extract from the submission is as under:



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[REDACTED]

[REDACTED]

[REDACTED]

116. The Commission has taken note of the statement dated 28.01.2022 of Mr. Suresh Amin, CEO of Indian Film and Television Producers Council, wherein it has been stated that while there was previously no condition on deployment of KDM, over the last four years, OP-1 has imposed restrictions such that only its KDM would work.

117. The Commission observes from the submissions made by various producers that KDM generated by other PPP service providers was not playing on the DCE supplied by OP-1 on lease, owing to the imposition of restrictions on the servers. Such practices do not appear to occur internationally, as has been submitted by AA Films Private Limited. It may be noted that other competitors such as K. Sera Sera and SDC Techmedia have submitted that they allow other players to provide content to its DCI-Compliant DCE subject to prior mutual consent and due approval from producer or distributor. The statement of representative of Indian Film and Television has brought out that previously there was no condition on deployment of KDM and over the last four years, OP-1 has imposed restrictions such that only its KDM would work. Therefore, the Commission



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concludes that OP-1 is indulging in refusal to deal in the market for provision of PPP services in India, wherein it is restricting CTOs operating under its lease network to receive supply of content cloned by any other PPP service provider.

Imposition of refusal to deal by OP-3

118. With regard to imposition of refusal to deal by OP-3, the DG observed from the submission of Informant that there was a firewall imposed by OP-3 on their DCEs which restricted KDM provided by Informant No.1 in 2019. The DG concluded that OP-3 is indulging in refusal to deal, wherein it is restricting CTOs operating under its lease network to receive supply of content cloned by any other PPP service provider.
119. OP-3, in its objections to the Investigation Report stated that the Investigation Report has failed to present a separate analysis and duplicates the observations made for exclusive supply to reach a finding of refusal to deal under section 3(4)(d) of the Act. It has been submitted that OP-3 does not restrict CTOs from procuring PPP services from any DCI-Compliant service providers. Therefore, no charge of refusal to deal can be levelled against OP-3.
120. In respect of imposition of refusal to deal, the Commission relies on the submissions made by Informant No.1 as well as the statements of its officials which are dealt in previous paragraphs. The Commission also relies upon the submissions made by OP-3 as well as the statements of its CEO with regards to vesting of content rights in its deployment models of DCI-Compliant DCEs as well as lack of restrictions imposed on DCP mastering of content by third parties. The Commission also noted the statements of third party vendors of OP-3 which substantiate the imposition of this vertical restraint as well as statements of competitors of OP-3 which have been set out in the section pertaining to imposition of exclusive supply agreements by OP-1 and OP-2. The submissions and statements of Mr. Yogesh Raizada (Wave Cinemas and representative of Batra Reels), Mr. Chettiar of Miraj Cinemas, Mr. D'Souza of PVR, Mr. Mayank Shroff of Cinepolis and Mr. Rajendar Singh of Inox, referred to in the section pertaining to exclusive supply arrangements imposed by OP-1 and OP-2, have also been taken into



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account. Further reliance has been placed upon submissions of YRF, Viacom 18, ZEEL and AA Films, as elaborated in previous paragraphs. The said statements and submissions are not reproduced herein for the sake of brevity.

121. In view of the foregoing, the arguments raised by OP-3 in this connection are not found to be tenable and the Commission concludes that OP-3 is indulging in refusal to deal in terms of Section 3(4)(d) of the Act in the market for provision of PPP services in India, wherein it is restricting CTOs operating under its lease network to receive supply of content cloned by any other PPP service provider.
122. The Commission now proceeds to examine whether vertical restraints imposed by OP-1 & OP-2 and OP-3 in the form of tie-in arrangement, exclusive supply agreement and refusal to deal have resulted in AAEC.
123. The investigation has brought out that the vertical restraints imposed by OP-1 have created barriers to entry for newer players. Newer players in the PPP processing market would be unable to compete effectively when markets for DCP cloning and delivery of content to CTOs are unavailable right at the outset. No other independent player (*i.e.* player which does not provide DCI-Compliant DCE), apart from Informant No.1, has attempted to enter this market over the last few years, which brings out that the enforcement of OP-1's model has been a significant barrier for independent players to venture into DCP cloning and delivery of content. The DG also noted that OP-1's conduct is aimed at driving out existing competitors from the market, which includes Informant No.1 as the imposition of restraints and firewall arose only over the last 5 years, around the time when Informant No.1 entered the market. The investigation also revealed that the conduct of OP-1 has resulted in foreclosure of market as through imposition of impugned clauses, a significant portion of CTOs having DCI-Compliant DCEs were blocked from being served by any other player in the market for PPP services, especially for DCP cloning and supply of content. Furthermore, the impugned agreements also resulted in hindrance to improvement in production of services and promotion of future technical, scientific or economic development in production or distribution of services, by restricting entry of a player who may have an improved



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model of providing DCP cloning or supply of content to the CTOs. It effectively monopolizes any potential innovation within the DCP cloning and supply of content to be used only by OP-1. The DG concluded that conduct of OP-1 and OP-2 through imposition of tie-in arrangement, exclusive supply arrangements, and refusal to deal resulted in AAEC with regard to the factors mentioned in Section 19(3) of the Act.

124. OP-1 and OP-2, in their submissions have stated that no barriers to entry are created, as potential competitors are free to invest in their own DCI-DCEs and lease them along with other services. It was pointed out that the Informant itself stated the following: “[...] *As the Informant No. 1 has already invested in the cloning and distribution business, it is commercially unviable for the Informant No. 1 to engage in the business of leasing/selling of DCE. [...]*”. It was stated that there is no evidence of players exiting the market due to OP-1’s business model. It was further stated that even including OP-3’s market share in the PPP services market (26.97%), 52% of the PPP services market remains open for the Informant and other PPP service providers. It was stated that no evidence indicating hindrance to technical, scientific, or economic development has been provided. As per its submission, OP-1 was not able to charge supra-competitive prices resembling market power and had to reduce prices despite inflation and reduction in profit margins.

125. The Commission noted the submission of Informant No.1 dated 21.01.2023 filed before the DG, stating that it did not generate any business on the DCI-Compliant DCEs installed by OP-1, which nullified the concerns raised by OP-1 pertaining to free-riding and impact on its investment if restrictions are loosened. In this regard, the Commission notes that, as per the DG, OP-1 has been unable to establish how Informant No.1 or other players in the market for PPP services, especially DCP cloning or delivery of content would be free-riding on its investments. The ambit of Informant’s complaint is limited to restraints placed on DCP cloning and delivery of content, and thus does not majorly impact the recoupment of OP-1’s investment through means such as VPF and advertising. The DG also stated that analysis of OP-1’s submissions indicates that it is using the exclusive content supply to ensure implementation of terms of VPF and advertising, however, the same can be ensured through means that are not anti-



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competitive or that restrict the entry of players in the PPP processing or market of DCP cloning and delivery of content.

126. Furthermore, it was stated that any content processed and viewed in a theatre required clearance by the Central Board of Film Certification (“**CBFC**”), and the claim that the content is viewed and verified by OP-1 and OP-3 for compliance with laws, is incorrect.

The relevant extract from the submission is as under:

“5. The CTOs investment in DCEs has nothing to do with the business of the Informant No.1 which is cloning and distribution.....It is the commercial call of the Informant No.1 to not go ahead with investing in acquisition of the DCEs. It is further stated that there is no business generated by the Informant No.1 on the servers installed by the Opposite Party as otherwise alleged by the Opposite Party of free riding. It is stated that PVR, Inox and Cinapolis have themselves installed DCEs in cinemas owned by them and are free players. There is no firewall enabled by these players for displaying cinematograph film on their DCEs. Any content processing company who pitches these players with better price for processing content/cinematograph film does get business from these players.

8. In relation to query 5 of the notice, I say that the content processed and viewed in cinemas are approved by the Central Board of Film Certification. It is false to state that the Opposite Party looks after the content and it's compliance. It is false to state that the content is verified and ensured by the Opposite Party before the release of cinematograph film.”

127. Informant No.1, in its submission dated 29.05.2023, stated that from commencement of business in 2018 and excluding movies in South Indian languages (*i.e.* Kannada, Malayalam, Tamil and Telugu), owing to restrictions imposed by OP-1/OP-3, it lost service from huge number of sites and resultantly suffered massive losses.

128. Reliance has been placed upon the submissions of third parties such as producers like YRF, RES, Viacom 18 and T- Series, which *inter-alia* stated that having lesser number of PPP players, considering the ‘integration’ carried out by DCE suppliers to lock-in PPP services through the arrangement, has resulted in lower bargaining power and has created entry barriers especially for non-integrated players like Informant No.1.



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“YRF

(viii) Please explain the extent to which you are adversely affected by the limited number of DCSPs prevailing in the market?

Reply – While YRF is directly not affected adversely by the number of DCSPs prevailing in the Indian market, the limited number of DCSPs in the market gives such DCSPs more leverage to control a good share of the market and hence higher power to negotiate with distributors compelling distributors like YRF to work with all DCSPs according to DCSPs mechanism, else the film to be displayed will lose out on the chain of cinemas controlled by the respective DCSP through the DCE.

(xii) Whether in your opinion, DCSPs especially UFO and Qube had/has., created entry barrier(s) in the field of innovation of technology being employed in the field of digital distribution of digital cinema?

Reply – There are no high entry barriers created by UFO and Qube in the field of innovation of technology being employed in the field of digital distribution of digital cinema, however, due to their existing practices of blocking access of third-party K.D.Ms (as elaborated above) and acquiring new entrants in the market, entry by other players may end up being redundant.”

RES

9. With respect to point no (viii) of the notice, I say and submit that limited number of DCSPs has adversely affected the bargaining power of producers, distributors. We are left with very limited choice and are forced to avail the services at high rates and non-negotiable terms.”

Viacom18

viii. Please explain the extent to which you are adversely affected by the limited number of DCSPs prevailing in the market?

Response: When there are limited number of DCSPs, the ‘Price’ component is the main issue, since more players in the market, increase the competition which results in competitive pricing and improvement in quality. However, fewer players result in lesser competition and higher prices.

For example – Globally Viacom 18 works with a particular DCSP which provides it with negotiated costs as well as guaranteed quality, however, in



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India, if a particular film is dependent on a theatre which has a tie up with UFO, Viacom 18 will be forced to work with UFO as the DCSP as well, which has been explained in detail herein above. This reduces flexibility since Viacom18 is forced to go to multiple service providers based on the theatre tie ups and are at the mercy of these service providers for the pricing.

xii. Whether in your opinion, DCSPs like UFO and Qube had/has created entry barrier(s) in the field of innovation of technology being employed in the field of digital distribution of digital cinema?

Response: There is no particular entry barrier, as such, however, since DCSPs like UFO and Qube are engaged in hardware supply as well as post-production processing of the films, owing to the wide scope of their business and the market they cater, it becomes practically difficult for competitors (like Prime Focus) to enter the market.

T-Series

viii. Please explain the extent to which you are adversely affected by the limited number of DCSPs prevailing in the market?

Response – The limited number of DCSPs prevailing in the market does have an adverse effect on our business. There is high pricing due to high demand and lack of bargaining power to negotiate the same.”

129. The Commission noted that ZEEL has made submissions corroborating numerous points mentioned above. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] The relevant extracts from the submission are reproduced below:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



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[REDACTED]

[REDACTED]

[REDACTED]

130. Based on the above, the Commission agrees with the DG that the restraints imposed by OP-1 have resulted in AAEC.

131. In respect of AAEC resulting from the imposition of vertical restraints in the form of tie-in arrangement, exclusive supply agreement and refusal to deal by OP-3, the DG noted that the vertical restraints imposed by OP-3 created barriers to entry for newer players in the PPP processing market, especially those who provide DCP cloning and supply of



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content to CTOs, who would be unable to compete effectively when major portion of that market is unavailable at the outset. It was also noted that no other independent player has attempted to enter this market over the last few years which indicates that the enforcement of OP-3's model has been a significant barrier for independent players to venture into DCP cloning and delivery of content. The DG noted that OP-3's conduct was aimed to drive out existing competitors from the market, including Informant No.1 and resulted in foreclosure of the market, as it blocked a significant portion of CTOs having DCI-Compliant DCEs from being served by any other player including Informant No.1. The DG also noted that agreements between OP-3 and CTOs resulted in a hindrance to improvement in production of services and promotion of any future technical, scientific, or economic development in production or distribution of services, as these agreements forced producers to opt for inefficient route of getting films processed (*i.e.* cloned, in this instance) from multiple players and delivered through numerous parties, rather than having a single player involved. It was noted that such agreements restrict entry of a player who may have an improved model of providing DCP cloning or supply of content to the CTOs while also effectively monopolizing any potential innovation within the DCP cloning and supply of content to be used only by OP-3, thus further deterring market disrupting tactics by potential new players.

132. OP-3 submitted that its agreements with CTO's would not result in any appreciable adverse effect on competition in the market for PPP services. Considering the benefits of its deployment model for smaller CTOs, coupled with the substantial investment and risk borne by OP-3, the collection of VPF was stated to be essential to the continuance of OP-3's business model. Further, it was stated to be pro-competitive with regards to all stakeholders including CTOs, distributors/producers and end consumers. CTOs were stated to be benefited in the form of multiple revenue streams (*i.e.*, rent, VPF, *etc.*) which allowed OP-3 to make DCE affordable and accessible for CTOs at a subsidized rate. Distributors/ Producers were stated to be benefited by prevention of losses on account of piracy, widespread release and reduction of overall costs enabling far wider distribution. End consumers were stated to have access to better quality of cinematographic images, movies at the same time, unlike in the past when analogue prints would reach smaller towns and cities weeks or months after release.



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133. The Commission placed reliance upon the submissions of Informant No.1 wherein it has been stated that it did not generate business on the DCI-Compliant DCE installed by OP-3, which nullified concerns pertaining to free-riding. Reliance was also placed on submission of Informant No.1 dated 29.05.2023, wherein it has been stated that the owing to the restrictions imposed by OP-3, Informant No.1 had lost service from huge number of sites, and resultantly suffered massive losses. Submissions of third parties, YRF, RES, Viacom18, ZEEL and T-Series, with regards to lower bargaining power and creation of entry barriers were also referred. The Commission also relied upon the submissions of YRF, wherein it stated that owing to the arrangement in which DCEs and PPP services are locked-in, producers are required to sometimes clone a movie through multiple players, especially OP-3 for their DCE's. Submissions of T-Series and Pickle Entertainment, indicating their preference for availing services of OP-3 owing to wide range of its coverage were also considered by the Commission. The extracts of the submissions and statements have been extracted in the section pertaining to analysis of AAEC in respect of OP-1 and OP-2 and have not been reproduced again for the sake of brevity.
134. Based on the above, the Commission observes that the restraints imposed by OP-3 have resulted in AAEC.

ORDER

135. In view of the foregoing analysis, the Commission finds the Opposite Parties in contravention of provisions of Sections 3(4)(a), 3(4)(b) and 3(4)(d) read with Section 3(1) of the Act.
136. The contravention of the above-mentioned provisions pertain to the market for supply of DCEs on lease to CTOs and the market for provision of PPP services in India. These contraventions essentially emanate from the restrictions on supply of content imposed through the lease agreements entered into by OPs with CTOs. Accordingly, in terms of Section 27(a) of the Act, the Commission hereby directs the OPs not to re-enter lease agreements with the CTOs imposing restrictions on supply of content from parties other



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than OPs. Further, in terms of Section 27(d) of the Act the existing lease agreements with CTOs shall stand modified such that they do not impose restrictions on supply of content from parties other than OP-1 (and its affiliates) and OP-3.

137. The Commission has also considered the issue of imposition of monetary penalty upon OPs and has given it a thoughtful consideration.
138. OP-1 and OP-2 (collectively referred as UFO) have submitted that no penalty should be imposed on them due to the mitigating circumstances. As per their submissions, UFO played a vital role in breaking the impasse between CTOs and producers. UFO's model transferred the financial benefits of VPF to CTOs by reducing lease rents. DCI-DCE providers are stated to simply collect VPF on behalf of CTOs who contractually authorise them to do so, either because they secure DCI-DCEs on relatively low lease rent or do not want the hassle of collecting VPF. It is submitted by UFO that presently smaller CTOs are concentrated in non-Tier-1 cities and in absence of the lease model, a large number of these CTOs may not be financially viable. Furthermore, UFO's model of leasing DCI-DCEs as part of its DCS bouquet is stated to have offered significant pro-competitive benefits, including maintenance of competition in movie exhibition business, preventing piracy, and streamlining operations for smaller CTOs, which is stated to result in increased supply and better competition in the movie exhibition business, ultimately benefiting movie-goers. It is further stated by UFO that, without prejudice to the above-mentioned claims, penalty, if any, should be imposed only on the relevant turnover of UFO, in light of *Excel Crop Care v. Competition Commission of India & Anr.* (AIR 2017 SC 2734), which defined "relevant turnover" to mean the turnover of an enterprise in relation to the infringing product only. UFO is stated to provide PPP services only through its indirect 100% owned subsidiary Scrabble Digital, i.e. OP-2, and the relevant turnover, in the present case, would be the revenue generated from provision of PPP services, excluding other income, indirect taxes, trade discounts and intra-group sales. It is further stated that the recently notified Penalty Guidelines, also require the consideration of mitigating factors while imposing a penalty.



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139. Similarly, OP-3 has submitted that this is a fit case for the Commission to not impose any penalty or at the most, determine a minimal penalty. As per OP-3, it derives very little revenue from PPP services in which anti-competitive foreclosure is alleged. Further, there is stated to be demonstrable evidence of OP-3's business model having fostered competition in India and making DCEs affordable for CTOs. OP-3's business model is stated to be commercially justified as procurement of cloning, encryption and delivery services under its lease is essential for fair and accurate calculation and collection of VPF. It is submitted that under the Penalty Guidelines, the Commission is required to consider (a) the nature and gravity of the contravention; and (b) the nature of the industry or sector affected because of the contravention and its implications on the economy, for the purposes of determining penalty. Given that OP-3's actions are effectively intended to make DCEs affordable to CTOs and the demonstrable adverse outcomes if OP-3 is unable to earn revenue from VPF, the Commission has been requested to consider exercising its discretion not to impose any penalty. It has been submitted that in view of the Penalty Guidelines and principles recognized by the Hon'ble Supreme Court, imposing a penalty on the total turnover of an entity, by including other products that do not have any nexus with the alleged anti-competitive activity, would lead to anomalous results. As per OP-3, the 'relevant turnover' in this case is its turnover from the allegedly tied product (*i.e.*, revenue from provision of the following components - namely, cloning, encryption and delivery services) for three years preceding the receipt of the DG's report by the Commission. Furthermore, OP-3 has submitted that turnover derived from '*market for supply of DCI-Compliant Digital Cinema Equipment, on lease/rent to CTOs in India*' cannot be considered as "relevant turnover" for the purposes of Section 27 of the Act, as the DG has not found foreclosure of competitors in the market for supply of DCEs. Accordingly, the relevant turnover in the present case *i.e.* revenue from provision of cloning, encryption and delivery services for FY 2021, FY 2022, FY 2023 should be taken into account.
140. The Commission notes that the objective behind imposition of penalties *inter alia* is to reflect the seriousness of the contravention, and also to ensure that the same deters the entities from violating the provisions of the Act. The decision to impose penalty as well as determining the quantum of penalties imposed must correspond with the gravity of



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the offence and also have due regard to the mitigating and aggravating circumstances of the case.

141. Section 27(b) of the Act provides that the Commission may impose such penalty upon the contravening parties as it may deem fit which shall be not more than ten per cent of the average of the turnover for the last three preceding financial years, upon each of such person or enterprises which are parties to such agreement or abuse. In this regard, the Commission notes that the Competition (Amendment) Act, 2023 amended this section by way of adding following two ‘explanations’:

Explanation I.—For the purposes of this clause, the expression ‘turnover’ or ‘income’, as the case may be, shall be determined in such manner as may be specified by regulations.

Explanation 2. - For the purposes of this clause, ‘turnover’ means global turnover derived from all the products and services by a person or an enterprise.

142. The Commission is guided by the amended Section 27(b) as well as the Competition Commission of India (Determination of Turnover or Income) Regulations, 2024 (Turnover Regulations), and general methodology laid down in the Penalty Guidelines in relation to computation of monetary penalty.
143. In terms of Penalty Guidelines issued by the Commission, the first step is determination of ‘relevant turnover’. Thereafter, the Commission would consider an amount up to thirty percent of the average relevant turnover of the enterprise for the purpose of determination of penalty to be imposed on an enterprise under Section 27(b) of the Act. The amount so determined would be adjusted for mitigating and aggravating factors applicable to a given case. Further, subject to legal maximum, the Commission may further increase the amount of penalty, if the amount of penalty so determined is not sufficient to create deterrence.
144. UFO submitted that the relevant turnover in this case would be the revenue generated from provision of post-production services, excluding other income, indirect taxes, trade discounts and intragroup sales.



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145. In this regard, the Penalty Guidelines issued by the Commission, itself prescribes that the starting point for computation of penalty is linked to the ‘relevant turnover’. Further, clause 2(1)(h) of the Penalty Guidelines provides that *‘relevant turnover’ means the turnover derived by an enterprise directly or indirectly from the sale of products and/or provision of services, to which the contravention relates and determined for the purposes of imposition of penalty.* Thus, the relevant turnover is to be determined with reference to the products or services directly or indirectly linked to violation of the Act.
146. The Commission observes that two relevant markets have been delineated in the present matter *i.e.*, ‘*market for the supply of Digital Cinema Equipment, on lease/rent to CTOs in India*’ and ‘*market for post-production processing services in India*’, which are closely linked with each other. Contravention of the Section 3(4)(a), (b) and (d), which essentially emanates from the imposition of restriction through lease agreements, relates to both these markets. Therefore, the relevant turnover, as per the Penalty Guidelines, in the present matter is the revenue derived from lease rental of DCEs as well as revenue generated from providing PPP services in India and not restricted to revenue generated from PPP services alone as has been submitted by UFO.
147. The Commission also notes that, as per the submissions of the Informant No.1, OP-1 and OP-3, restrictions are imposed from the stage of creation of cloned copies *i.e.*, DCP cloning, and that any other player including Informant No.1 is free to create a master copy which can be supplied to OP-1 or OP-3 for cloning. Hence, in the interest of justice, the Commission deems it fit to not impose penalty on income derived from mastering.
148. Paragraph 3 of the Penalty Guidelines also provides that for calculating average relevant turnover, the Commission, may consider the relevant turnover or income of three years of the enterprise preceding the year in which the Investigation Report is received by the Commission. In the present matter, the Investigation Report was received by the Commission on 14.08.2023 and accordingly, the Commission has considered relevant turnover of financial years 2020-21, 2021-22 and 2022-23 of OP-1 and OP-2. Based on the said data, relevant turnover as determined above for the FYs 2020-21, 2021-22 and 2022-23 is tabulated hereunder:

Table 2: Relevant Turnover of OP-1 and OP-2

Financial Years	Relevant Turnover from Lease of DCEs to CTOs (OP-1) (INR Lakhs) (A)	Relevant Turnover from PPP services (OP-2) (INR Lakhs) (B)	Total Relevant Turnover (UFO) (INR Lakhs) (A+B)
2020-21			
2021-22			
2022-23			
Total			
Average of three FYs			

149. The nature and gravity of the contravention can be gauged from the anti-competitive effect which has been elaborated in this order. Therefore, considering the nature and gravity of contravention as well as nature of the industry or sector affected by the contravention, the Commission concludes that █% (█ per cent) of the average total relevant turnover as given in above table should be the basis for determination of penalty to be imposed on the OP-1 & OP-2 under Section 27(b) of the Act. Accordingly, the amount so determined is INR █ Lakh.

150. Coming to assessment of mitigating and aggravating factors, the OP-1/OP-2 have submitted various mitigating factors. As per OP-1/OP-2, a vital role has been played by them in breaking the impasse between the CTOs and the producers and financial benefits of VPF collected by them are passed on to CTOs by reducing lease rents. Their business model is stated to have offered certain pro-competitive benefits. The Commission has given a thoughtful consideration to these factors and found that these factors are not related to the impugned conduct of OP-1/OP-2. Accordingly, the amount of penalty



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imposed on OP-1/ OP-2 is INR 104.03 Lakh for violating Section 3(4)(a), 3(4)(b) and 3(4)(d) read with Section 3(1) of the Act.

151. OP-3, with regard to imposition of penalty, stated that penalty should be based on the relevant turnover in the present case *i.e.* revenue from provision of cloning, encryption and delivery services for FY 2020-21, FY 2021-22 and FY 2022-23 as it does not mandate procurement of mastering services from CTOs and only restricts provision of cloning, encryption and delivery services. Accordingly, the Commission deems it fit to not impose penalty on income derived by OP-3 from mastering.

152. The Commission has considered relevant turnover of financial years 2020-21, 2021-22 and 2022-23 of OP-3. Based on the said data, relevant turnover as determined above for the FYs 2020-21, 2021-22 and 2022-23 is tabulated hereunder:

Table 3: Relevant Turnover of OP-3

Financial Years	Relevant Turnover from Lease of DCEs to CTOs INR (Lakhs) (A)	Relevant Turnover from PPP services INR (Lakhs) (B)	Total Relevant Turnover (OP-3) (INR Lakhs) (A+B)
2020-21			
2021-22			
2022-23			
Total			
Average of three FYs			

153. Considering the nature and gravity of contravention as well as nature of the industry or sector affected by the contravention, the Commission concludes that an amount of % (per cent) of the average total relevant turnover as stated above should be the basis for determination of penalty to be imposed on the OP-3 under Section 27(b) of the Act.



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Accordingly, the amount so determined is INR ■■■ Lakh based on average total relevant turnover as computed above.

154. Coming to assessment of mitigating and aggravating factors, OP-3 submitted that its business model is beneficial for CTOs and has enabled deployment of DCI-Compliant DCEs by making them affordable especially for smaller CTOs. The Commission has given a thoughtful consideration to these factors and found that these factors are not related to the impugned conduct of OP-3. Accordingly, the amount of penalty imposed on OP-3 is INR 165.8 Lakh for violating Section 3(4)(a), 3(4)(b) and 3(4)(d) read with Section 3(1) of the Act.
155. OPs are directed to deposit the penalty amount within 60 days from the receipt of this order.
156. Before parting, the Commission deems it appropriate to deal with the request of the parties seeking confidentiality over certain documents/data/information filed by them under Regulation 35 of the General Regulations, 2009. Considering the grounds given by the OPs for the grant of confidential treatment, the Commission grants confidentiality to such documents/data/information in terms of Regulation 36 of the General Regulations 2024, subject to Section 57 of the Act, for a period of three years from the passing of this order. It is, however, made clear that nothing disclosed in the public version of this order shall be deemed to be confidential or deemed to have been granted confidentiality, as the same have been used and disclosed for purposes of the Act in terms of the provisions contained in Section 57 thereof. Accordingly, the Commission directs that two versions of the present order may be issued *i.e.*, public version shall be served upon all the parties and a confidential version shall be shared with the OPs through members of the confidentiality ring. The public version of the order shall be prepared keeping in mind the confidentiality requests and the provisions of Section 57 of the Act read with Regulation 36 of the General Regulations 2024. For convenience, it is directed that the confidential version of this order may be provided to such ring members/ individuals through one of the ring members, who may then share the same with the other ring members nominated by the OPs.



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157. The Secretary is directed to forward certified copies of the present order to the parties, in terms of the directions above.

**Sd/-
(Ravneet Kaur)
Chairperson**

**Sd/-
(Anil Agrawal)
Member**

**Sd/-
(Sweta Kakkad)
Member**

**Sd/-
(Deepak Anurag)
Member**

New Delhi

Date: 16.04.2025