



COMPETITION COMMISSION OF INDIA
Case No. 11 of 2023

In Re:

Sobhagaya Media Pvt Ltd.
A-9, Sector-68
Noida-201301 (UP)

Informant

And

DEN Networks Ltd
236, Okhla Industrial Estate
Phase III
New Delhi 110020

Opposite Party

CORAM:

Ms. Ravneet Kaur
Chairperson

Ms. Sangeeta Verma
Member

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

1. The present Information has been filed by Sobhagaya Media Pvt. Ltd. (**Informant**) under Section 19(1)(a) of the Competition Act, 2002 (**the Act**) against Den Networks Ltd (**DEN/OP**) alleging contravention of the provisions of Section 3 and 4 of the Act.
2. The Informant is stated to be a company registered under the Companies Act, 1956 and is engaged in the business of television broadcasting of news, transmissions, systemization of written communications relating to news *etc.* The Informant declares itself to be a cable television service provider duly registered under Section 3 of the Cable Television Networks (Regulation) Act, 1995. The Informant runs its news channel with the brand name 'APN'.



3. The OP has been described as the agent or intermediary of several broadcasters including ETV-UP and is stated to be distributing around 100 channels of different broadcasters. It has been further submitted that it acts as a content aggregator and offers bouquets for distribution by bundling together channels of different broadcasters.
4. It has been alleged that the Informant entered into an agreement dated 15.12.2015 with DEN for a period from 01.08.2015 to 31.07.2016 (**MOU**) with the state of Uttar Pradesh as the defined territory. It has been further submitted that the term of this agreement was extended for another year based on oral understanding. DEN was stated to be carrying the Informant's channel on DEN's Digital Addressable Networks under the agreement.
5. As per the Informant, it made multiple payments to DEN under the belief that the carriage fee charged by DEN is not more than the fee applicable to other Hindi TV channels. However, the Informant gathered information from reliable sources that the amount charged by DEN from other media companies running numerous channels like News Nation Network Private Limited, Information TV Private Limited, Zee Media Corporation Limited, ABP News *etc.* was much lower compared to what was being charged from the Informant.
6. As per the Informant, the Telecom Regulatory Authority of India (**TRAI**) issued a consultation paper on Draft Telecommunication (Broadcasting and Cable Services) Interconnection (Addressable Systems) Regulations, 2016 on 14.10.2016. Post-issuance of the said consultation paper, the Informant is stated to have requested DEN to charge carriage fee in accordance with the consultation paper which was allegedly refused by DEN on the ground that the consultation paper is merely a draft and therefore not binding. Thereafter, TRAI issued a notification dated 03.03.2017 upon which the Informant again raised the issue of exorbitant carriage fee and DEN allegedly conveyed to the Informant that the notification is under challenge before the Hon'ble High Court of Madras. On 23.05.2018, the Hon'ble High Court of Madras upheld the notification dated 03.03.2017 issued by TRAI pursuant to which the Informant demanded refund of the excess amount and advance paid to DEN. DEN, however, allegedly conveyed to the



Informant that the judgement dated 23.05.2018 of the Hon'ble High Court of Madras is in appeal before the Hon'ble Supreme Court and assured to carry the Informant's channel free of cost as it is a free to air channel in case the Hon'ble Supreme Court upholds the judgement of the Madras High Court.

7. The Informant further averred that as per the above mentioned notification dated 03.03.2017, DEN could not have charged the amount from the Informant as it had more than 20% subscribers in the State of Uttar Pradesh. DEN could have charged a maximum of 20 paise per subscriber, however, it has charged much more than that.
8. It has been further averred that DEN had orally assured the Informant that the excess amount will be adjusted in the third year by giving free signal for one year to the Informant. On the basis of this oral assurance, the Informant made payments in accordance with the agreement dated 15.12.2015 for the period from 01.08.2016 to 31.07.2017 under the hope that DEN will adjust the excess paid amount by giving free signal in the third year. As per the Informant, the parties had mutually agreed to extend the agreement on oral terms without executing a further written agreement.
9. The Informant stated that it made various representations to DEN regarding refund of excess money, non-execution of agreement, poor signals to APN (a free to air channel), and also sent reminders related to revision of carriage fees on the basis of the TRAI notification etc. However, DEN did not pay any heed to any of the reminders.
10. The informant has alleged that, in light of the above-mentioned facts and circumstances, DEN has violated various provisions of Section 4 of the Act.
11. Further, as per the Informant, the conduct of DEN also results in constructive refusal to deal as discounts are offered to other channels on certain parameters and APN News is treated differently and excluded, thereby resulting in violation of Section 3(4)(d) of the Act. The Informant has also sought interim relief under Section 33 of the Act by way of directing DEN to carry and air the channel of the Informant pending investigation free of cost.



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12. The Commission considered the Information in its ordinary meeting on 16.05.2023 and *vide* order of even date directed to forward a copy of Information to the OP with a direction to file its reply thereon. The reply from the OP was received on 19.06.2023. The Informant was also directed to submit copy of the agreement dated 15.12.2015 executed with the OP as mentioned in the Information. The Informant submitted the said copy of agreement on 05.06.2023. The Informant was also allowed to file its rejoinder to the reply filed by the OP within 2 weeks of its receipt, with an advance copy to OP. The Informant, however, has chosen not to file any rejoinder to the OP's reply.

13. In its reply, DEN has submitted that the Informant is indulging in forum shopping as Broadcasting Petition No. 79 of 2019 filed by OP against the Informant is pending before the Telecom Disputes Settlement Appellate Tribunal (**TDSAT**) in respect of default in payment of outstanding amounts towards channel placement fees arising out of the same agreement. It has been submitted that the Informant has put up a similar case, as in the Information, in its counter affidavit to the Petition. DEN has submitted that it raised invoices according to the four channel placement agreements executed with the Informant, however, the Informant consistently made short payments which have led to an outstanding amount towards DEN. Thereafter, DEN served a demand notice dated 13.08.2018 on the Informant and subsequently was constrained to file Broadcasting Petition No. 79 of 2019 before TDSAT.

14. OP has further averred that the channel placement fee depends on various factors such as popularity of the channel, position of the channel, position of neighbouring channels, reach of channel, obligations under broadcaster's (Reference Interconnect Offer) RIO for pay channels *etc.* DEN has submitted that the Informant had never raised any complaint against DEN as regards the quality of service or placement fee during the term of the agreement and it is only after the filing of the Broadcasting Petition that the Informant has raised such issues.



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15. DEN has further submitted that the Informant is seeking to draw a comparison with the fee charged for Pay Channels whereas the Informant's channel is a free to air channel. Further, it has been submitted that the TRAI Notification dated 03.03.2017, relied upon by the Informant to claim exemption from carriage fee, is not applicable to the present case as *firstly*, the nature of the agreement executed between the parties (Placement Agreement) is different from the one regulated by the notification (Carriage RIO) and *secondly*, the carriage fee regulation of 2017 was implemented with effect from February 2019. It has also been submitted that DEN is not dominant in the market due to the existence of other competing MSOs in the Broadcasting and Cable industry.
16. The Commission has perused the Information and the reply filed by DEN.
17. The Informant appears to be aggrieved by the alleged excessive carriage fee charged by DEN for carrying the Informant's channel on its network. The Informant has alleged that the conduct of DEN falls foul of Section 3(4) and Section 4 of the Act.
18. Before delving into the merits of the case, it is observed that television is one of the most prominent mediums in India for transmission of information, news, entertainment, *etc.* The television broadcasting and distribution services in India mainly comprise Cable Television Services (Cable TV), Direct-to-Home (DTH) services, Internet Protocol Television (IPTV) services, Headend-in-the-Sky (HITS) services, terrestrial TV services provided by Doordarshan - the public broadcaster.
19. For examining allegations pertaining to Section 4 of the Act, the delineation of the relevant market is essential to first ascertain dominance and thereafter, the alleged conduct of DEN in the said relevant market can be examined.
20. In this regard, it would be instructive to note the order of the Commission in the case of *Kansan News Pvt Ltd v. Fastway Transmission Pvt Ltd & Ors Case No 36/2011*, which was instituted against Multi System Operators (MSOs), wherein it was observed that cable TV service is a distinct product and is not a substitute for other platforms of



TV channel transmission such as DTH, IPTV *etc.* The relevant extracts of the observations of the Commission are reproduced hereunder:

“...The characteristics/features of cable TV are different from the other platforms of transmission

6.2.4 On the basis of difference in technology, scalability, viewing experience and the reach, the DTH, IPTV and cable TV is services are not interchangeable or substitutable with each other.

6.2.5 The Commission observes that in terms of accessibility of service to the consumer, the reach of the cable TV is different from other platforms of transmission. Cable TV can reach any place only with the help of cables whereas DTH works everywhere even the rural and remote areas. A cable operator provides services such as exclusive local channels which are exclusive to the cable operators and are not generally provided by DTH or other service providers.

.....

*6.2.8 The Commission further observes that DTH viewers receive the transmission of channels independently from the satellite whereas the cable TV operators receive the signals from the broadcasters through satellite in their control room and thereafter distribute these signals to customers through cables. There is no choice for consumers in selection of the channels in case of cable transmissions whereas the choices are given by the DTH service providers. The installation of the DTH in homes requires set top box, dish antenna and remote *etc.* whereas no such requirements are there for cable installation. The spectrum used by these two transmissions is also different.”*

21. Further, TRAI in its consultation paper dated 25.10.2021 on *"Market Structure/ Competition in cable TV services"* has also noted that DTH services are not perfectly substitutable with cable TV services, as certain factors are unique to cable industry. In this regard, it is noted that cable TV operators can provide broadband and voice services in addition to the distribution of TV channels, which DTH operators cannot. Furthermore, even for distribution of TV channels, competition within the cable TV sector is essential as cable TV networks operate on a State/regional basis and can choose specific channels to be supplied according to the demand in a particular area whereas DTH services operate on a national basis and transmit the same channels throughout the country irrespective of variations in demand of channels in different market.



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22. With regard to the determination of relevant geographic market, the Commission is of the view that due to the factors such as local specification requirements, consumer preferences, communication language, distribution network *etc.* the territory of the State is the relevant geographic market in the present matter.
23. Accordingly, the relevant market in the present case may be taken as the *market for cable TV service in the State of Uttar Pradesh.*
24. In relation to assessment of dominance, the Informant has not placed on record any material to suggest dominance of DEN in the market for cable TV service in the State of Uttar Pradesh. However, based on the information available in TRAI's Paper on "*Recommendations on Entry Level Net worth requirement of Multi-system Operators in Cable TV service*"¹, it appears that four MSOs *i.e.*, SITI, IMCL, DEN and Fastway have their presence in the State of Uttar Pradesh. Further, as per the Ministry of Information and Broadcasting, in addition to these four MSOs, there are several other MSOs registered in the State of Uttar Pradesh indicating minimal entry barriers in the cable television sector.²
25. In the above market construct including presence of multiple players and in the absence of any material to indicate the contrary, the OP does not appear to be dominant in the said relevant market.
26. The Commission notes that *arguendo* cable TV and DTH services may be considered as substitutes with each other and thus, falling in the same relevant market. However, in such broader relevant market, the market power of the OP, if any, would further weaken. Thus, in the absence of dominance of DEN in the relevant market, no case of contravention of the provisions of Section 4 of the Act can be made out.

¹ https://traai.gov.in/sites/default/files/Recommendation_MS0_22072019_0.pdf

² <https://mib.gov.in/sites/default/files/List%20of%20Registered%20MSOs%20as%20on%2018.01.2022.pdf>



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27. Coming to the alleged conduct on the part of the OP *i.e.*, charging excessive carriage fee, the Commission notes that the Informant has not placed on record any evidence to substantiate its allegations. Further, the Informant chose to not file any rejoinder to the reply filed by the OP negating the contentions of the Informant in this regard.
28. In these circumstances, no case of contravention of provisions of either Section 3(4) or Section 4 of the Act is made out against the OP and thus, the matter is ordered to be closed forthwith under Section 26(2) of the Act. Consequently, no case for grant of relief(s) as sought under Section 33 of the Act arises and the prayer for the same also stands rejected.
29. The Secretary is directed to communicate to the parties, accordingly.

Sd/-
(Ravneet Kaur)
Chairperson

Sd/-
(Sangeeta Verma)
Member

New Delhi

Date: 14 / 09 / 2023