

COMPETITION COMMISSION OF INDIA

Case No. 42 of 2023

In Re:

The Film and Television Producers' Guild of India Limited Informant

And

UFO Moviez India Limited Opposite Party No.1

Qube Cinema Technologies Private Limited Opposite Party No.2

PVR INOX Limited Opposite Party No.3

CORAM

Ms. Ravneet Kaur
Chairperson

Mr. Anil Agrawal
Member

Ms. Sweta Kakkad
Member

Mr. Deepak Anurag
Member

Order under Section 26 of the Competition Act, 2002

1. The present Information has been filed by The Film and Television Producers' Guild of India Limited ('**Informant**') under Section 19(1)(a) of the Competition Act, 2002 ('**Act**') alleging contravention of the provisions of Sections 3 and 4 of the Act by UFO Moviez India Limited ('**OP-1**'), Qube Cinema Technologies Private Limited ('**OP-2**') and PVR INOX Limited ('**OP-3**'). OP-1, OP-2 and OP-3 are collectively referred to as the Opposite Parties ('**OPs**').
2. The Informant is stated to have been established in 1954 by the Indian film industry. The television sector was included within its fold in the year 2004. The Informant has

approximately 170 producers as its members which include small, medium and large producers.

3. Both OP-1 and OP-2 are companies incorporated under the Companies Act, 1956 and are, *inter alia*, involved in the supply of Digital Cinema Equipment ('DCE') to Cinema Theatre Owners ('CTOs').
4. OP-3 is stated to be the largest film exhibitor in India with 1,707 screens across 115 cities (India and Sri Lanka) with 359 properties and an aggregate seating capacity of 3.58 lakh seats. It has been stated that OP-3 recently completed the merger with INOX Leisure Limited, thus becoming the largest multiplex chain in India.
5. As per the Information, movies could only be projected on analogue 70 mm projectors, which later transitioned into 'celluloid' played on 35 mm projectors. Once a film was shot, the (physical) prints had to be transported to different theatres. For distributors, the cost of physically transporting a print from one location to another was significant. During 2000s, there was a global shift to the digital medium and digitization of the Indian theatres started soon after in the year 2005. By the end of 2014, 100% of the Indian cinema screens were digitized.
6. Initially, there were concerns by the CTOs and exhibitors regarding the necessity of transitioning from celluloid to a digital medium, the latter being capital-intensive compared to analogue projectors. The cost of DCE ranges between INR 30 lakhs to INR 50 lakhs which proved to be a substantial economic burden on the theatres.
7. It is stated that to mitigate the cost of DCE, Virtual Print Fee ('VPF') originated in the USA around the middle of 2005, when the first set of the VPF agreements were executed between 6 major studios/producers *viz.* Fox, Paramount, Sony Pictures Entertainment, Disney, Universal, and Warner Bros. and Christie/AIX (a DCE provider) for the roll-out of the digital cinema technology in 4,000 screens. Thus, in effect, producers agreed to subsidize the transition of theatres from analogue projectors and equipment to digital equipment by bearing a charge, which was payable to the DCE provider. This was later termed as VPF.

8. Around the year 2007, producers and DCE providers in India started to follow the same model as USA and pay VPF to incentivize the adoption of digital projectors. VPF was charged by DCE providers to be paid by producers at the rate of approximately INR 500-600 per film per screen and per show, capped at INR 20,000-27,500 per film per screen for multiple/unlimited number of shows. There was however, no written agreement to this effect between Indian producers and DCE providers.
9. It has also been stated that the introduction of digital cinema in India also coincided with the advent of multiplexes in the 2000s, led by PVR which was followed by several players such as INOX, Carnival, BIG Cinemas, Miraj, DT Cinemas and Cinepolis. Initially, they chose to lease DCE from DCE providers such as OP-1 and OP-2 who are the primary providers of DCE to the exhibitors and have been charging VPF from the producers. During 2015-18, PVR and INOX decided to purchase their own DCE, followed by Cinepolis purchasing DCE for some of their multiplexes.
10. As per the Informant, VPF was understood to be transitory and not permanent in nature. In 2018, the agreement between 6 Hollywood producers and DCE providers/third party digital aggregators lapsed and thus Hollywood producers/studios do not pay VPF for screening their movies in India. It has been stated that some producers and distributors appear to have entered into an agreement with OP-3 with a sunset clause that would put an end to VPF in 2024.
11. In order to charge and collect VPF, DCE providers enter into agreements with exhibitors in India, for providing DCE to CTOs on payment of lease rental by the CTOs/exhibitors and grant of exclusive rights to supply films, as well as exclusive advertisement rights that generates advertising revenue in the said theatre. The CTO is 'locked-in' to that particular DCE provider due to exclusivity clauses and cannot take films or content from any other source, as these would not be capable of projection on the DCE supplied by any other supplier.
12. It has been stated that though VPF is not relatable to any particular service provided but was originally introduced to enable the transition from analogue to DCE as it was intended to cover the cost incurred by CTOs for the transition. Once the transition was complete, VPF was to come to an end as in the case of Hollywood producers, in 10 years, *i.e.*, by

2018. However, the same has continued to be levied, for more than 15 years since its introduction, even though theatres completed their digitization in 2014. At present, it is unviable for several producers, particularly small and medium size ones, to get a decent theatrical release without releasing the movie in theatres controlled by the OPs and having to incur VPF charges. It is stated that when a Hollywood film gets released in India, it is under no obligation to pay the VPF and Hollywood producers are therefore, able to release a larger number of prints in India which is discriminatory towards Indian producers.

13. Several requests have been made by individual producers over time, to remove the VPF charges. It has been stated that in 2019, Unilazer Ventures approached the Commission against PVR, INOX and Cinepolis, in Case No. 10 of 2019 ('**Unilazer Case**'), wherein all 3 exhibitors submitted that they were willing to discuss the VPF charges as well as a sunset clause. However, despite a period of 5 years having lapsed since, these 3 exhibitors continue to levy VPF.
14. Following the release on 14.10.2022, of the Commission's Market Study which had found the levy of VPF charges to have anti-competitive outcomes particularly for smaller producers in the ecosystem, the Informant requested its members to send their comments on the same. The Informant was requested by its members to engage in discussions on behalf of the producers with all DCE providers and exhibitors on the levy of VPF. Consequently, in May 2023, the Informant wrote several letters to the DCE providers and exhibitors to meet the Informant on the VPF issue. However, all attempts to end VPF were futile and the OPs were reluctant to even engage in discussions. A letter dated 04.06.2023 by OP-2 suggests that VPF should be continued indefinitely, while OP-1 and OP-3 continue to delay any resolution of the issue. At no point has it been suggested that VPF would be ended either immediately or within a defined period.

Allegations against OP-1 and OP-2

15. As per the Informant, the DCE providers lease equipment to CTOs for a lease rental and also enter into agreements with the lessee cinemas for advertising and VPF, whereby they retain a majority of the revenues generated. The content supplied by the DCE provider is played on the DCEs leased to CTOs, and thus no film can be screened on such equipment without the DCE provider's approval/release order. It is stated that OP-1 and OP-2 hold a combined market share of more than 60% in the leased DCI-compliant DCE market and

hence, the producers have no choice but to agree to their terms, including the payment of VPF. A producer, thus, has no choice but to pay the VPF charged by OP-1 and OP-2 or forgo screening of films at the theatre that lease their equipment. Further, OP-1 and OP-2, charge VPF through invoices raised on the producers once the producer has decided on the number of screens and locations at which his movie would be released. The VPF charge is not relatable to any service provided such as digital processing services or distribution, the fee for which is a separate charge. It has been alleged that OP-1 and OP-2 are preventing the exhibition of films on their DCEs unless VPF is paid by the producers to them, amounting to violation of Sections 3(4)(b) and 3(4)(d) of the Act, which deals with exclusive supply agreement and refusal to deal, respectively. The Informant has further stated that the conduct of OP-1 and OP-2 causes Appreciable Adverse Effect on Competition ('AAEC') in the market delineated by the Informant.

Relevant market delineation for OP-1 and OP-2

16. Based on the factors listed in Section 19(7) of the Act, such as physical characteristics or end-use of goods or nature of services, existence of specialized producers/service producers, preferences of consumer/producers/exhibitors, the Informant has delineated the relevant product market as '*the provision of DCE to CTOs for screening of films*'. With regard to relevant geographic market, the Informant has stated that digitized movies are provided to cinemas through satellite upload, which can then be downloaded in any part of the country and accordingly, the geographic market was delineated as the '*whole of India*'. In view of the above, the Informant defined the relevant market as the market for '*provision of DCE to CTOs for screening of films in India*'. The Informant stated that an alternative delineation may be based on the business model and thus the relevant market could be defined as '*the provision of DCE, by DCE providers on a lease/rent basis to CTOs in India*'.
17. The Informant has proposed a further distinction between: (a) '*the provision of DCE, by DCE providers on a lease/rent basis to single screen theatres in India*', and (b) '*the provision of DCE, by DCE providers on a lease/rent basis to multiplexes in India*', since the viewing experience provided at a multiplex is different for consumers in terms of accessibility, comfort, and value-added services.

Assessment of market power of OP-1 and OP-2

18. The Informant has submitted that OP-1 and OP-2 have significant market power in both the broad and narrow market, as delineated above. With regard to the broad market, *i.e.*, 'the provision of DCE, by DCE providers on a lease/rent basis to CTOs in India', it is stated that as per the data of Bureau of Outreach and Communication/Central Bureau of Communication ('BOC/CBC'), there are a total of 8,859 movie screens in India (both single and multiplex theatres included) as of 2022. Based on the data, with market shares of 33.84% and 30.78% respectively, OP-1 and OP-2 exercise significant market power.
19. With regard to the narrow market delineated by the Informant *i.e.* 'the provision of DCE, by DCE providers on a lease/rent basis to single screen theatres in India', it has been stated that as per the BOC/CBC data, there are 3,300 screens in single screen theatres in India. It has been stated that OP-1 and OP-2 have significantly higher market share *i.e.*, 48.5% and 40.72% respectively, compared to their next closest competitor *viz.*, Khushi Advertising Idea Private Limited with a mere 4.3% market share.
20. With regard to the other narrow relevant market pertaining to 'the provision of DCE, by DCE providers on a lease/rent basis to multiplexes in India', it has been stated that as per the BOC/CBC data, there are 5,559 screens in multiplex theatres in India and OP-1 and OP-2 possess a market share of 25% and 24.87% respectively in the relevant market for providing DCE to multiplexes.
21. The Informant has alleged that the conduct of OP-1 and OP-2 causes AAEC. It is alleged that high level of command over the market has given OP-1 and OP-2, the position to leverage and charge VPF, which works as a deterrent for relatively small producers who may operate with miniscule budgets and prevents them from achieving a wide theatrical release for their movies, which in turn, deprives the final audiences/consumers of more choices. The Informant has stated that VPF acts as an additional burden for the producers, over and above the cost incurred by them in the production and promotion of a theatrical film, and despite producers continuing to make losses, OP-1 and OP-2 have refused repeated requests to end the unjustified continuation of VPF.

22. It has also been stated that as a result of 50:50 joint ventures being formed between OP-1 and OP-2 in relation to (a) advertising sales and (b) content services, as stated in the press release dated 06.07.2023, OP-1 and OP-2 may be effectively operating as a single economic entity. Thus, their conduct may amount to an abuse of dominant position in the market. The Informant has stated that the nature and scope of joint ventures may be examined to determine whether OP-1 and OP-2 are in contravention of the Act.

Allegations against OP-3

23. With regard to the conduct of OP-3, it has been stated that levy of VPF by OP-3 amounts to imposing unfair terms and conditions on the members of the Informant, who are not allowed to release their films on OP-3's screens until they agree to pay VPF as demanded by OP-3. This is thus, a violation of Section 4(2)(a) of the Act. OP-3's conduct is also discriminatory as Hollywood producers are not charged VPF for movies exhibited in India. The Informant has also alleged the conduct of OP-3 to be in contravention of Section 4(2)(b) of the Act as OP-3 is limiting and restricting the ability of producers, particularly small and medium size ones, in producing and exhibiting films due to the continued charging of VPF. It has been stated that in the absence of VPF small and medium scale producers would have been able to release a film as widely as possible.
24. The conduct of charging VPF by OP-3 is also stated to be in violation of Section 4(2)(c) of the Act, as OP-3 has attempted to deny market to producers in terms of revenue generated and cost lost to VPF. It has been stated that since VPF is not charged from Hollywood studios for their movies in India, it allows them to release prints of their films in more cinema theatres in comparison to Indian producers. It has also been stated that the revenues from screening a movie are shared between a producer and an exhibitor in a certain proportion. OP-3 owns its own DCE equipment and no film can be screened at its theatres without its prior approval/release order. A producer, therefore, has no choice but to pay the VPF charged by OP-3 or forgo screening the film at its theatres.
25. The Informant has also submitted that OP-3 is in contravention of Section 4(2)(d) of the Act which prohibits the "*conclusion of contracts subject to acceptance by other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts*". It has been stated that OP-3 has

leveraged its market share in the relevant market to coerce producers and exhibitors into paying additional charge in the form of VPF for them to be able to release their films on theatrical screens. The Informant has also averred that the VPF charge is not relatable to any service provided by OP-3.

26. The Informant has stated that despite repeated requests to end the unjustified continuation of VPF, OP-3 refuses to do so.

Delineation of relevant market for OP-3

27. On the basis of several factors such as physical characteristics, consumer preferences and price, the Informant has delineated the relevant product market as the '*exhibition of films in theatres*'. Based on the similar factors as stated above, a further delineation of the market in terms of single screens and multiplexes has been suggested by the Informant, *i.e.*, '*exhibition of films in multiplex theatres*'. With regard to the relevant geographic market, the Informant has stated that, as the present Information is being filed against the anti-competitive and abusive conduct of OP-3 in charging VPF, from a producers' point of view, it may not be necessary to delineate the market narrower than the city limit and accordingly, delineated the relevant market as '*the exhibition of films in multiplexes in different cities in India*'.

Dominant position enjoyed by OP-3

28. Based on the factors listed under Section 19(4) of the Act, such as market share, size and economic power of OP-3, size and importance of the competitors and dependence of consumers on the enterprise, the Informant has stated that OP-3 has a position of dominance in the delineated relevant market. It has been stated that as per BOC/CBC data, for single and multiplex screens taken together, the market share of OP-3 was 18.07% with its closest competitor, Cinepolis having a market share of 3.30%, while in the narrow market of multiplex screens, the market share of OP-3 was 28.80%, with Cinepolis, having a market share of 5.27%.
29. In view of the above, the Informant has submitted that OP-1 and OP-2 are in violation of Sections 3(4)(b) and 3(4)(d) of the Act, while OP-3 is in violation of Sections 4(2)(a),

4(2)(b), 4(2)(c) and 4(2)(d) of the Act. The Informant did not seek any interim relief in the matter. However, in light of the averments made in the instant matter, the Informant has sought the following reliefs from the Commission:

- (i) pass an order under Section 26(1) of the Act directing the Director General ('DG') to cause an investigation into the matter;
- (ii) pass an order under Section 27 of the Act directing OP-1, OP-2 and OP-3 to cease and desist from indulging in the anti-competitive conduct;
- (iii) pass any order that the Commission may deem fit and proper in the facts and circumstances of the case.

30. The Informant had filed Interlocutory Applications ('IAs') dated 06.02.2024 (I.A. No. 17 of 2024), 15.03.2024 (I.A. No. 41 of 2024), 28.11.2024 (I.A. No. 382 of 2024), 24.03.2025 (I.A. No. 136 of 2025) and 01.09.2025 (I.A. No. 378 of 2025) requesting the Commission to expeditiously consider the Information filed under Section 19(1)(a) of the Act.

Subsequent Developments

31. Association of Digital Cinema Technology ('ADCT'), an industry body representing enterprises in the cinema digitization sector, filed a letter on 16.04.2024, on behalf of its members to address the present Information. ADCT had requested the Commission to invite and seek its views before considering the Information.

32. In an ordinary meeting held on 08.05.2024, the Commission considered the Information and subsequent applications filed by the Informant and ADCT. The Commission decided to seek certain information from the Informant with respect to specific instances where the producers (small/medium/regional films) were not able to release their films widely due to charging of VPF by the OPs or any other adverse effect in the market due to charging of VPF. The Commission also decided to seek comments from OP-3 on the Information, along with certain additional details. In relation to the request of ADCT, the Commission forwarded a copy of the non-confidential version of the Information to ADCT, to file their comments.

33. The Informant filed its response on 11.06.2024 to Commission's query about specific instances where the producers were not able to release their films widely due to charging of VPF by the OPs. Therein, the Informant annexed responses from officials of 3 production companies, Zee Entertainment Enterprises Limited ('**Zee Entertainment**'), SP Cinecorp Cinematic Venture Limited ('**SP Cinecorp**') and Emmay Entertainment and Motion Pictures LLP ('**Emmay Entertainment**').
34. On 25.06.2024, OP-3 filed its comments on the Information in confidential and non-confidential version along with its response to the queries raised by the Commission. OP-3 stated that its market share in the '*market of exhibition of films through multiplexes in India*' is 30% as total number of OP-3's multiplex screens in India are 1,754 out of 5,712. As regards collection of VPF, the response of OP-3 is summarized as under:
- (i) The shift from analog projectors into digital projectors was undertaken by the exhibitors at the behest of film producers, who benefited from such transition in terms of lesser print costs, wider film distribution, and limited security/leakage concerns.
 - (ii) The exhibitors continue to incur huge expenditure on purchase of DCE for new theatres, regular maintenance and repair of the DCE and replacing DCE every 8-10 years in view of its limited life cycle.
 - (iii) The Informant's submission that all stakeholders understood that VPF shall be a temporary payment/fee is not corroborated by a single piece of evidence. In Unilazer Case, the Commission considered and rejected the argument regarding VPF being intended to be transitory. Accordingly, in line with the requirements of Section 26(2A) of the Act, the present matter should be dismissed.
 - (iv) Without the levy of VPF, exhibitors cannot cover even a portion of their continuing costs for DCE and it will become unviable for theatres to continue to use DCE. If exhibitors are not permitted to recoup at least a portion of their continuing DCE costs from producers, they will be forced to pass it on to consumers, which will result in a sharp increase in ticket prices.

- (v) With regard to charging VPF from foreign producers, it is stated that only those Hollywood producers that had initially agreed to pay a higher rate of VPF in exchange for a sunset clause do not pay VPF, whereas other Hollywood producers who did not sign up for such a deal continue to pay VPF (including large and renowned Hollywood producers), similar to the Hindi/regional film producers.
35. The comments on the Information submitted by the OP-3, are summarized hereunder:
- (i) VPF is the only fee that producers pay to exhibitors and producers do not pay exhibitors any other form of screening or distribution fee. Removing VPF will effectively imply that producers are able to exhibit their films at theatres for free and only share the revenues of exhibitors but not any of their costs.
- (ii) Levy of VPF is a well-accepted industry practice and more than 3,000 single screens and 5,000 multiplex screens levy VPF (which is necessary for their survival). Therefore, VPF is a standard industry practice and is not unique to OP-3 in any manner.
- (iii) The Informant has failed to demonstrate any AAEC as a result of VPF. The Informant has broadly alleged that small/independent producers are foreclosed from the market because of VPF. However, small/independent producers regularly deal with OP-3 and exhibit their films at OP-3's theatres. OP-3 has stated that on an average, producers have earned more than ■ times the VPF they paid to OP-3 and that VPF spent on OP-3's theatres amount to merely ■ of the budget of a small/medium scale producer, based on the data provided by the Informant. Also, the Informant has cherry picked examples of select films of 3 producers that did not generate sufficient box office collections to recoup its VPF. However, the Informant has misled the Commission by failing to disclose that in the last 3 years, these producers have earned a total revenue of ■ from their films being exhibited at OP-3's theatres and have paid a VPF of only ■ to OP-3. Therefore, smaller producers (even the specific instances relied upon by the Informant) have not been foreclosed from the market and have in fact benefitted from OP-3's theatres.
- (iv) There are no AAEC concerns arising from the conduct as Hollywood producers are not gaining any significant advantage or foothold in India. There may not be a competitive advantage for such films because they make up a small percentage of releases.

- (v) In terms of delineation of the relevant market, it is stated that the present case centers around DCE and the VPF that is required to be paid by producers for use of DCE. Therefore, the relevant market for OP-3 should also be defined in terms of '*provision of DCE at theatres*', and OP-3's market shares should be calculated based on number of screens using OP-3's DCE (as OP-3 can only levy VPF on such screens). Accordingly, the relevant product market should be defined as '*the market for provision of DCE at theatres*'. Further, as regards the relevant geographic market, the market should be defined on a pan-India basis. In such a relevant market (*for provision of DCE at theatres*), the Informant admits that OP-3 has an insignificant market share of only 18% and it is not even amongst the top 2 players in the market. Therefore, OP-3 is not a dominant player and there can be no question of abuse of dominance by OP-3.
- (vi) The relevant market should not be further segmented between multiplexes and single screens as the producers release their films both in multiplexes and single screens as their objective is to exhibit films in maximum number of screens, amount of VPF paid is the same for both multiplexes and single screen theatres and supply side factors, are the same for the segments.
- (vii) By placing reliance on *XYZ vs Tamil Film Producers Council, Case No. 07 of 2018*, it is stated that the Informant is in fact engaging in a cartel, in violation of Section 3 of the Act. Through the Information, several producers (who compete with each other) are collectively negotiating and seeking to decide a common rate/term of VPF (which is a key commercial term between exhibitors and producers) with OP-3. OP-3 has reiterated its willingness to the Informant to amicably discuss/negotiate the rate of VPF separately with each producer.
- (viii) In response to the Informant's allegation, with regard to lesser number of screens granted for exhibitors who pay less VPF, the same is completely logical. It is standard business practice in any industry to link the distribution opportunities to the distribution fee paid and this cannot be considered to be unfair.
- (ix) VPF is a payment for the use of the DCE using which films are exhibited at theatres. Thus, it is unclear how a payment for usage of DCE can be unconnected to the usage of DCE

for exhibition of films. OP-3 would not charge VPF from a producer not exhibiting its films at OP-3's theatres.

36. On 25.06.2024, ADCT submitted its response to the order dated 08.05.2024 which is summarized as under:
- (i) ADCT is an industry body representing Digital Cinema Service Providers ('DCSPs') and its members include companies such as OP-1, E-City Digital Cinemas Private Limited, OP-2, *etc.*
 - (ii) VPF is a pro-competitive, symbiotic industry practice that is mutually beneficial for moviegoers, CTOs and movie producers. Producers benefited by saving costs associated with physical film prints, logistics, and piracy, while CTOs gained from improved exhibition quality, shorter exhibition cycles and the ability to exhibit movies on the same day of the release.
 - (iii) The arrangement between members of ADCT and CTOs is primarily driven by commercial feasibility with no element of coercion involved. The CTOs enter into commercial arrangements with members of the ADCT which often involves transferring to DCSPs the authority to collect VPF. To maintain the integrity of their arrangements, DCSPs usually require that the CTOs refrain from accepting content from other service providers.
 - (iv) The claim that DCSPs, like OP-1 and OP-2, are refusing to deal without the payment of VPF due to their alleged high market power is a misrepresentation of the commercial reality of the industry. VPF is neither created by nor retained by the DCSPs without cause; rather, it is directly linked to the provision of DCEs at nominal costs. If the DCSPs fail to charge VPF, they would invariably be required to increase fees and lease rentals charged to the CTOs, which may not be feasible for the CTOs.
 - (v) OP-1 has provided ADCT with a Memorandum of Understanding ('MoU'), entered into between the Informant and OP-1 in 2012, which stipulates the following: (a) there would be no sunset clause with respect to VPF; (b) OP-1 had agreed to offer advantageous discounts and flexibility on VPF, which were also capped at INR 20,000 per screen per

film until 31.03.2018; and (c) if technological advancements impacted OP-1's commercial costs, VPF would suitably be revised upwards.

- (vi) In Hollywood, VPF was kept close to the cost of physical prints at \$850-\$1200 which was sufficient financial incentive to drive the transition to DCEs, as the CTOs recovered their investment within 5-7 years. In comparison, the highest VPF in India then was about INR 20,000/-. CTOs based in the West also enjoy significantly higher average earnings per screening and annual earnings compared to their counterparts in India. Given this differential economic background of CTOs in the West *vis-à-vis* CTOs in India, a formal written agreement with a sunset clause was established between CTOs and movies studios in the West, which ensured recoupment of the investment in the DCEs in 5-7 years. On the other hand, far lower VPF in the Indian film industry emanating from a mutual understanding between movies producers and CTOs, morphed into an industry norm.
- (vii) The Informant's claim that VPF is not relatable to any specific service provided to the producers is misleading as VPF is a charge paid by the producers in return for the digital cinema infrastructure that they expect CTOs to maintain.
- (viii) The Informant's claim that VPF is a significant barrier to the release of smaller-budget movies is incorrect. VPF works on both lump sum and flexible models. Under the flexible rate card model, which is primarily suited to smaller movies, VPF is collected only on a per-show basis. As such, movies which fail to do well at the box office or get a smaller release, invariably pay only a very small component of their production cost as VPF.
- (ix) There is no evidence to the claim that movie production has diminished due to VPF. ADCT has provided a list of the number of movies released in India every year between 2000-2023, which shows that after a dip during the COVID-19 pandemic from an all-time high in 2019 (when 1,783 movies were released), the total number of movies released in India has reached a new all-time high of 1,835 in 2023.
- (x) While the Informant made certain proposals inviting the members of ADCT to engage in negotiation concerning VPF, it continually disregarded requests by ADCT's members to include independent CTOs (who are a critical stakeholder in this process) in such engagements.

- (xi) Contrary to what is claimed by the Informant, there is no joint venture between OP-1 and OP-2, as the proposed efficiency-enhancing joint venture between the two parties never materialized.
37. On 09.07.2024, the Informant filed its rejoinder to the reply of OP-3 dated 25.06.2024 wherein besides reiterating submissions made *vide* the Information, the following have been highlighted:
- (i) As regards delineation of the relevant market and its market share, the Informant has stated that the same is properly defined as OP-3 is not in the business of providing DCEs but of exhibition of films. In order to substantiate the delineation of the relevant market in respect of OP-3 as '*exhibition of films in multiplex theatres*', the Informant has also referred to a Combination case bearing Combination Registration No. C-2015/07/288 approved *vide* order dated 04.05.2016, involving acquisition by OP-3 of DLF Utilities Limited's film exhibition business (DT). The Informant has averred that in this case, the Commission while delineating the relevant market, held that the differences established between single screen theatres and multiplex theatres based on characteristics, intended use and prices, the relevant market was identified as being '*exhibition of films through multiplexes*'. Thus, even for producers there exists a clear distinction between multiplexes and single screen theatres. The Informant has also stated that as per the CBC data, in the '*market for exhibition of films in multiplexes in India*', OP-3 has a 30% market share (based on its latest screen count of 1,754 screens and total multiplex screen count of 5,559 screens). Its closest competitor, Cinepolis stands at a distant 5.27%. According to a Report by Deloitte, there are 3,270 multiplex screens in India (as of 2019) which puts OP-3's market share at 48.96% with 1,601 screens. As per OP-3's own statement in its Annual Report for Financial Year ('FY') 2022-23, it has 1,697 screens as of June 2023, which amounts to 43% market share of all multiplex screens in India. Further, as per its Annual Report, it has a presence in 114 cities across the country and accounts for around 30% of the total box office collections in India. It has also stated that as a percentage of multiplex revenues, the revenue share of OP-3 would be double that figure and no other multiplex chain come close to these figures. Thus, OP-3 is dominant based on value as well and not just number of screens.

- (ii) In response to OP-3's statement that the claim of VPF being a temporary payment is not corroborated by a single piece of evidence, the Informant has stated VPF was introduced to aid theatres to shift to digital projectors and the purpose of digitization has been fully achieved.
- (iii) In response to OP-3's claim that VPF was a standard industry practice followed by all exhibitors and that rate of VPF being charged was similar to other players, the Informant has relied on the Commission's decisions in *Belaire Owner's Association v. DLF Limited and Ors.*¹ and *Shri Jyoti Swaroop Arora v. Tulip Infratech Limited and Ors.*², to state that the defense of 'standard industry practice' ought not to be accepted in case the conduct leads to anti-competitive outcomes.
- (iv) In response to OP-3's contention that the Informant has failed to demonstrate AAEC in India due to levy of VPF, the Informant has, *inter-alia*, stated that the confidential figures provided by OP-3 must be established by the DG. It has stated that VPF cost is directly proportional to the number of screens and number of shows for a movie and choice of a higher number will constitute a substantial portion of the total cost.
- (v) On the OP-3's response that exhibitors continue to incur huge expenditure on purchase of DCE and maintenance & repairs, and would not be able to fully cover these costs without levy of VPF, the Informant has stated such capital expenditure is intrinsic to owning and running a theatre. Such costs were being borne by CTOs even when analogue projectors were being used and thus, it is only reasonable that this should be borne by CTOs even for digital projectors. Further, producers also make additional investments to attract audiences which are not funded/subsidized by exhibitors.
- (vi) On the response of OP-3 that without levy of VPF exhibitors cannot even cover a portion of the running costs of DCE and will thus be forced to pass it on to customers in form of increased ticket prices, the Informant has stated that despite payment of VPF, OP-3 has been increasing the price of tickets.

¹ Case No. 19 of 2010

² Case No. 5 of 2011

- (vii) As regards OP-3's justification that Hollywood producers had initially agreed to pay a higher rate of VPF in exchange for a sunset clause, the Informant has stated that if CTOs in Hollywood are able to invest in new DCE and its running without VPF, how is the same a commercial necessity in India.
- (viii) The Informant has stated that the producers bear all cost of production and promotion and pay exhibitors for exhibiting their films through a revenue share agreement. They are also primarily dependent on box office collections whereas multiplexes have multiple sources of revenue. Thus, payment of VPF proves detrimental for producers.
- (ix) The Informant while reiterating its submissions in the Information, stated that OP-3 has agreed to a deal with Yash Raj Films ('**Yash Raj**') and Viacom 18 ('**Viacom**') to end VPF charges by December 2024, as stated in the Unilazer Case, which shows the discriminatory treatment by OP-3 to the detriment of small producers in India.
38. Further, in response to ADCT, the Informant, while relying on its submission in the initial Information, made certain averments which are summarized as under:
- (i) The MoU between the Informant and OP-1 was in effect till 31.03.2018. For this understanding to continue post 2018, the parties ought to have signed another document and absence of the same itself proves that the parties did not intend to, nor agree to, any VPF charge to be levied in perpetuity.
- (ii) While the DCE providers state that it 'secures the right to charge VPF for the CTOs' in return for 'nominal' charges, there are in fact a range of rights that have been 'secured' by the DCE providers, such as mastering and advertising rights, and annual service contracts, apart from the sale/lease rental payable by the CTO. The agreements entered into between the DCE providers and the CTOs ensure that the CTO is effectively under the control of the DCE provider.
- (iii) CTOs were bearing the cost of replacement and annual maintenance when analogue projectors were used and should now bear the same for digital projectors.

- (iv) In response to ADCT's claim about the Informant excluding independent CTOs from their discussions, it is stated that it is the members of the ADCT that charge and collect the VPF through their contractual arrangements with the CTOs.
39. On 23.08.2024, OP-3 filed a reply to the Informant's rejoinder dated 09.07.2024. OP-3 stated that the sunset clauses in agreements with Yash Raj and Viacom have not been brought into effect/implemented, and may be subject to renegotiation and any grouse against this is premature at this stage. The production houses are only eligible for a sunset clause if they similarly stop paying VPF to all other exhibitors/DCE providers in the country. These select producers were also in discussions to enter into a similar agreement with other exhibitors such as Cinepolis. OP-3 faced a serious risk of losing exhibition of these productions to its competitors, unless it offered similar terms as being offered by other exhibitors. Explanation to Section 4(2)(a) of the Act states that any condition shall not be considered discriminatory if it was implemented to meet the competition. The agreements with Yash Raj and Viacom corroborate that OP-3 is willing to enter into such negotiations with individual producers. It further demonstrates that producers have negotiating power and at time exhibitors are required to adhere to the terms dictated by producers. OP-3 also requested for oral hearing to present its case in the event the Commission considers directing an investigation under Section 26(1) of the Act.
40. Subsequently, *vide* orders dated 28.08.2024, 01.10.2024 and 08.01.2025, the Commission considered the matter and decided to relist the same in one of the ensuing meetings.
41. Thereafter, in the ordinary meeting held on 30.04.2025, the Commission considered the matter and decided to hold a preliminary conference with the Informant and OP-3 on 28.05.2025. On 28.05.2025, the Commission held the preliminary conference with the said parties and directed them to file written submissions of their oral arguments. The Informant and OP-3 filed their written submissions on 03.06.2025 and 04.06.2025, respectively.
42. The Informant has stated in its written submission dated 03.06.2025, that the relevant market as defined by the Informant with respect to OP-3, *i.e.*, the '*market for exhibition of films in multiplexes in India*' is apt and precise. It is defined rightly as OP-3 is not in the business of providing DCEs. Instead, it is in the business of exhibition of films in

India. OP-3 has chosen to purchase DCEs for the purpose of running this business. Treating exhibition of movies in multiplexes as the market is also justified as the revenue generation from the multiplexes is much more than that generated from the single screens and ticket prices for a single screen and a multiplex are distinct. The Informant has also proposed an alternate relevant market: a) '*Market for lessors of DCE that aid in the exhibition of movies in theatres*' b) '*Market for owners of DCE that aid in the exhibition of movies in theatres*', in furtherance of the Commission's order dated 16.04.2025 in Case No.11 of 2020. The Informant has further reiterated its assessment of market share in the relevant market both in terms of screen share and revenue, and stated that this makes OP-3 an indispensable trading partner and it is next to impossible for the producers to survive without using the outreach of OP-3.

43. In the written submission filed by the Informant, it has also reiterated its allegation that OP-3 has abused its dominant position in the relevant market and has alleged violation of Sections 4(2)(a), 4(2)(b), 4(2)(c) and 4(2)(d) of the Act.
44. In the written submission dated 04.06.2025 filed by OP-3, apart from reiterating its previous submissions, it has contended that as the present matter centers around DCE and the VPF that is required to be paid by the producers for use of DCE, the relevant market for OP-3 should also be defined as '*the market for provision of DCE at theatres in India*'. It has averred that the members of the Informant are producers (and not the final consumers watching the films being exhibited at theatres. Therefore, it is wholly incorrect to define the relevant market as the '*market for exhibition of films at theatres*', which is consumer facing and not film producer facing). It has averred that it is the producers who are being charged VPF on account of the supply of DCE and not the end consumers. OP-3 further argued that no distinction should be made between multiplex screens and single screens as the 'consumer' for the purpose of the present matter (*i.e.*, film producer) does not distinguish between single screens/multiplexes and equally uses both forms of theatres to exhibit their films.
45. As regards dominance, OP-3 has averred that its market power/market shares should be calculated based on number of screens using OP-3's DCE (as OP-3 can only levy VPF on such screens). In the correct relevant market (for provision of DCE at theatres), the Informant itself admits that OP-3 has an insignificant market share of only 18-19%. It has

stated that OP-3 is not even amongst the top 2 players. It has stated that if the market is restricted to only to DCE for multiplexes, the Informant admits that OP-3 still has a market share of only 28% and other strong competitors such as OP-1 (25%) and OP-2 (25%) have similar market shares.

46. OP-3 has also reiterated that on an average, producers have earned more than ■ times the VPF they paid to OP-3 and that VPF spent on OP-3's theatres amount to merely ■ of the budget of a small/medium scale producer, based on the data provided by the Informant. OP-3 has stated along with evidence, that small/independent producers have earned a significant revenue from OP-3's theatres in exchange for miniscule sum of VPF. It has also averred that the Informant has failed to demonstrate any AAEC on producers in India or that levy of VPF has foreclosed the market for small/independent producers. It is stated that the Informant's allegation that producers are suffering/making losses due to the VPF charged by exhibitors is factually incorrect as producers have the ability to choose how much they want to spend on VPF by providing different tiered options and VPF is a negligible portion of the producer's expenses.
47. OP-3 has averred that the Informant's broad comparisons to other jurisdictions is misplaced and does not take into account the unique dynamics of the film exhibition industry in India.

Analysis of allegations against OP-1 and OP-2

48. At the outset, based on the submissions made by the parties, the Commission notes that VPF is an industry practice of charging producers/distributors purportedly for the purpose of covering the cost of converting their analogue projectors into digital ones.
49. The Commission has examined the allegations raised in the Information, the comments filed by ADCT to the Information and the rejoinder filed by the Informant to ADCT's response. While raising allegations under Section 3(4) of the Act against OP-1 and OP-2, the Commission notes that the Informant has identified mainly two relevant markets, the broad market being the '*provision of DCE to CTOs for screening of films in India*' and the narrow market as '*the provision of DCE, by DCE providers on a lease/rent basis to*

CTOs in India'. Thus, the markets as identified by the Informant predominantly pertain to business arrangements between DCE providers and CTOs.

50. It is noted that in Case No. 11 of 2020, allegations against OP-1 and OP-2, who were stated to have significant market power in the relevant market of '*provision of DCEs on lease/rent to CTOs*', have been analyzed by the Commission. OP-1 and OP-2 were found to have imposed condition of exclusivity on content played on the DCEs provided by them to CTOs on lease, which also enabled them to retain a portion of VPF received by such CTOs. The Commission, after analyzing the allegations made against OP-1 and OP-2, found them to be in contravention of Sections 3(4)(a), 3(4)(b) and 3(4)(d) of the Act, and directed that existing lease agreements with CTOs shall stand modified to the extent that they do not impose restrictions on supply of content.
51. The Commission observes that the issues raised in the present matter are substantially based on the fact that OP-1 and OP-2 are having significant power in the market and thus they are in a position to collect/retain VPF through exclusivity clauses in agreements entered into with CTOs. The directions given by the Commission in the Section 27 order in Case No. 11 of 2020, are expected to result in modification of such agreements which will enable the CTOs to directly deal with producers for receiving its content. Thus, the abuse of market power by OP-1 and OP-2, which was emanating from the exclusivity clause in such agreements, will be redressed.
52. In view of the foregoing, since a similar issue against OP-1 and OP-2 has already been dealt in Case No. 11 of 2020, the Commission does not deem it appropriate to inquire into the alleged anti-competitive agreements at this stage, under the provisions of Section 3(4) of the Act, and directs that the same be closed under Section 26(2A) of the Act.

Allegations against OP-3

53. The Commission notes that the Informant has alleged that the conduct of OP-3 in charging VPF is in contravention of provisions of Sections 4(2)(a), 4(2)(b), 4(2)(c) and 4(2)(d) of the Act.
54. With respect to delineation of the relevant market, the Informant has stated that as OP-3 is not in the business of providing DCEs and rather has chosen to purchase the DCEs for

the business of exhibition of films, the relevant market be delineated as '*the market for exhibition of films in multiplexes in India*'. With regard to the distinction between multiplexes and single screen theatres, the Informant has stated that a film screening at a multiplex typically generates more revenue than at a standalone single screen theatre, due to higher footfalls and ticket prices at multiplexes and thus the producers tend to rely more on multiplexes for higher revenue generation. It has also relied on Commission's order dated 04.05.2016 in Combination Registration No. C-2015/07/288 wherein, the relevant market was identified as '*exhibition of films through multiplexes*'. The Informant, in its post-hearing submission, has proposed alternate relevant markets which may be considered: a) '*Market for lessors of DCE that aid in the exhibition of movies in theatres*'; and b) '*Market for owners of DCE that aid in the exhibition of movies in theatres*'.

55. OP-3 in its post-hearing submission has contended that as the present matter centers around DCE and the VPF that is required to be paid by the producers (and not the final consumers watching the films) whose films are being exhibited at theatres for the use of DCE, the relevant market for OP-3 should also be defined as '*the market for provision of DCE at theatres in India*'. Therefore, it is wholly incorrect to define the relevant market as the '*market for exhibition of films at theatres*' which is consumer facing and not film producer facing. OP-3 has further argued that no distinction should be made between multiplex screens and single screens as the 'consumer' for the purpose of the present matter (*i.e.*, film producer) does not distinguish between single screens/multiplexes and equally use both forms of theatres to exhibit their films. This is corroborated by the fact that in FY 2023, approximately 50% of box office sales were generated from single screen theatres, and therefore, producers are still heavily reliant on single screen theatres for maximum visibility of their films. OP-3 has contended that the Informant has also stated that the market should be defined as the '*market for owners of DCE that aid in the exhibition of movies in theatres*'. In the present case, there is absolutely no rationale for distinguishing between purchased and leased DCE. The Informant itself admits that the impugned conduct involving a levy of VPF, is undertaken by all exhibitors, on the same terms, whether they have leased DCE or purchased DCE.
56. In order to show dominance of OP-3, with respect to '*the market for exhibition of films in multiplexes in India*', the Informant has stated that as per the BOC/CBC data, in the narrow market of multiplex screens, the market share of OP-3 was 30%, with Cinepolis

having a market share of 5.27%. Further, as per OP-3's Annual Report for FY 2022-23, it has 1,697 screens as of June 2023, which amounts to 43% market share of all multiplex screens in India. As per the Annual Report, OP-3 has a presence in 114 cities across the country and accounts for around 30% of the total box office collections in India. It has also stated that as a percentage of only multiplex revenues, the revenue share of OP-3 would be double that figure and no other multiplex chain come close to these figures. With respect to alternate relevant markets proposed in post-hearing submission, the Informant has stated that in the market for owners of DCI-compliant DCEs, there are approximately 5,031 DCI-compliant DCEs as of 2022, of which 3,180 are leased, meaning 1,851 DCI-complaint DCEs have been sold. Of this, OP-3's figures alone are 1,754 resulting in a market share of over 90%. Thus, producers find OP-3 to be an indispensable trading partner and it is next to impossible for the producers to survive without using the outreach of OP-3.

57. As regards dominance, OP-3 has averred that its market power/market shares should be calculated based on number of screens using a particular player's DCE. It has averred that market shares calculated by the Informant in the artificially narrow markets (such as the market for leased/owned DCE or DCI-compliant DCE) should be disregarded as they are not appropriate relevant markets in the present case. In the correct relevant market (for provision of DCE at theatres), the Informant itself admits that OP-3 has an insignificant market share of only 18%-19%. OP-3, further stated that it is not even amongst the top two players. It has stated that if the market is restricted to only to DCE for multiplexes, the Informant admits that OP-3 has a market share of only 28% and there are other strong competitors such as OP-1 and OP-2 having similar market shares of around 25%.
58. The Informant has alleged violation of Section 4(2)(a) of the Act by OP-3 for continuing to charge VPF from Indian producers even after the same has been discontinued with the Hollywood producers in India for English films. It has also been stated that OP-3 has discriminated against the Indian producers by agreeing to sign sunset clauses with only Yash Raj and Viacom while refusing to enter such clauses in agreements with other producers. The Informant has alleged violation of Section 4(2)(b) of the Act by OP-3 for limiting/restricting the ability of small and medium size producers in producing and exhibiting films as widely as possible due to the continued charging of VPF. OP-3 has also been alleged to have violated Section 4(2)(c) of the Act, by denying the small

producers a wider reach into the exhibition market, resulting in loss of revenue and additional cost as VPF. In support of its allegation, the Informant provided instances of few films where the producers incurred losses purportedly because of higher VPF charges. The Informant has also alleged violation of Section 4(2)(d) of the Act by OP-3 for levying VPF which is not relatable to any service provided by OP-3.

59. With respect to allegations raised under Section 4(2)(a) of the Act, OP-3 has stated that all Hollywood producers, barring 6 studios, pay VPF at the same terms as that of Hindi producers. In this regard, OP-3 has enclosed copies of invoices corroborating payment of VPF by foreign production houses. With respect to the aforementioned 6 producers, OP-3 stated that they agreed to pay a significantly higher rate of VPF as compared to Hindi producers, in exchange for a sunset period. It is stated that Hindi/regional film producers were aware of the terms for these 6 Hollywood producers, however, at that time they were not keen to negotiate and opt for the same terms but rather preferred to pay a lower rate of VPF in the market and not have any sunset clause. With respect to alleged discriminatory conduct among Indian producers, OP-3 has stated that the sunset clauses with Yash Raj and Viacom have not yet been brought into effect and may be subject to renegotiation. OP-3 also stated that aforementioned agreements corroborate that OP-3 is willing to enter into negotiations with individual producers, and despite OP-3's willingness to negotiate the levy of VPF, the Informant's members are seeking to negotiate only as a cartel together. It is also stated that Yash Raj and Viacom are eligible for sunset clauses only if they stop paying VPF to other exhibitors/DCE providers.
60. With respect to allegations raised under Section 4(2)(b) of the Act, OP-3 has stated that small/independent producers regularly deal with OP-3 and exhibit their films at its theatres. It has also been stated that such producers have earned more than ■ times the VPF they pay to OP-3. It has been further stated that, as a standard business practice, theatres allow producers the ability to choose how much they want to spend on VPF by providing different tiered options, based on the number of shows chosen by the film producer for exhibition of their films. Therefore, the film producers are fully in control of the amount they would like to spend on this front. It was further submitted that the practice of assigning lesser number of shows to producers paying less VPF, is completely logical. As per OP-3, it is standard business practice in any industry to link distribution opportunities to the distribution fee paid and the same cannot be considered to be unfair.

61. In relation to the allegations under Section 4(2)(c) of the Act, OP-3 has stated that the Informant has failed to provide any evidence that VPF leads to foreclosure of small/medium producers from the market in face of the detailed evidence provided by OP-3 which indicates that such producers earn significant revenue from OP-3's theatres in exchange for miniscule sum of VPF. OP-3 further stated that the Informant cherry-picked and provided a few instances of films not having performed well at theatres and therefore, not earning sufficient revenue to cover the VPF charges. However, it is stated that the box office earnings of a film solely depend on its popularity and demand amongst viewers and cannot be attributed to exhibitors.
62. As far as the allegations raised under Section 4(2)(d) of the Act by the Informant, OP-3 stated that VPF is a payment for the use of DCE on which films are exhibited at theatres and hence it is unclear how a payment for usage of DCE can be unconnected to the usage of DCE for exhibition of films.
63. With regard to AAEC, the Informant has stated that few of the producers shared their email communications, wherein they outlined certain adverse effects of levying VPF such as unfair advantage granted to Hollywood films by being exempted from payment of VPF and risk of loss due to high VPF charges. OP-3 has stated that the Informant has not provided any evidence for indicating AAEC in the market. It has been further stated that VPF is a negotiable portion of the producers' expenses and the Informant is seeking to mislead the Commission by portraying the same to be a significant barrier to the producers. With respect to the Informant's submissions on certain select films of 3 producers, OP-3 has stated that the Informant has failed to mention that a comprehensive analysis of all films of these select producers will demonstrate that they have in fact earned exponentially higher revenue at OP-3's theatres as compared to the VPF they have paid to OP-3.

Analysis of the Relevant Market

64. For the purpose of analyzing allegations under Section 4 of the Act, the Commission now proceeds to identify the relevant market. OP-3, in its submissions, has stated that since the present matter centers around DCE and the VPF that is required to be paid by the

producers (and not the final consumers watching the films) for the use of DCE, the relevant market for OP-3 should be defined as *'the market for provision of DCEs at theatres in India'*, as has been defined for OP-1 and OP-2, by the Informant. The Commission observes that the producers as an intermediate consumer approach OP-3 for exhibition of their films at OP-3's theatres and the charge of VPF is presumably connected to this. The Commission observes that even from the producers' perspective, OP-3 provides a different service than the one provided by OP-1 and OP-2. The DCE providers like OP-1 and OP-2, do not as such, provide any service to producers but rather to the CTOs to which the DCEs are leased out. OP-3, on the other hand, is a CTO which directly deals with producers for the purpose of exhibition of their films on its owned DCEs installed in its theatres.

65. The Informant, in its submissions, has also suggested delineation of a narrow relevant market, based on the distinction between the multiplexes and single screen theatres. The Informant has stated that a film screening at a multiplex typically generates more revenue than at a standalone single screen theatre, due to higher footfalls and ticket prices at multiplexes and thus the producers tend to rely more on multiplexes for higher revenue generation. OP-3, in its submissions, has stated that no distinction should be made between multiplex screens and single screens as the 'consumer' for the purpose of the present matter (*i.e.*, film producer) does not distinguish between single screens/multiplexes and equally use both forms of theatres to exhibit their films. The Commission is in agreement with the Informant that multiplexes are important source of revenue for the producers and the producers are not likely to forego the significant revenue generated by such multiplexes. The Commission notes that the OP-3 referring to EY Media and Entertainment Sector Report (March 2024) itself submitted that in FY 2023, around 50% of box office sales were generated from multiplexes. The Commission also takes note of the Informant's submission that due to the distinctive ticket prices for single screen and multiplexes, the revenue generated by producers from both the avenues is different and therefore, both cannot be treated as equivalent partners from the producers' perspective.
66. The Commission also notes that the Informant has referred to Combination Case No. C-2015/07/288 of acquisition by OP-3 of DLF Utilities Limited's film exhibition business. In this case, the Commission had analyzed the relevant market. Based on responses

received from various stakeholders and differences established between single screen theatres and multiplex theatres on the basis of characteristics, intended use and prices, the Commission was of the view that the relevant product market for the purpose of the said proposed Combination should be '*exhibition of films through multiplexes*'. The Commission noted that high-end single screen theatres that provide the same experience as multiplex theaters are not truly representative of single screen theaters as a category and that they are an exception to the rule. It however, made an observation that the relevant product market be widened by including high-end single screen theaters in addition to multiplex theatres. However, this may not be apt in this case because in the aforesaid Combination case, the relevant geographic market was restricted only to Delhi-NCR and Chandigarh. Even this market was further segmented into five smaller parts of which only in two segments was market expanded to cover high-end single screen theatres. The Commission's order in this Combination case also refers to another Combination case *i.e.* Combination Registration No. C-2015/01/236, involving acquisition of Reliance MediaWorks Limited and Cinema Ventures Private Limited by Carnival Films Private Limited which was approved *vide* order dated 24.03.2015. In this case, the Commission observed that multiplexes may be classified as being distinct from the single screen in terms of their peculiar characteristics and distinguished them as separate relevant markets.

67. In view of the above, Commission is of the of the *prima facie* view that the relevant product market could be delineated as the '*market of exhibition of films in multiplex theatres*'. This is also in consonance with the decisional practice of the Commission.
68. With regard to the relevant geographic market, it is understood from the facts of the case, that VPF is an industry wide practice and thus is presumably charged by every theatre in the country. Therefore, the relevant geographical market may be delineated as the '*whole of India*'. In view of the foregoing, the Commission is of the *prima facie* view that the relevant market may be delineated in the present matter as the '*market of exhibition of films in multiplex theatres in India*'.

Analysis of dominance of OP-3

69. Consequent to delineation of the relevant market, the Commission proceeds to examine the dominance of OP-3 in the delineated relevant market. The Commission notes that the

Informant as part of the information, has stated that as per CBC data, in the narrow market of ‘*market for exhibition of films in multiplexes in India*’, OP-3 has a market share of 28.80%, with its closest competitor, Cinepolis having a market share of 5.27%. In its response OP-3 on the basis of the Informant’s submission has stated its market share is 28.80% with respect to number of screens in the delineated relevant market. It has, however, also stated that if its screens are considered as 1,754 instead of 1,601, its market share marginally increases to 30%. The Informant in its rejoinder based on OP-3’s latest count of 1,754 screens, stated that according to CBC data, OP-3 has 30% market share in the delineated relevant market with its next competitor, Cinepolis having a market share of 5.27%. The Informant has also calculated OP-3’s market share based on data from two other sources. The first is a report by Deloitte of 2019 which gives of total number of multiplex screens in India as (3,270 as of 2019). Based on this OP-3’s market share with 1,601 screens has been worked out as 48.96%. The other report is OP-3’s Annual Report for FY 2022-23, wherein OP-3 screen count is given as 1,697 as of June 2023, which constitutes 43% of all multiplex screens in India. Further, as per the Annual Report, OP-3 has a presence in 114 cities across the country and its box-office revenue accounts for around 30% of the total box office collections in India. The Informant has stated that as a percentage of only multiplex revenues, the revenue share of OP-3, would be double that figure and no other multiplex chain come close to these figures. Considering the high market share of multiplex screens of OP-3, contrasting very low market share of its competitors and OP-3’s very high share of total box office revenue, the Commission is of the *prima facie* view that OP-3 is in a dominant position in the delineated relevant market.

Analysis of allegations against OP-3

70. With regard to the Informant’s allegation of discriminatory conduct of OP-3 under Section 4(2)(a) of the Act, of not charging VPF from the Hollywood producers, OP-3 has submitted that not all Hollywood producers are exempted from the payment of VPF. In order to substantiate its claims, OP-3 have also provided invoices of payment of VPF with respect to [REDACTED] [REDACTED], which indicates that VPF is being charged from some Hollywood producers. However, the Commission notes that as per OP-3’s own submission, they have charged VPF to 30% of the movies released by Hollywood producers, which shows that 70% were not charged VPF. Accordingly, the Commission is of the view that the alleged

discriminatory conduct of OP-3 is *prima facie* in violation of the provisions of Section 4(2)(a) of the Act and needs to be investigated by the DG.

71. The Informant has also raised an allegation that OP-3 has discriminated against the Indian producers, by agreeing to sign sunset clauses with only Yash Raj and Viacom and evaded entering into such clauses with other producers, including the members of the Informant. In this regard, the Commission observes that in Case No. 10 of 2019, OP-3 had given the following submission:

“OP-1 [PVR] is in discussion with many of these producers for signing separate VPF agreements and ‘Yash Raj Films’ has already signed an agreement with OP-1 for payment of VPF until December 2024. ‘Viacom’ (a Hollywood content producer) and OP-1, also, are in the final stages of concluding a written agreement.”

72. The Commission notes that, in the present proceedings, OP-3 has submitted that the sunset clauses in agreements with Yash Raj and Viacom have not been brought into effect/implemented, and may be subject to renegotiation. The Commission has also taken note of the release orders provided by OP-3 indicating that it continues to charge VPF from the aforementioned producers. However, the Commission also takes note of the submissions of OP-3 as made in the Unilazer Case, wherein OP-3 (arrayed as OP-1) had already signed an agreement with Yash Raj for payment of VPF until December, 2024. Thus, the Commission is of the view that OP-3 seems to have taken inconsistent pleas in its submissions in the instant case *vis-à-vis* its submission in Case No. 10 of 2019. Further, OP-3 has also stated that the production houses are only eligible for a sunset clause if they similarly stop paying VPF to all other exhibitors in the country. It has stated that OP-3 was forced to accept these conditions with Yash Raj and Viacom to meet the competition and it faced the risk of losing its exhibition business of Yash Raj and Viacom to its competitors unless it offered these producers similar terms as being offered by other exhibitors. Furthermore, OP-3 claims that it entered into the concerned agreements to match its competitor Cinopolis, which was also in discussion with the mentioned production houses to enter into similar agreements. In this regard, the Commission is of the opinion that the contention of OP-3 that it is constrained to offer similar terms as offered by other exhibitors does not *prima facie* seem to be cogent especially when it's immediate next competitor, Cinopolis has a market share of only 5.27%.

73. Accordingly, the Commission is of the view that the alleged discriminatory conduct of OP-3 is *prima facie* in violation of the provisions of Section 4(2)(a) of the Act and needs to be investigated by the DG.
74. The Informant has alleged the conduct of OP-3 to be in contravention of Section 4(2)(b) of the Act as OP-3 is limiting and restricting the ability of producers, particularly small and medium size ones, in producing and exhibition of films due to the continued charging of VPF, in absence of which small and medium scale producers would have been able to release a film as widely as possible. As regards allegations under Section 4(2)(c) of the Act, the Informant has submitted that OP-3 by charging VPF to producers has attempted to deny the market to producers in terms of revenue generated and cost lost to VPF. The Informant has provided emails of some producers and specific instances in support of its allegations. OP-3 has stated that the Informant has misled the Commission by failing to disclose that in the last 3 years, the producers, whose grievances/email communications were provided by the Informant, have earned a total revenue of INR [REDACTED] from their films being exhibited at OP-3's theatres and have paid a VPF of only INR [REDACTED] to OP-3. It has also stated that on an average, producers have earned more than [REDACTED] times the VPF they paid to OP-3 and that VPF spent on OP-3's theatres amount to merely [REDACTED] of the budget of a small/medium scale producer. In addition, OP-3 has stated that small/independent producers have earned a significant revenue from OP-3's theatres in exchange for miniscule sum of VPF. The Commission however, notes that OP-3 has not specifically addressed the specific cases cited by the producers. It has instead based its response on aggregated data and/or averages relating both to revenues and costs of the producers. Accordingly, the Commission is of the view that the alleged conduct of limiting/restricting production/exhibition of films and denying the market access to producers by OP-3 is *prima facie* in violation of the provisions of Section 4(2)(b) and 4(2)(c) of the Act and needs to be investigated by the DG. The DG is directed to investigate, based, *inter-alia*, on more detailed and granular information with respect to exhibition of movies in multiplex theatres of OP-3.
75. In relation to the allegations raised under Section 4(2)(d) of the Act, the Informant has stated that the charge of VPF is not relatable to any service provided by OP-3, which is evident from the fact that Hollywood studios do not pay this charge at all for releasing

English films in India. It is also stated that, for the purpose of releasing a film on theatrical screens, producers are compelled by OP-3 to agree to a supplementary obligation of paying VPF. OP-3 in its submission stated that VPF is a payment for the use of DCEs and accordingly, it is connected to the usage of DCE for exhibition of films. OP-3 has also justified charging of VPF for recoupment of the huge capital expenditure incurred for DCE. In this regard, the Commission observes that the cost of DCEs is one of the various costs of running a multiplex and a particular cost can either be charged separately from all other costs or in a composite form of revenue sharing agreements amongst parties. From the facts of the case, it appears that only the cost of DCE is charged separately in the form of VPF by OP-3. Charging a cost separately comes with the expectation of a separate service being rendered in exchange of consideration. However, in the present case, OP-3 has not been able to demonstrate as to what separate service is being rendered by it in exchange of VPF. Recoupment of cost of DCE alone does not establish provisioning of a separate service to producers. The Commission also notes that, based on the submissions made by the parties, certain producers, *i.e.*, foreign/domestic, have either been exempted from paying VPF or are allegedly in the process of entering into agreements which will phase out the payment of VPF by a certain period. OP-3 has also stated that it is willing to negotiate the terms of VPF with producers individually. OP-3 in its submission also stated that Yash Raj and Viacom are eligible for a sunset clause only if they stop paying VPF to all other exhibitors/DCE providers in the country. The aforementioned information brings into question the necessity and justification of the practice of charging VPF. It is noted that if VPF, as stated by OP-3, is a charge for a particular service, then it would be charged from every producer and would not be contingent on fulfilment of certain conditions including the condition that producers should first stop paying VPF to other DCE providers. Putting such conditions on producers by OP-3 for exhibiting their films substantiate the allegation of not only imposing a supplementary obligation of charging VPF without any specific service to producers but also of imposing an unfair condition for exhibiting films. Accordingly, the Commission is of the view that the alleged imposition of supplementary condition on producers by OP-3, is *prima facie* in violation of the provisions of Section 4(2)(d) of the Act and needs to be investigated by the DG.

76. In view of the facts, circumstances and analysis carried out *supra*, the Commission is of the view that there exists a *prima facie* case of contravention under Sections 4(2)(a),

4(2)(b), 4(2)(c) and 4(2)(d) of the Act against OP-3. Accordingly, the Commission directs the DG to cause an investigation into the matter to be made in relation to the alleged conduct under the provisions of Section 26(1) of the Act. The Commission also directs the DG to complete the investigation and submit an investigation report within a period of 90 days from the date of receipt of this order. Further, IA Nos. 17 of 2024, 41 of 2024, 382 of 2024, 136 of 2025, 378 of 2025 stand disposed of.

77. It is made clear that if, during the course of this investigation, the DG comes across any other anti-competitive conduct of OP-3, the DG shall be at liberty to investigate the same.
78. The DG is also directed to investigate the role of the persons/officers who were in charge of, and were responsible for the conduct of the activities of OP-3, that may be found to have indulged in anti-competitive conduct, at the time the alleged contravention was committed as well as persons/officers with whose consent or connivance the alleged contravention was committed, in terms of the provisions of Section 48 of the Act.
79. It is also made clear that nothing stated in this order shall tantamount to a final expression of opinion on the merits of the case and the DG shall conduct the investigation without being swayed in any manner, whatsoever, by the observations made herein.
80. The Secretary is directed to send a copy of this order along with the Information and other material available on record to the office of the DG forthwith.
81. Before parting, the Commission deems it appropriate to deal with the request of the Informant and OP-3 seeking confidentiality over certain information/documents/data filed by them under Regulation 35 of the Competition Commission of India (General) Regulations, 2009. Considering the grounds given by them for the grant of confidential treatment, the Commission grants confidentiality to such information/documents/data in terms of Regulation 36 of the Competition Commission of India (General) Regulations, 2024, subject to the provisions of Section 57 of the Act, for a period of 3 years from the date of issuance of this order. However, it is made clear that nothing disclosed in the public version of this order shall be deemed to be confidential, as the same have been used and disclosed for the purpose of the Act in terms of the provisions contained in Section

57 of the Act. Accordingly, 2 versions of the order are issued, *i.e.*, public version shall be served upon all the parties and a confidential version shall be shared with OP-3.

(Ravneet Kaur)
Chairperson

(Anil Agrawal)
Member

(Sweta Kakkad)
Member

(Deepak Anurag)
Member

Place: New Delhi
Date: 30.09.2025