



COMPETITION COMMISSION OF INDIA

Case No. 29 of 2022

In Re:

Consumer Unity & Trust Society
D - 217, Bhaskar Marg, Bani Park,
Jaipur - 302016, Rajasthan

Informant

And

PVR Limited
61, Basant Lok, Vasant Vihar,
New Delhi - 110057

Opposite Party No. 1

INOX Leisure Limited
5th Floor, Viraj Towers,
Western Express Highway,
Andheri (East), Mumbai – 400093

Opposite Party No. 2

CORAM

Mr. Ashok Kumar Gupta
Chairperson

Ms. Sangeeta Verma
Member

Mr. Bhagwant Singh Bishnoi
Member

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

1. The present information is filed by Consumer Unity & Trust Society (CUTS/**Informant**) under Section 19(1) (a) of the Competition Act, 2002 (**Act**) against PVR Limited (**OP-1/PVR**) and INOX Leisure Limited (**OP-2/INOX**), alleging contravention of the provisions of Section 3(1) of the Act.
2. CUTS is stated to be a global, independent, non-profit, public policy research, advocacy and capacity building organisation. In pursuit of its vision of consumer sovereignty, it promotes optimal regulation, rule-based trade and good governance



across sectors by bridging the gap between policymakers and grassroots through evidence-based interventions.

3. OP-1 (PVR) is stated to be a public listed company incorporated under the provisions of the Companies Act, 1956, which is engaged in the business of exhibition, distribution and production of movies, and also earns revenue from in-house advertisement, sale of food and beverages. The Information states that OP-1 is the largest player in the Film Exhibition Industry in India, and it acquired control of: (i) SP Cinemas in 2018 (89 screens), (ii) DT Cinemas in 2016 (32 screens) and (iii) Cinemax India Limited in 2012 (138 screens).
4. OP-2 (INOX) is stated to be a public listed company incorporated under the provisions of the Companies Act, 1956, which is engaged in the business of operating and managing multiplexes and cinema theatres in India. It is stated to be the second largest player in the Film Exhibition Industry in India after PVR. As per the Informant, OP-2 acquired control over: (i) Satyam Cineplex in 2014 (38 screens) and (ii) Fame Cinemas in 2012 (95 screens).
5. As per the Informant, the OPs have entered into anti-competitive agreements which are likely to cause an appreciable adverse effect on competition (AAEC) in the relevant market for the '*exhibition of films in multiplex theatres and high-end single screen theatres in different cities in India*'.
6. As per the Information, the OPs, on 27.03.2022, announced a transaction (**Proposed Transaction**) whereby OP-2 will merge with OP-1, and the combined entity will be called 'PVR INOX Limited' (**Combined Entity/PVR INOX Ltd.**). The transaction is stated to be implemented in four steps *viz.*, (i) amalgamation of OP-2 into OP-1, (ii) transfer of authorised share capital of OP-2 to OP-1, iii) issuance and allotment of new equity shares by OP-1 to OP-2's shareholders and (iv) dissolution of OP-2.
7. As per the Informant, the proposed transaction is exempted from the notification requirement under Section 5 of the Act as the Proposed transaction qualifies for the



सत्यमेव जयते



de minimis exemption. The Informant has claimed that, had it not been due to the unprecedented outbreak of the COVID-19 pandemic, which lowered the turnover of the Target enterprise *i.e.* OP-2 to less than Rs. 1000 crore in FY 2020-21, the Proposed Transaction would mandatorily have had to be notified for approval from the Commission. Nonetheless, the Informant has averred that the Combined Entity will become the largest player in the Film Exhibition Industry in India, operating 1546 screens in 341 commercial properties across 109 cities of India, resulting in significant market share in most relevant markets which will lead to even more consolidation of the Film Exhibition Industry, leaving it with four players only, *viz.* Combined Entity (PVR INOX Ltd.), Cinapolis, Miraj Cinemas and Carnival Cinemas.

8. The Informant has averred that the Proposed Transaction is likely to cause an AAEC in India as it will lead to: (a) reduction in consumer choice, (b) adverse impact on consumers in terms of high prices and a deterioration in food and service quality, (c) prevention of other cinema theatres from accessing movies from distributors and advertising content, (d) high bargaining power of the Combined Entity that will likely lead to onerous terms for distributors, especially for comparatively low-budget films and vendors (including food and beverage suppliers) and (e) a situation that real estate owners/developers will have no option but to (possibly) accept one-sided terms of the Combined Entity because of their high bargaining power.
9. The Informant has prayed to initiate an investigation against the OPs on the aforesaid allegations and, accordingly, impose penalty on them for entering into the Proposed Transaction. It is also prayed that the OPs be directed to suitably amend the Proposed Agreement so as not to cause an AAEC in India and ensure that the Combined Entity does not abuse its dominant position.
10. The Commission considered the Information in its ordinary meeting held on 30.08.2022 and decided to pass an appropriate order in due course.



11. The Commission finds that the present case filed by the Informant is based on an apprehension that the PVR and INOX merger will result in the new entity being the largest player in Film Exhibition Industry. This entity, as per the Informant, will be dominant in terms of Section 4 of the Act by virtue of owning 1646 multiplex screens out of 3200 multiplex screens (approx.) in India. It is the contention of the Informant that the Proposed Transaction is likely to cause AAEC in the relevant market and create barriers for entry given the limited availability of space at key locations for opening multiplexes by new players, the high capital expenditure required to outfit an operating space, the onerous regulations and the long drawn process of getting approvals as well as economies of scale.
12. The Commission notes that the Informant is also sceptical that the proposed transaction would not lead to consumer benefit due to the absence of competitive constraints, and is of the view that the proposed agreements will result in short and long term consumer harm. Apprehension has been raised that consumer harm may manifest in rise in ticket price, reduced service quality, slower adoption of new technologies, fewer new screens *etc.* It is also averred by the Informant that the Combined Entity could bring a chilling effect on the film exhibition industry as it would be able to extract more favourable terms due to the enormity of its network.
13. The Commission notes that, in a previously decided case, being Case No. 02 of 2021 (*Vikas Verma v. Adani Ports and Special Economic Zone Ltd. & Others*), which was closed under Section 26(2) of the Act by the Commission *vide* order dated 24.03.2021, it was held that there was no requirement to notify the Commission of the transaction as the target entity did not meet the required threshold under law. The Commission in the said case had also observed that '*the mere existence of dominance bereft of any abusive conduct under the provisions of Section 4 of the Act, cannot be held to be the basis to order an investigation*'. The Commission also observed that the Information in the said case was bereft of any allegation and/or evidence of abusive conduct of the concerned parties. With respect to allegations made under Section 3 of the Act in the said case, the Commission noted that the same were not maintainable. However, the Commission held that *post-facto, if any*



matter of abusive conduct under Section 4 of the Act is brought to the notice of the Commission, the same may be looked into at that stage in terms of the provisions of the Act.

14. Similar allegations were also made in Case No. 23 of 2019 (*Satyen Narendra Bajaj v PayU Payments Private Limited & Another*), wherein the Informant had alleged that, pursuant to the combination between PayU and Wibmo, the Combined Entity would attempt to monopolise the e-payment gateway market in India, which was likely to have exploitative as well as exclusionary effects in the market of e-payment processing gateways. The Commission, in its order dated 29.01.2020, passed under Section 26(2) of the Act, noted that:

“17..... while the Act prohibits an abuse of dominant position by an enterprise, mere existence of dominant position, without any prima facie evidence of its abuse, is not recognised as an anti-competitive conduct in the scheme of the Act. In order to establish a prima facie case for intervention, an abuse of a dominant position cannot be based on a mere existence or potential to achieve dominance in the market.”

15. In the present case also the main thrust of the Informant is that the proposed agreement to merge falls foul of the provision of Section 3(1) of the Act as this agreement has the likelihood to cause AAEC in India. The Informant is trying to make a case under Section 3(1) of the Act by drawing sustenance on certain previously decided cases wherein the Commission held that a case can be seen under Section 3(1) standalone without recourse to other sub sections of Section 3. The Commission in this regard notes that, in all such cases, some conduct of an anti-competitive nature was sought to be impugned, allegedly emanating from the agreements referred to therein. The same, however, is not the case here. In the present case, an agreement has been stated to be entered into amongst the OPs to merge, and it has been alleged that such merged entity will have substantial market power and is likely to conduct itself in a manner which may undermine competition and cause AAEC, based on factors under Section 19(3) of the Act. The Commission observes that, even for Section 3(1) to get attracted, there has to be, *firstly*, an



agreement between two or more parties, and *secondly*, the agreement should be of the nature which may result in an AAEC or a likelihood thereof. A case cannot be made out in the facts and circumstances of the present case merely on an apprehension that the agreement may give rise to a conduct in the future which would thereafter cause AAEC in the market.

16. Moreover, the Commission notes that, though the Informant has not specially alleged contravention of Section 4 of the Act, the Information contains averments relating to PVR INOX Ltd. becoming a dominant entity in the future, when the proposed transaction is consummated. The Informant apprehends that abuse of dominance may occur once the combined entity takes form. In this regard, the Commission notes that the proposed transaction has not even been consummated to give legal status to the new entity. Thus, *firstly*, no entity, much less a dominant entity, is in existence, even for assessment of conduct in the present case. *Secondly*, even if the Proposed Transaction is concluded, dominance *per se* is not anti-competitive and only conduct is, if the same falls within the provisions of Section 4 of the Act.
17. In view of the above, the Commission is of the view that apprehension of likelihood of AAEC by an entity which is yet to take form cannot be a subject matter of inquiry/investigation under Section 3 or 4 of the Act. Section 3 of the Act provides for examination of likelihood of AAEC arising of conduct in terms of an agreement, not a likelihood of conduct itself. This kind of an assessment is *ex-ante*, which can be undertaken by the Commission in appropriate cases, when legal requirements for such examination are attracted in the first place. Therefore, the Commission is of the view that conduct, much less of an anti-competitive nature, is found to be missing in the present case for an analysis from the standpoint of provisions of Section 3 or 4 of the Act. *Post-facto*, if any matter of abusive conduct under the provisions of the Act is brought, or comes, to the notice of the Commission, the same may be examined at that stage in terms of the provisions of the Act.



18. In view of the foregoing, the Commission is of the opinion that there exists no *prima facie* case under the provisions of Sections 3 and 4 of the Act, and the Information filed is directed to be closed forthwith against the Opposite Parties under Section 26(2) of the Act.
19. The Secretary is directed to communicate the order to the Informant accordingly.

Sd/-
(Ashok Kumar Gupta)
Chairperson

Sd/-
(Sangeeta Verma)
Member

Sd/-
(Bhagwant Singh Bishnoi)
Member

New Delhi
Date: 13.09.2022