



COMPETITION COMMISSION OF INDIA

Case No. 58 of 2012

In Re:

Kannada Grahakara Koota

Informant No. 1

Shri Ganesh Chetan

Informant No. 2

And

Karnataka Film Chamber of Commerce (KFCC)

Opposite Party No. 1

Karnataka Television Association (KTVA)

Opposite Party No. 2

Karnataka Film Directors Association (KFDA)

Opposite Party No. 3

Kannada Film Producers Association (KFPA)

Opposite Party No. 4

Kannada Chalanachitra Academy (KCA)

Opposite Party No. 5

**Karnataka Film Artists, Workers and Technicians
Union (KFAWTU)**

Opposite Party No. 6

CORAM

**Mr. Ashok Chawla
Chairperson**

**Mr. S. L. Bunker
Member**

**Mr. Sudhir Mital
Member**

**Mr. Augustine Peter
Member**



Mr. U. C. Nahta
Member

Appearances:

For the Informants : Shri Aniruddha Deshmukh, Advocate

For Opposite Party 1: Ms. Shwetha Shanmughappa, Advocate
Shri K. Harshavardhan, Advocate

For Opposite Party 2, 3 & 4: Ms. Divya Nair, Advocate
Shri A.K. Singh, Advocate

For Opposite Party 5: Shri K. Chandra Mohan, Advocate

For Opposite Party 6: Ms. Shanthi, Advocate

Order under Section 27 of the Competition Act, 2002

1. The present order will dispose of the case that initiated from the information filed by Kannada Grahakara Koota (hereinafter, the 'Informant 1') and Shri Ganesh Chetan (hereinafter, the 'Informant 2') (collectively referred to as the 'Informants') under section 19(1)(a) of the Competition Act, 2002 ('the Act') against Karnataka Film Chamber of Commerce (KFCC) (hereinafter, 'Opposite Party 1/OP-1'), Karnataka Television Association (KTVA) (hereinafter, 'Opposite Party 2/OP-2'), Karnataka Film Directors Association (KFDA) (hereinafter, 'Opposite Party 3/OP-3'), Kannada Film Producers Association (KFPA) (hereinafter, 'Opposite Party 4/OP-4'), Kannada Chalanachitra Academy (KCA) (hereinafter, 'Opposite Party 5/OP-5'), and Karnataka Film Artists, Workers and Technicians Union (KFAWTU) (hereinafter, 'Opposite Party 6/OP-6') (collectively referred to as the Opposite Parties) alleging *inter alia* contravention of the provisions of section 3 of the Act.



2. **Brief facts and allegations:**

2.1 The Informant No. 1 is an association of viewers within the State of Karnataka and the Informant No. 2 is its President. The Opposite Parties are the various trade associations whose members are *inter-alia* engaged in the business of films and TV serials exhibition, production and distribution etc.

2.2 The Informants have alleged that they have, at various times in the past five years, been deprived of viewing various shows/films by the Opposite Parties that were produced in a language other than Kannada. The case primarily pertains to allegations regarding anti-competitive operations and abuse of dominant position by the Opposite Parties in not allowing the release and broadcast of any dubbed content, within the State of Karnataka. OP-1 has been alleged to control a large portion of the Karnataka film industry and is stated to have considerable control over the players in that industry. As per the allegations, it refuses to deal with those who do not follow its directions and mandates which are alleged to be anti-competitive. The directions, *inter alia*, restrict the exhibition of non-regional films, debar non-members to release films, withhold the payment of distributors' share for non-compliance of its directions etc. As per the allegations, OP-2 pressurizes different TV channels not to telecast dubbed content which results in competition distortion and denial of consumer choice. The other opposite parties likewise have been alleged to be indulging in anti-competitive conduct.

2.3 The Informants have contended that the following programmes /films which were telecasted/dubbed in Kannada were not permitted by the Opposite Parties to be released on TV channels/theatres in Karnataka:-



सत्यमेव जयते



Name of the Show / Film	Channel on which it was to have been broadcast	Expected date of release	Whether Telecast/released or not in Kannada, if yes when?
The sword of Tipu Sultan	(Doordarshan, now called Chandana TV)	1999	No
Sri Ramayan	(Doordarshan, now called Chandana TV)	1990	No
Veera Nari Jhansi Rani	Zee Kannada channel	2011	No
Satyameva Jayate	(Suvarna Channel)	2012	No
Bharath 2000 (dubbed from Telugu film 'Mechanic – Mavayya')		April 2011	No
Aa Marma (dubbed from Telugu and Hindi)		Aug 2011	No
Coffee Shop (dubbed from Telugu and Tamil)		April 2011	No
Namitha I love you (dubbed from Telugu)		June 2011	No
Lava Kusha (dubbed from Telugu and Hindi)		1963, 1970	No
Independence Day (dubbed from English)		1996	No
Shwethanaga (dubbed from Telugu)		July 2010	No

2.4 Therefore, the Informants, aggrieved by the anti-competitive activities of the Opposite Parties, approached the Commission to initiate inquiry



against the Opposite Parties under the provisions of the Act. The Commission *prima facie* found merit in the allegations of the Informants and, accordingly, *vide* its order dated 18.10.2012, directed the Director General (hereinafter referred to as the 'DG') to investigate the matter for contravention of the provisions of the Act.

3. DG's Investigation and Findings

- 3.1 In terms of section 26(3) of the Act, the DG submitted a detailed investigation report in the matter to the Commission on 29.04.2013.
- 3.2 In line with the facts and circumstances of the case, the DG looked into the conduct of the Opposite Parties. The DG analysed whether the Opposite Parties have put restriction on the dubbed version of other language films/TV programs and whether the activities and conduct of the Opposite Parties are in violation of the provisions of Section 3(3) of the Act or not.
- 3.3 The DG looked into the nature and working of each Opposite Party. As per the DG report, OP-1, OP-2 and OP-4 are the association of enterprises who are engaged in the production and exhibition/telecast of films and TV programs. The DG found concrete evidence against OP-1 and OP-2 which showed that they were prohibiting/banning the telecast of dubbed content, both films and television programmes, on television. OP-4, which is a Producer's association in the state of Karnataka, was found by the DG to be jointly responsible for the decisions of OP-1. The office bearers/members of OP-4 were reported to be members of OP-1 also.



- 3.4 With regard to OP-3, an association of directors who are engaged in the direction of Kannada films, the DG has opined that its role is limited to the needs of film directors only and as such DG has found no evidence against it while investigating the facts of the present case. Similarly, OP-6, a trade union of cine employees/artistes was found to be mainly concerned with the welfare of its members and to represent them before the film producers and as such the DG has found no evidence against it while investigating the facts of the present case. OP-5, was found to be a Government organisation established with the objective to act as a bridge between the Karnataka Government and Film Medium. The DG found no evidence against OP-5 for the contravention of the Act in the present case.
- 3.5 The findings of the DG and the supporting evidence against OP-1, OP-2 and OP-4 are summarized in the following paragraphs.
- 3.6 For the purposes of investigation, the DG has delineated the relevant market as the '*production and exhibition/telecast of Films and TV programs in the State of Karnataka*'. The DG has noted that OP-1, OP-2 and OP-4 are associations of producers/distributors/exhibitors/artists and professionals engaged in the business of production and exhibition/telecast of television programs and films in Karnataka. The joint efforts of all the persons associated with the Opposite Parties culminate in a single end product i.e. a visual film in the form of feature film or television serial or any other programme such as documentary etc. Thus, the DG has opined that for the purposes of the present case, the members of Opposite Party associations are dealing in identical or similar trade i.e. production and exhibition/telecast of films and TV programs.



- 3.7 The DG has then individually looked into the conduct of each of these Opposite Parties. As per the DG report, although the bye-laws of the OP associations, OP-1 and OP-2, do not contain restriction on other language films or programs, they have been following the practice of opposing dubbed films in the name of protection of Kannada language or Kannada film/TV industry by way of taking joint decisions.
- 3.8 DG has also reported that the history of ban on dubbing of films in Kannada may be traced back to late fifties and early sixties. In 1962 the local film makers under the banner of 'Sahitya Parishath' (an organisation for the development of Kannada culture and language) declared a ban on dubbed films in Karnataka. After this declaration, reportedly no dubbed film has been released in Karnataka. This declaration has been adopted under the banner of various film trade associations, including OP-1. In the recent past, after the formation of KTVA in 2000, the responsibility of restricting dubbed TV programme has been spearheaded by KTVA alongwith KFCC and other associations.
- 3.9 The DG has noted that OP-1 is the most important organisation in the film industry of Karnataka which is recognised as the representative of the entire Kannada film Industry even by the government bodies like Film Certification and Censor Board, Karnataka State Information Department etc. The activities like title registration, publicity clearance and certificates of Kannada movie for tax exemptions are generally granted by these bodies on the recommendations of OP-1 only.
- 3.10 DG has further reported that, due to market power and strength of OP-1, it is almost impossible to carry out the business of film production, distribution and exhibition in the state of Karnataka by not following the decisions of OP-1. The DG has noted that there are various essential



regulatory practices performed by OP-1 like routine certificates required by different stakeholders that makes them highly dependent upon OP-1.

- 3.11 The DG has also found that OP-1 has been engaged in restricting the screening of films by taking anti-competitive decisions.
- 3.12 The DG took into consideration the investigation in earlier cases against OP-1 wherein it was found that OP-1 had imposed restriction on the distribution and exhibition of dubbed films in Kannada language. Further, the Annual report published by film Censor Board revealed that no film has been dubbed in last many years. Further, the data reveals that dubbing of films is prevalent in all other Indian languages, whereas no film either Indian or foreign has been dubbed in Kannada language. The DG has thus concluded that the practice of restricting the dubbing of films has been followed by the local producers and artistes under the banner of OP-1 since last many years.
- 3.13 Apart from the above mentioned past conduct, the DG also found that OP-1 tried to restrict the release of film 'Koffi Shop' produced and directed by Shri Geetha Krishna. The DG inquired into the said fact from Shri Geetha Krishna. In reply to DG's office notice, Shri Geetha Krishna has stated that in spite of his film 'Koffi Shop' being a straight film, OP-1 had interfered in the release the film in Karnataka alleging that it is a dubbed film. He has further submitted that his film was met with a series of demonstrations and protests which were covered by the media. Further, in spite of a court order to the film body not to interfere with the release of the film, Zee TV, which had bought the telecast rights of the film, informed Mr. Geetha Krishna that OP-1 had asked the TV channel not to air the film. He has also stated that a couple of newspapers, heavily dependent on film advertisement, were threatened not to carry advertisements by the producers of films opposed by OP-1.



The DG took into account the letters issued by OP-1 to the local newspapers. Further, the DG has also considered the justification offered by OP-1 in this regard but found them unsatisfactory. The DG has, thus, concluded that OP-1 was indeed indulging in anti-competitive conduct of restricting telecast of dubbed content from other languages in the State of Karnataka.

3.14 Similarly, the conduct of OP-2 in the television industry in the State of Karnataka was examined by the DG.

3.15 The DG took into account the following instances of restrictions imposed on the dubbed television programs by OP-2:

- In 2004, OP-2 opposed the dubbed version of television serial 'Jasoos Vijay';
- In 2011, the programme 'Veera Nari Jhansi Rani' of Zee Kannada was opposed by OP-2;
- In 2012, the telecast of the dubbed version of the television programme 'Satyameva Jayate' was also opposed by OP-2 and accordingly Suvarna channel was constrained to deny the telecast of the said programme

3.16 To check the veracity of the above facts, the DG sent probe letters to third parties involved in this case, viz Shri Aamir Khan, Producer of the Television Show 'Satyameva Jayate', Zee Kannada Channel and Asianet Communications Ltd. (ACL), the owner of Zee Kannada Channel.

3.17 It was submitted by the channel Zee Kannada that on 15.08.2011, it scheduled the telecast of a one-hour patriotic programme titled 'Veera Nari Jhansi Rani' from 12 noon to 1 pm. The footage of the said programme was from original 'Jhansi ki Rani' telecast on Zee TV. This was not a dubbed programme and it only contained a narrative of the story in Kannada. While the programme was being telecast, members of



OP-2 barged into the office of Zee Kannada situated at MG Road, Bangalore, and indulged in acts of vandalism, alleging that the programme was dubbed. The activists destroyed computers, television sets, glass panes and library tapes. An FIR was registered against OP-2 and the incident was also widely reported in the local media. Later on, with the tendering of apology by OP-2, it was decided to withdraw the FIR.

3.18 Similarly, ACL, in its reply dated 26.03.2013, has stated that they initially had planned to telecast the dubbed version of the television programme 'Satyameva Jayate', which highlights social issues like female feticide, child sex abuse, untouchability etc., in Kannada language on Suvarna channel. Mr. Aamir Khan, producer of the programme had personally written to OP-1 for extending support to have the programme dubbed in Kannada and telecast on Suvarna Channel. As OP-1 did not respond and there existed an informal embargo by them on dubbing films or programmes of other language into Kannada, ACL had proposed to telecast the original Hindi version with Kannada subtitles in Suvarna Channel. They had written to the President, OP-1 on 15.04.2012 and to OP-2 on 17.04.2012 seeking their cooperation for telecast of the programme in its original language, i.e. Hindi with subtitles in Kannada. However, OP-1 and OP-2 did not respond to these letters. Consequently, apprehending violent resistance and protest from OP-1 and/or OP-2, ACL did not telecast the programme.

3.19 ACL further stated that OP-1 and OP-2 restricted dubbing of programmes originally made in other languages and broadcasting in Kannada as, according to them, such dubbing would deprive opportunities for local Kannadigas, who work for original Kannada Serial/Programmes.



3.20 During the course of investigation, OP-2 submitted that it had formed a Dubbing Committee on 25.09.2011. The DG took into account the minutes of the meeting of Dubbing Committee of OP-2 and found that OP-2 formally opposed the dubbed programs from other language by forming a Dubbing Committee and taking decision against the telecast of such programs.

3.21 Thus the DG concluded that OP-2 has been engaged in the practice of imposing restriction on the non-Kannada language programs as well as the dubbed versions of such programs on TV channels in the State of Karnataka.

3.22 As regards OP-4, the DG found that it was involved in the practice of restricting the other language films by boycotting the cinema theatres which do not obey their decisions. The DG relied on the minutes of the Emergency Executive Committee meeting dated 23.01.2012 called by OP-1. In the said meeting, the office bearers of OP-4 were also present. The minutes of the said meeting clearly showed that OP-4 was supporting and implementing the decisions taken by OP-1 by boycotting film theatres that showed other language films or dubbed content. The following excerpt from the minutes of the said meeting is relevant to be reproduced here:

'The press statement of the Kannada Film Producers' association published on 22/01/2012 was thoroughly discussed and the President and office-bearers of the Producers' association were invited to this meeting and problems of the producers were discussed. Later, discussions were held. It is learnt that, hardship is caused to the



kannada movies due to other language movies, in this matter, the Film Chamber and all organ - associations of the industry together has to finally prevent menace of the other language movies. It was decided in the meeting to hold meetings in this regard in future and to formulate regulations in this regard.'

3.23 The above excerpt clearly shows that OP-4 was acting in tandem with OP-1 and supporting its anti-competitive decisions. Thus, conduct of OP-4 was found to be in contravention of section 3(3)(b) by the DG.

3.24 The other OP associations (OP-3, OP-5 & OP-6) do not comprise of the enterprises engaged in the production and exhibition/telecast of film/TV programs. They cater to the specific needs and welfare of their members. Thus the provisions of section 3(3) may not be attracted by the activities of these associations.

4. Reply/Objections of the Parties

4.1 Reply/objections of the Informant in response to the DG report

4.1.1 The Informant supported the findings of the DG report except the findings whereby the DG has excluded OP-3 and OP-6 from the scope of its investigation.

4.1.2 Informant submitted that the DG wrongly excluded OP-3 and OP-6 stating they are not engaged in the production and exhibition/telecast of films or TV Programs without understanding that merely because an enterprise is not involved with the end product of a particular industry would not absolve such a person from liability or inquiry.



4.1.3 It was submitted that the conclusion of the DG with regard to OP-6 was contrary to the evidence on record as the DG himself has stated that *“any producer or person engaged in the business of film TV programs cannot do the business without the involvement of the artistes and technicians”*. It was, therefore, submitted that OP-6 being a union of the Artistes and Technicians falls within the scope of the investigation. Further, the Informants pointed toward the response of Shri Geetha Krishna, the Director of the film “Koffi-Shop” a dubbed film, the release of which was stalled by the Opposite Parties.

4.1.4 Informant further submitted that the admission made by OP-6 clarifies that it actively enforces the ban on the release of dubbed content within the State of Karnataka and the observation of the DG, that without the involvement of the technicians and artistes no film can be made, is sufficient to show that the conduct of OP-6 ought to have been investigated by the DG.

4.1.5 As regards the involvement of OP-3, the Informants submitted that OP-3 has categorically admitted that dubbing is dangerous to Kannada language and consumers and, therefore, should not be allowed. It was submitted that the affairs of OP-3 are deeply entwined with the functions of OP-1. The Informant further highlighted that the President of OP-3 i.e. Mr. M.S. Ramesh is a member of the “Dubbing Committee” formed by OP-2. Further, it was submitted that Shri M.S. Ramesh, in his capacity as President of OP-3, had participated in a meeting dated 25.09.2011 of the OP-2 vide which a decision was taken to ban the release of dubbed content.

4.1.6 In response to the objections filed by OP-1, the Informants contended that OP-1 is not just a welfare organization as pleaded by it. Considering



the role of OP-1, it is almost impossible to carry out any activity in the Kannada film industry without the involvement of the KFCC.

4.1.7 Further, the contention of OP-1 that it is not involved with the Television industry and is only concerned with the film industry is misplaced considering the specific correspondence brought on record between it and OP-2 with regard to the release of the dubbed version of the TV Serial Satyameva Jayate. It was contended that the ban on the release of the TV serial Satyameva Jayate was taken by OP-1 and OP-2 jointly.

4.1.8 With regard to OP-2, it was submitted that in its reply it specifically admitted that there is a “need to protect the Kannada language” and stated that the “consumer interest is better served when dubbing is not made”. Therefore, it is obvious that OP-2 was actively engaged in the enforcement of the ban on dubbing of television serials within the State of Karnataka in contravention of Section 3 of Act.

4.1.9 Further, the Informant submitted that on 17.04.2012, a television channel namely Suvarna wrote to OP-2 requesting that it be permitted to telecast a “dubbed version” of the show “Satyameva Jayate”. In response to the aforesaid, OP-2 wrote a letter dated 24.04.2012 to OP-1 stating that they had formed a “dubbing committee” and had decided that “Satyameva Jayate” would not be permitted to be telecast in dubbed format.

4.1.10 The Informant submitted that the minutes of the meeting of the “dubbing committee” of the OP-2 clearly shows that a specific decision has been taken against the telecast of “dubbed content” on television within Karnataka unless the original language was Kannada and the persons involved in production etc. were members of the OP-2.



4.1.11 Highlighting the past conduct of OP-2, the Informant submitted that on 13.04.2004, OP-2 wrote to the Director General of the Doordarshan Kendra demanding to stop the broadcast of a TV programme “Jasoos Vijay” which was a dubbed programme. In response to this letter the Director General, Communication Division, New Delhi, specifically directed the Doordarshan Kendra, Bangalore forthwith to stop the telecast of the dubbed version and telecast the programme in Hindi only. Therefore, it was contended that OP-2 has been habitually indulging in such anti-competitive conduct.

4.1.12 As regards OP-4, it was submitted that the reply of OP-4 to the DG report is misplaced as the findings of the DG are fully supported by evidence placed on record.

4.2 **Reply/objections of the OP-1 in response to the DG report**

4.2.1 OP-1 has filed written submission on 22.12.2014, 06.02.2015 and 25.02.2015. It was submitted that the DG Report was a result of a one sided investigation taking the allegations made by the Informants at face-value while completely ignoring the submissions made by the OP-1. It was further submitted that the DG had failed to make any independent enquiry from any third parties involved in the Film Industry in the State of Karnataka.

4.2.2 It was argued that the delineation of the ‘relevant market’ as the ‘production and exhibition/telecast of Films and TV programs in the State of Karnataka’ was incorrect and contrary to the express provisions of the Act. That the DG has clubbed two entirely different ‘product markets’ with no correlation to each other into one ‘geographic market’. It was contended that the commercial, technical, manpower and other



considerations that govern the market forces in the television industry was completely different from the Film Industry.

4.2.3 It was submitted that OP-1 has no concern with the television industry and therefore, cannot in any manner be made responsible for the actions of the other opposite parties in the market. It was also contended that no material has been found by the DG during his investigation to show that the Opposite Parties have been acting in concert. It was further contended that the DG failed to take into account the fact that OP-1's presence is limited to the Mysore-Karnataka region. Therefore, failure to consider this factor negated the delineation of the 'relevant geographic market' by the DG. It was also stated that the membership in OP-1's society is voluntary and not mandatory as claimed by the Informants.

4.2.4 It was pointed out that the DG failed to examine the advertisers as to whether, in fact, they had heeded to the letters of OP-1. That the release of advertisement by the newspapers despite the alleged objection by OP-1 would, in itself, demonstrate that it has no control over the industry and was purely interested in protection of the interests of its members. Additionally, the fact that "Koffi Shop" obtained tax exemption from the Government of Karnataka, despite alleged objections by OP-1, further invalidated the allegation of the Informants that OP-1 was omnipresent in the film industry in the State of Karnataka.

4.2.5 OP-1 also submitted that it appeared that the DG's view was coloured by the previous Order of the Commission in Case no. 25/2010 which was still under challenge before the Competition Appellate Tribunal.

4.2.6 It was further stated that the DG failed to notice that even the allegation made by the Informants in respect of release of the movie "A-Marma" was rhetoric as the same was concerned with a payment dispute between



the Producer of the Movie and the Outdoor Unit. That this again raised questions as to the motive of the Informants.

4.2.7 OP-1 further submitted that nowhere in the entire report was there any evidence of any such practice carried on by the opposite parties nor any such document to prove the alleged joint decisions taken by them.

4.2.8 It was pointed out that the Commission in Case Nos. 25/2010, 41/2010, 45/2010, 47/2010 and 48/2010 has held that OP-1 was not engaged directly in any activity relating to the production, storage, supply, distribution, acquisition or control of articles or goods or the provision of services of any kind concerning the distribution / exhibition of films. In the light of the same, the present view of the DG is contradictory. In fact, none of the opposite parties in the instant matter are engaged in any such activity and that they are only associations formed for the welfare of their members.

4.2.9 It was argued that there was no such agreement entered into by OP-1 with any other person or enterprise or association. Further, the byelaws of the association do not contain any restriction on other language films or programs. Moreover, the byelaws are not agreements entered into by OP-1 with any other person. They are laws governing the inter-se dealings of the members within the association and hence the same will not fall within the purview of Section 3 of the Act. Therefore, the conclusion of the DG that OP-1 violated the provisions of section 3(3) of the Act was erroneous and baseless.

4.2.10 It was further contended that the allegation that KFCC has imposed restrictions was not backed by any evidence but based on conjectures. The DG did not even deem it fit to examine producers of other language films as to why they have not released dubbed films in Karnataka. Apart



from examining one producer, in the case of “Koffi Shop” which was a Kannada film and not a dubbed film.

4.2.11 It was submitted that the DG has also failed to consider the fact that out of the 800 single screen theatres, only 300 theatre owners i.e., exhibitors were members of OP-1. This again demonstrated that it was not within the power of OP-1 to enforce a blanket restriction on the release of dubbed films across the State of Karnataka.

4.3 **Reply/objections of the OP-5 in response to the DG report**

4.3.1 OP-5 stated in its submission dated 18.02.2015 that the Academy is involved in giving education on Cinema and that the Academy has no role to play in Film and Television Industry. It was further submitted that the academy has cordial relationship with all the opposite parties. At present the Academy has no members in its board. Hence, the question of conducting/ holding meetings, deliberations does not arise. It was further submitted that the informants falsely and intentionally implicated the OP-5 though it has no connection with dubbing films. That the Informant has unnecessarily implicated OP-5 in the instant case.

4.4 **Reply/objections of the OP-6 in response to the DG report**

4.4.1 OP-6 first filed its written submission on 05.02.2015. It stated that the film industry in Karnataka is still a nascent industry and that it has not yet fully developed like film industry in other states. It was contended that without appreciating the ground reality that the Kannada Film industry has a very small market, the DG wrongly came to the conclusion that “*portraying a picture of dying industry for the sake of protecting the inefficiencies of some businessmen is untenable*”.



4.4.2 In its reply dated 16.02.2015, it was also submitted that at no point of time had OP-6 entered into any agreement or memo of understanding or taken any decision or indulged in any act or conduct, which would contravene the provisions of sections 3 and 4 of the Act. That OP-6 has been made as a party by the Informant without any justification. It was stated that the majority of the members of the organisation were earning their livelihood as daily wagers and do not have the capacity to bargain in the matter of direction, production, distribution, exhibition and dubbing.

4.4.3 It was contended that the expression of views by any individual, including office bearers, on issues concerning the Kannada film industry, whether it relates to direction, production, distribution, exhibition or dubbing, cannot be construed as violation of Section 3 and 4 or any other provisions of the Act. That expression of the views and observations made by the persons associated with Kannada film industry must be appreciated as the right to freedom of expression under Article 19 of the Constitution of India.

4.4.4 It was contended that an attempt was made to mislead the Commission by supplying inaccurate information and facts with regard to the activities carried on by the Opposite Parties. It was also submitted, that while OP-6 denied that it had been a party to any decision or agreement to prevent dubbing of films into Kannada language, if such an act/ programme was allowed, it will have serious repercussion on Kannada film industry, and affect the source of livelihood of large section of people. OP-6 further stated that there will be a serious hindrance to the growth of the regional language and talent. Therefore, it was submitted that in this background if some observations were made or views were expressed by people who are interested in protecting Kannada culture,



language and the film industry, such views cannot be construed as violation of section 3 and 4 of the Act.

4.4.5 It was submitted that the DG in its report has rightly held that OP-6 is not the association of enterprises engaged in the production and exhibition/ telecast of films or TV programmes. It caters to the specific need and welfare of its members; as such, its activities in the present case do not attract the provisions of section 3(3) of the Act.

4.5 **Replies/objections of the OP-2, OP-3 & OP-4 in response to the DG report**

4.5.1 The Commission had directed OP-2, OP-3 and OP-4 to appear for hearing and file their written submissions, if any. The counsels representing OP-2, OP-3 and OP-4 repeatedly sought extension for hearing as well as for filing written submissions. Their Counsels, Ms. Divya Nair, and Shri A.K. Singh, appeared on 25.03.2015, 14.05.2015 and 26.05.2015 and requested the Commission for adjournment of hearing and additional time for filing written submissions on each of the dates mentioned. On 26.05.2015, extension was yet again sought by the counsels for filing their replies. The Commission observed that several opportunities had been given to the parties to file their replies and appear for hearing. However, they failed to avail of the said opportunities. Therefore, the Commission decided not to adjourn the matter any further and cause more delays. The Counsels for OP-2, OP-3 and OP-4 were directed to file their written submission, if any. However, no reply was filed before the Commission by OP-2, OP-3 and OP-4.



5. Issues and Analysis

5.1 The Commission has perused the material available on record and heard the counsels appearing for the Informants and the Opposite Parties. On careful consideration of the matter, the Commission is of the opinion that in order to arrive at a decision, the following issues needs to be determined:

Issue 1: Whether the Opposite Parties have imposed restrictions on the dubbed version (kannada) of other language films/TV programs to be exhibited/telecast in the State of Karnataka?

Issue 2: Whether the conduct of Opposite Parties is in contravention of the provisions of Section 3(3) read with section 3(1) of the Act.

6. Issue 1: Whether the Opposite Parties have imposed restrictions on the dubbed version (Kannada) of other language films/TV programs to be exhibited/telecast in the State of Karnataka?

6.1 The Commission is of the view that before coming to the conclusion about the violation of section 3 of the Act, it is important to examine whether they have in fact imposed any such restrictions as alleged by the Informants.

6.2 The Commission notes that the DG has pointed out in its report that the first case of ban on dubbed films in Karnataka was in the year 1962 under the banner 'Sahitya Parishath'. It is also noted from the letter dated 13.04.2004 issued to the Director of Doordarshan Kendra, Bangalore by OP-2 that it not only opposed the telecast of dubbed version of television serial 'Jasoos Vijay' but has also admitted that it has been protesting against telecast of dubbed serials since 1962. It has



also admitted that other dubbed serials like '*The Sword of Tipu Sultan*', '*Ramayan*' and '*Malgudi Days*' were discouraged by OP-2.

6.3 In 2011, the Zee Kanada's proposal to telecast the Hindi serial 'Jhansi ki Rani' was met with protest by OP-2 members. This incident has been admitted by OP-2 in its letter dated 18.08.2011 to the Channel Chief Officer of Zee TV, Bangalore. Further, with regard to Suvarna channel's proposal to air dubbed programme of 'Satyameva Jayate' even with Kannada subtitles, a letter dated 24.04.2011 was issued to OP-1 by OP-2 wherein it was conveyed that the programme 'Satyamev Jayate', being a non-Kannada programme, cannot be telecast in a Kannada channel. The Commission notes from the statement of Shri B. Suresh, a member of OP-2, that the practice of preventing telecast of dubbed films/ serials is prevalent. The minutes of the meeting (undated) of the Committee formed in respect of the dubbing issue on 25.09.2011 further confirms the facts.

6.4 It is also noted that the DG's investigation gathered that there was no data of dubbed films in the past so many years in Karnataka as per the annual report published by the Censor Board. Further, Shri Geetha Krishna, Producer-Director of the film 'Koffi Shop', stated in his reply to the DG's notice that despite his film 'Koffi Shop' being a Kannada film, OP-1 interfered in the release of the film in Karnataka alleging that it was a dubbed film. He further submitted that his film met with a series of demonstrations and protests, which were covered by the media. Further, in spite of a court order to the film body not to interfere with the release of the film, Zee TV, which had bought telecast rights of the film, informed Mr. Krishna that OP-1 had asked the TV channel not to air the film.



- 6.5 The Commission also notes from the minutes of the Emergency Executive Committee Meeting dated 23.01.2012 held by OP-1 that members of OP-4 participated in the said meeting. The members of OP-4 identified were Shri Umesh Banakaar, Shri R.S. Gowda, Shri S. Dinesh Gandhi, Shri A. Ganesh and Shri M.B. Babu. It may be noted that in the said meeting the participants discussed the hardship that is caused to the Kannada movies due to other language movies. It was further discussed that OP-1 and all associations of the industry has to finally prevent menace of other language movies.
- 6.6 From the above, it is amply clear that OP-1, OP-2 and OP-4 have been involved in the practice of preventing the release/ telecast of dubbed films/ TV-serial in the State of Karnataka.
7. **Issue 2: Whether the conduct of Opposite Parties is in contravention of the provisions of Section 3(3) read with section 3(1) of the Act.**
- 7.1 The examination of the evidence collected by the DG in the light of submissions made by the Informant and the Opposite Parties establishes that OP-1, OP-2 and OP-4 were involved in activities that restricted the telecast of content, in the form of television programmes and films, of some other language dubbed into Kannada language in the State of Karnataka. The only question that needs to be determined now is that whether such conduct falls foul of the provisions of the Act.
- 7.2 At the outset, it may be noted that the issue of restriction imposed by the associations on the dubbed version of TV serials has been declared anticompetitive by the Commission in a similar case involving West Bengal film and television industry.



7.3 In case No. 16/2011 (*Mr. Sajjan Khaitan vs Eastern India Motion Picture Association & Ors.*), the Commission opined that the act and conduct of the film associations is anticompetitive in nature if it imposes restrictions on the free and unrestricted distribution and exhibition of non-Bengali TV serials dubbed in Bengali language. Such act and conduct was held to be limiting and controlling the supply of serials dubbed in Bengali language in violation of provisions of section 3(3) (b) of the Act. The Commission further observed that prohibition on the exhibition of dubbed serial on the TV prevented the competing parties in pursuing their commercial activities. The plea of the trade association, in that case, that the restriction was imposed to protect the interest of local artists was also held to be without merit.

7.4 Further, it may be relevant to reproduce the finding and holding of the Commission in Case No. 56 of 2010, wherein OP-1 was one of the Opposite Party. The Commission held as follows:

“In this regard, the Commission observes that there could be other ways to promote non-regional and non-language films. In any case, the preference to a particular film must be left to the consumers in the market. The restrictions on number of screens imposed in certain pockets by KFCC in the name of promotion and protection of Kannada language films causes restriction and impedes competition in the market, which are prohibited under the Indian Competition Act. The Commission holds that the above action arises out of agreement among the members of the association which gets reflected in decision or practice carried on by KFCC and results into limit on supply of films in the market which is violative of section 3(3)(b) of the Act” .

7.5 Keeping the above decisions and observations in the hindsight, the Commission deems it appropriate to examine whether the conduct of



OP-1, OP-2 and OP-4 in the present case amounts to contravention of the provisions of section 3 of the Act. The main allegation levelled by the Informants in this case is regarding the restrictions imposed by the said Opposite Parties on dubbed films/TV programs in the State of Karnataka.

- 7.6 The DG investigation has revealed that in Karnataka no film or TV programme dubbed in Kannada language has been released in the last 40-50 years. Although there is no legal restriction on dubbing or release of a dubbed film in India or in Karnataka, yet due to boycott or ban imposed by the film trade associations and some other organisations the dubbed films in Kannada language are not made or released. It is also found that except in the state of Karnataka and to some extent in West Bengal, there is no such practice of restricting the dubbing of content of one language programme in the local language.
- 7.7 The Commission has already mentioned in a similar case namely Case No. 56 of 2010 that the conduct of regional trade association in banning the telecast of the dubbed programme was found to be anti-competitive.
- 7.8 There is no doubt that such conduct leads to anti-competitive outcomes. The prohibition on the exhibition of dubbed content, both films and/or television programmes, prevents the competing parties in pursuing their commercial activities.
- 7.9 The DG, while investigating the present case, has opined that OP-1, OP-2 and OP-4 are the associations of film and television producers/exhibitors engaged in the business of production and exhibition/telecast of television programs and films in the State of Karnataka. The joint efforts of all the persons associated with these Opposite Parties



culminate in a single end product i.e. a visual film in the form of feature film or television serial or any other programme like documentary etc.

7.10 Further, the DG has opined that the film and TV programs are interchangeable in character as most of the persons engaged in Film are also engaged in TV programs. OP-1 was found to have the market power to determine the terms and conditions relating to the Kannada film industry. OP-2 was found to have similar status in the TV industry in Karnataka. OP-4 was found to have control over the film production activities in the state of Karnataka jointly with OP-1.

7.11 The DG thus considered OP-1, OP-2 and OP-4, being associations of enterprise engaged in the production and exhibition of films and TV programs, to be engaged in similar or identical trade, and observed that any agreement between them would fall within the purview of section 3(3) of the Act.

7.12 It was thus opined that any agreement or joint action taken by the OPs would attract the provisions of section 3(3) of the Act being in the nature of a horizontal agreement.

7.13 OP-1 has objected to such determination stating that the DG has wrongly treated film and television industry as part of the same product market whereas both these industries are totally different from each other. OP-1 has stated that it has no concern with the television industry and, therefore, it cannot be held responsible for the actions of OP-2 in that market.

7.14 The Commission has considered the observations of the DG and submissions made by OP-1 in this regard. It may be noted that OP-2 did



not make any objections to the DG report in spite of several opportunities given to it.

7.15 In view of the facts of the present case, the Commission sees merit in accepting the determination of the DG i.e. the joint action/decision making by OP-1, OP-2 and OP-4 can be seen as a decision that affects the film and television market. Moreover, for the purposes of Section 3 of the Act, the market need not be defined very narrowly. However, even if the contention of OP-1 is accepted i.e. film and television industry are taken as separate product markets, the same would not absolve OP-1 or OP-2 or OP-4 from the reach of section 3 of the Act.

7.16 OP-1 is an association of persons/enterprises (including producers/distributors/ exhibitors) controlling the film industry in the State of Karnataka. Similarly, OP-2 is an association of persons/enterprises controlling the television industry in the State of Karnataka and OP-4 is an association of Producers in the State of Karnataka. The decisions taken or practices carried on by such associations are individually covered within the scope of agreements falling under section 3 (1) read with section 3(3)(b) of the Act. OP-1, as an association is guilty of carrying on the practices of prohibiting/banning dubbed content in the form of films in the State of Karnataka. Similarly, OP-2, as an association, is guilty of carrying on the practices of prohibiting/banning dubbed content in the form of television programmes in the State of Karnataka. OP-4, as already stated earlier, is guilty of participating in the anti-competitive decision making practices and implementing such decisions by boycotting the cinema theatres who do not obey their decisions in the State of Karnataka. The conduct of OP-1, OP-2 and OP-4, therefore, falls under the purview of section 3(3)(b) of the Act which raises a presumption of appreciable adverse effect on competition.



- 7.17 It is to be noted that none of these Opposite Parties have been able to rebut the presumption. The Opposite Parties tried to justify their conduct before the DG. Before the Commission, only OP-1 presented oral arguments and filed written submissions to justify its conduct. The issue of banning the dubbed versions was justified before the DG on two grounds.
- 7.18 It has been stated that, firstly, the Opposite Parties have a right to protect the local language and culture which gets adversely affected by dubbing. Secondly, dubbing was stated to adversely affect the local artistes by rendering them jobless.
- 7.19 The first justification i.e. that the dubbed content destroys the local language and culture was considered by the DG as well as by the Commission. Though it may be true that the spirit or meaning of the local language or culture may not be conveyed through dubbing or translation, yet the importance of dubbing cannot be denied. It has been contended that the ban on dubbed content is the practice which started in the late fifties and early sixties and was endorsed by the Government of Karnataka. This contention, however, is not supported by evidence on record. As per the DG's investigation, in Karnataka, the dubbing of films/TV programme is restricted as a matter of practice. Such practice, however, is not backed by any legal/statutory prohibition on screening or broadcasting of the dubbed contents in Karnataka or any other part in the country.
- 7.20 The associations have followed the practice of restricting the screening/broadcasting of dubbed versions of contents. This practice is being followed for the last 50 years and no dubbed film in the past has been successfully released in Karnataka. The OPs not only restrict the production and exhibition of dubbed contents but also have been found



to impose conditions like number of screens for Kannada or other language films and number of shows on the other language films. Similarly on TV, Kannada channels are told not to telecast other language contents. The Opposite Parties also impose restrictions like minimum number of hours for Kannada language programs.

7.21 The DG investigation has not shown that the Government of India or the State Government has banned the telecast of dubbed version in India or in Karnataka. Most importantly, the viewers/consumers are not forced to watch any dubbed contents. It is the discretion of the viewer to exercise her choice as to which programme she wants to watch. She has to pay for the programs she wants to watch as most of the entertainment programs on TV are not available free of cost. Therefore, it is the viewer who should have the choice to watch a dubbed programme or original language programme or any other programme. Trade associations such as OP-1 and OP-2 cannot become the self-appointed guardians of local language and culture and interfere with the market forces. In view of the foregoing discussion, the Commission agrees with the DG that the justification offered by OP-1 and OP-2 is liable to be rejected.

7.22 Another justification offered by OP-1 and OP-2 for banning dubbed content before the DG is the loss of opportunity for local artistes. The Commission finds this argument baseless and illogical. Today when technology permits watching more than 200 channels on one television, the dubbing of one or two entertainment programs from other language cannot deprive the local artistes from showcasing their skills. There has been a complete paradigm shift in the television industry.

7.23 As rightly noted by the DG, the programs on Television cater to various segments and genre like housewives, children, spiritual programs, musical programs, reality shows, film based programs, serials, history,



national geographic news, debates programs and comedy. Further, the fact that the State Government of Karnataka has earmarked various incentives for original Kannada language films in the form of allowing tax exemptions and other financial benefits to protect and promote the local film industry shows that the Kannada language films are already in an advantageous position in comparison to other language films or dubbed films. In such a scenario, portraying a picture of dying industry so as to protect the Kannada film and television industry from competition from other language films and TV programmes is unacceptable.

7.24 The Commission is of the view that any form of restriction to deny market access to other language films or programmes is not justified. It should be the choice of a film producer or artiste as to whether his film should be dubbed in other language or not. Similarly the viewer should have the choice as to which movie/programme to watch. Restrictions cannot be imposed on the film exhibitors and distributors and television channels to exploit the exhibition of validly obtained rights of a film or programme. Any kind of regulation or restriction by an association falls foul of competition law provisions. On the basis of the foregoing, the Commission agrees with the findings of the DG that the conduct of OP-1, OP-2 and OP-4 clearly results in limiting and restricting the market of dubbed films/serials in Kannada language in contravention of section 3(1) read with section 3(3)(b) of the Act.

7.25 With regard to the role of OP-3, OP-5 and OP-6, the DG has reported that these associations do not comprise of enterprises engaged in the production and exhibition/telecast of film/TV programs. They cater to the specific needs and welfare of their members. The Commission finds that there is no evidence against OP-3, OP-5 and OP-6. In view of the



absence of evidence against OP-3, OP-5 and OP-6, the Commission at this stage finds no contravention of the Act committed by them.

Order

8. In view of the aforesaid findings, the Commission directs OP-1, OP-2 and OP-4 to cease and desist from indulging in practices which are found to be anti-competitive in terms of the provisions of section 3(1) read with section 3(3)(b) of the Act in the preceding paragraphs of the order.
9. Further, in exercise of its powers under 27(g) of the Act, the Commission directs OP-1, OP-2 and OP-4 to bring in place, in letter and in spirit, a 'Competition Compliance Manual' ('the Manual') to educate its members about the basic tenets of competition law principles. These erring associations should play an active role in creating awareness amongst its members of the provisions of the Act through competition advocacy.
10. With regard to penalty under section 27 of the Act, the Commission is of the considered view that the same has to be determined after taking into account the aggravating and mitigating factors pertaining to each contravening Opposite Party. Further, the anti-competitive conduct needs to be penalized sufficiently to cause deterrence in future among the erring entities engaged in such activities. In this regard, it is essential to take note of the fact that KFCC's conduct (i.e. OP-1 in the instant case) has been found to be in contravention of the provisions of Section 3 of the Act in Case No. 25 of 2010 & others and a penalty was imposed on it. Furthermore, in Case No. 56 of 2010 also, OP-1 was found to be guilty of contravening the provisions of the Act but the Commission decided not to impose monetary penalty in view of the penalty imposed



in the earlier order mentioned above. It is abundantly clear that OP-1 has been found to be indulging in anti-competitive conduct in various cases. This is a case of continuous violation of the provisions of the Act and of complete disregard to the competition law principles by OP-1. Having regard to the nature of anti-competitive conduct and its recurrence, the Commission is of the opinion that it would be appropriate to impose a penalty on OP-1 at the rate of 10% of their income based on the financial statements filed by them. With regard to OP-2 and OP-4, the Commission is of the view that a penalty at the rate of 8% of their income based on the financial statements filed by them would be appropriate to meet the ends of justice. The penalty calculated at the rates specified above is depicted in the table below:

Year	Income during the year (In Rs.)		
	OP-1	OP-2	OP-4
2008-09	15242487	2868125	1204507
2009-10	15700629	1112564	1767456
2010-11	19523017	2555311	3332700
Total	50466133	6536000	6304663
Average	16822044.33	2178666.67	2101554.33
10% (OP-1) and 8% (OP-2 and OP-4) of Average Turnover (Penalty Amount)	1682204.43	174293.33	168124.35

11. Resultantly, a penalty of Rs. 16,82,204/- (Rupees Sixteen Lakhs Eighty Two Thousand Two Hundred and Four only) — calculated at the rate of 10% of the average income of OP-1 for three financial years 2008-09, 2009-10 and 2010-11 is hereby imposed on it. Similarly, a penalty of Rs. 1,74,293/- (Rupees One Lakh Seventy Four Thousand Two Hundred and Ninety Three only) and Rs. 1,68,124 (Rupees One Lakh Sixty Eight



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Thousand One Hundred and Twenty Four only) — calculated at the rate of 8% of the average income of OP-2 and OP-4 for three financial years 2008-09, 2009-10 and 2010-11 is hereby imposed on them respectively.

12. It is ordered that OP-1, OP-2 and OP-4 should deposit the amount of penalty imposed upon them within 60 days of the receipt of this order. Further, OP-1, OP-2 and OP-4 are directed to file a compliance report on the Manual as mentioned in Para 9 above within six months.
13. Secretary is directed to inform the parties accordingly.

Sd/-
(Ashok Chawla)
Chairperson

Sd/-
(S. L. Bunker)
Member

Sd/-
(Sudhir Mital)
Member

Sd/-
(Augustine Peter)
Member

Sd/-
(U. C. Nahta)
Member

New Delhi
Dated: 27.07.2015