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In Re: M/S HT Media Limited v. Super Cassettes Industries Limited; Case no. 40 of 2011, Order Dated 1st October 2014

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Abstract

This case commentary examines the landmark ruling by the Competition Commission of India (CCI) in In Re: M/s HT Media Limited v. Super Cassettes Industries Limited (T-Series), which underscores a key example of abuse of dominant position under Section 4 of the Competition Act, 2002. The case revolved around the imposition of unfair licensing conditions – specifically, the Minimum Commitment Charges (MCC) by T-Series on private FM radio stations, thereby restricting access to Bollywood music, a key market segment. Based on the Director General's investigation, the CCI identified the relevant market as the sale of Bollywood music rights to private FM radio stations in regions where this genre is popular. It concluded that T-Series held a dominant position and had abused this dominance, resulting in a cease-and-desist order and a penalty of ₹2.83 crores. This commentary evaluates the legal reasoning, market analysis, and implications of the order, emphasizing its role in strengthening anti-abuse enforcement and promoting fair competition in India's music industry.

Keywords: Abuse of dominant position, anti-competitive agreements, Bollywood music, CCI, Competition Commission of India, Competition Law, consumer preference, FM radio, HT media, Indian music industry, licensing conditions, market foreclosure, minimum commitment charges (MCC), relevant market, Section 3, Section 4, T-series

INTRODUCTION AND BACKGROUND

The case of In Re: M/s HT Media Limited v. Super Cassettes Industries Limited remains a significant litigation in India regarding the abuse of dominant position by T-Series (Super Cassettes India Limited) within the national music industry. Super Cassettes Industries Limited acts as a leading firm engaged in producing music and videos both domestically and internationally. It constitutes one of the largest music-producing companies in India and maintains approximately 70% of the total market share. The informant (HT Media Limited) is a prominent media corporation, which notified the CCI under Section 19(1)(a) about this specific abuse of the dominant position by T-Series. This involved imposing unfair conditions upon the provision of its services to private FM radio channels across the country. HT Media possesses a FM radio station named Fever 104 which operates within metro cities and has established a strong customer base in the market. The company informed the CCI about these specific anti-competitive practices of the opposite party, T-Series.

The opposite party was held liable under Section 4(1)(a)(i) of the act for the abuse of its dominant position in the Indian music industry for the broadcasting of Bollywood songs on the private FM radio channels. A penalty of ₹2.82 crores was imposed on the company for this abuse as the practices of the company were held to be exploitative in nature leading to foreclosure of the market for the competitors and thus having an anti-competitive effect on the Indian market.

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BRIEF FACTS

In the current case, the informant, HT Media Limited, submitted the complaint to the Competition Commission of India (CCI) under Section 19(1)(a) of the Competition Act, 2002.

The informant claimed that the Super Cassettes India Ltd. (opposite party), also known as T-Series had contravened the provisions of the Competition Act with respect to entering into anti-competitive agreements and abusing its dominant position in the market with respect to Section 3 and Section 4 of the act, respectively [1].

T-Series was involved in producing the Bollywood music that was then broadcast by HT Media Limited through its FM radio channel, Fever 104. However, T-Series started imposing license fee for the broadcast of its music on the FM radio channels and the amount of fees to be paid according to this agreement was very high. In addition to this, T-Series also demanded a monthly amount known as Minimum Commitment Charges (MCC) and the time of the actual broadcast of music on the channel was immaterial to MCC. It was a fixed amount (₹1,25,000) that will be paid irrespective of the needle-hour that the song is broadcast on the channel. This was very unfair as there are other things that are broadcast on the radio channels other than these songs, such as advertisements, sound recordings, anchoring, voiceover, etc. The acceptance of these agreements was made a pre-condition for entering into the licensing agreements for the broadcast of the music owned by T-Series.

It was alleged by the informant that these conditions imposed by T-Series for the broadcast of its music is unfair in nature. The FM radio channel is restricted from the broadcast of music which is ultimately harming the public interest [2].

The licensing agreement was claimed to be an anti-competitive arrangement under Section 3 of the Act. It was alleged that the terms of this agreement are itself anti-competitive in nature, thus violating Section 3(3)(b) as it limits and controls the provision of services in the market with respect to the broadcast of Bollywood music on the FM radio channels.

The informant further claimed that the opposite party had abused its dominant position in the relevant market for broadcasting rights of new Bollywood film music on FM radio in metropolitan cities by imposing unfair terms in its service offerings, thereby violating Section 4 of the Competition Act, 2002.

Investigation by the DG

Following the Commission's directive, the Director General conducted a thorough investigation and submitted its report, which was communicated to the CCI under Section 26 of the Act.

The DG identified the relevant market as the "sale of Bollywood music rights to private FM radio stations in regions of India where Bollywood music is popular" [3].

In its report, the DG submitted that T-Series holds a dominant position in this relevant market and had abused the same and in this regard violated Section 4(2)(a)(i) and Section 4(2)(a)(ii) of the act by imposing unfair condition and price for the provision of its services to the FM radio channels. The amount of license fee and MCC charged was held to be exorbitant and the conditions were unfair in nature. The condition of imposing minimum needle-hours was unfair and distorting the competition at many levels in the geographical market where Bollywood songs are popular and listened to by the consumers.

Thus, it was submitted by the DG that the opposite party had abused its dominant position in the above relevant market which led to the foreclosure of the relevant market for other music producers and broadcasters.

ISSUES FOR DETERMINATION

After going through the investigation report submitted by the Director General and the replies and submissions made by the parties, the Commission, in the instant case investigated the following issues in detail:

i. What is the relevant market in the instant case?
ii. Does the opposite party hold a dominant position in the relevant market?
iii. Has the opposite party abused its dominant position in violation of Section 4 of the Act?

Objections and Submissions Made by the Parties [4]

After the DG's report was considered by the Commission, the parties filed their objections and submission to the CCI with respect to the allegations.

Submissions by the Opposite Party (SCIL)

With Respect to Issue I

It was submitted by the opposite party that with respect to the establishment of relevant market by the DG, the supply side perspective was not taken into consideration which has led to a narrow approach of the relevant market. This approach should have been wider according to the opposite party. Not just the Bollywood music, but all type of music, like AIR, should have been included in the relevant market.

The non-substitutability and interchangeability of the Bollywood music by the consumers has been considered as a factor by the DG which should not have been a criterion for carving out the relevant market. This criterion was said to be arbitrary by the opposite party, and it was said that other type of content is also listened to by the Indian consumers. The geographical market is only the market where Bollywood music is prevalent, this was also said to be a narrow approach taken by the DG as there is no criteria to determine what is prevalent in which region.

With Respect to Issue 2

The opposite party submitted that there is no dominant position held by the opposite party even if the relevant market as per the criteria given by the DG is taken. The evidence relied upon by the DG is not robust in nature. There is no substantial market share held by the opposite party. It holds only 27% of the market share which cannot said to be holding a dominant position in the market. Additionally, it was argued that the opposite party lacks the necessary resources and economic influence to maintain a dominant position.

It was submitted that the opposite party faces a lot of competition from its competitors and this was not considered by the DG, only the demand side perspective was taken into consideration. It faces competition at many levels, such as the level of acquiring music and licensing the same.

The opposite party submitted that there are no barriers to entry and foreclosure of competition in the present case. The competition is not affected in any way as it faces tough competition from the players in the market and does not hold a dominant position.

With Respect to Issue 3

The opposite party also submitted that it has not abused the dominant position in the relevant market even if it is said to hold a dominant position. It submitted that the available evidence, such as the annual reports of radio stations and other documents in the industry are enough to show that there is no harm caused and it is progressing at a steady growth rate. There is no evidence of abuse of dominant position in the market.

The fee charged is an assured sum of royalty payable by the radio stations and is reasonable in nature. With respect to the charge of performance fee, it was submitted that it is nowhere stated that the charging of this kind of fee is illegal in nature and even the High courts and Supreme courts of the country are deciding this matter and hence, no competition law violation had taken place in the present case [5].

Submissions by the Informant

According to the informant, the DG's report was well founded in nature. It submitted the following:

With Respect to Issue 1

The informant submitted that the FM radio is a different market in itself as they are free, no cost is charged from the consumer to listen to them and thus there is no switch-ability. Plus, there are certain broadcast restrictions imposed on these private radio channels pursuant to the GOPA agreement entered between the Government of India and these private channels. Also, these radio channels are specific to a particular geographical area, thus making it a relevant market. This is not the case for other channels, like the AIR, as it has a pan India presence with addition to no broadcasting restrictions being imposed on it by the government.

The primary reason for these FM radio channels to operate is the broadcast of music thus making it non-substitutable. Moreover, Bollywood music constitutes a distinct product market due to its strong consumer preference in India. Given the variety of music genres catering to different tastes, Bollywood music enjoys significant popularity among Indian audiences. Additionally, consumer preference plays a crucial role in market segmentation. Hence, the relevant market – "sale of Bollywood music rights to private FM radio stations in regions of India where Bollywood music is popular" – is appropriately defined [6].

With Respect to Issue 2

The informant argued that the opposite party holds a dominant position in the relevant market, and that the DG's findings in this regard are accurate. It was submitted that the opposite party holds a 80% market share of the music market and has a catalogue of around 200,000 songs. The resources and economic power with the opposite party is huge with its turnover around ₹400 crores when the entire music industry earns ₹750 crores. This clearly shows a position of dominance. All the major Bollywood films are dealt with by the opposite party, and it has overall the major role to play in the functioning of the Bollywood music industry.

It was submitted that the private FM stations are dependent completely on the opposite party for the broadcasting of its music due to the strong consumer preference for Bollywood music and they cannot survive without access to the music produced by the opposite party. There are not a lot of alternatives available and thus the dependency is huge. If the unfair conditions are imposed, this would cause a major disruption in the business of the FM radio stations [7].

With Respect to Issue 3

The informant submitted that the opposite party has abused its position of dominance by imposing the unfair prices and conditions on the terms of its service. The license fee is extremely high, and it violated Section 4(2)(a)(i) of the act. In addition to this, the MCC and needle-hour conditions are violative of Section 4(2)(a)(ii) by virtue of being unfair and unreasonable.

The informant also claimed that the terms of the agreement between the parties are anti-competitive, thereby breaching Section 3 of the Act. It constitutes a vertical anti-competitive agreement under Section 3(4) and has a significant negative impact on competition in the relevant market [8].

Order of the CCI

The CCI concluded that the opposite party had violated Section 4(2)(a)(i) of the Competition Act, 2002, which prohibits the imposition of unfair conditions in the sale of services. The Commission held that the condition for the MCC (Minimum Commitment Charges) imposed on the private FM radio stations by the opposite party were unfair in nature.

The CCI passed a cease-and-desist order for the imposition of MCC on any private radio station in India and the opposite party was given a 3-month period to modify this condition in the appropriate manner. A penalty of ₹2,83,28,000 (Two Crore Eighty-Three Lakhs Twenty-Eight Thousand) was imposed on the opposite party under Section 27(b) of the act. This penalty was calculated on the rate of 8% of the average turnover for the last 3 years of the company. A time of 60 days was given to the opposite party by the commission for submitting the penalty amount.

ANALYSIS

The CCI was correct in reaching its finding and holding the opposite party liable under the provisions of the Competition Act and disrupting the competition in the Indian market with respect to the sale of Bollywood music to the private FM radio stations. T-Series was exploiting its dominant position by imposing unjust conditions on the sale of its music for broadcast on private FM radio stations. On considering the aggravating factors, the CCI found that a price of ₹2,16,667 was imposed as MCC for every radio station irrespective of the actual time for which the music is broadcast on these channels. The mandatory performance fee amount is unfair and exorbitantly high. The amount of license, to be fair, must generate an equal amount of economic value for the licensee who is paying for the license. In the present case, the actual needle-hours, i.e., the time in which the music is actually broadcast on these channels leaving the advertisements, anchoring, voiceover aside was not considered and the MCC amounts were fixed. This is very unfair for the licensee as he is paying for the broadcast even when the actual broadcast is actually lesser as there are other things also, other than the playing of these Bollywood songs that go on these FM radio channels. Also, no other company was involved in the imposition of MCC except the opposite party and this is unfair as it holds a dominant position. Thus, Section 4(2)(a)(i) is violated [9].

The FM radio channels do not have any alternative options also available for procuring the broadcast rights over these Bollywood songs as the opposite party is a dominant player in the market with substantial market share and owns the majority rights over these songs. Also, the Bollywood songs are not substitutable in case of the Indian audience, and they hold a separate position with respect to the consumer preference. The target audience strongly prefers Bollywood music over any other kind of music and T-Series has acquired the exclusive rights over all these songs.

It is the largest private music copyright holder in India, owning the rights to all major Bollywood songs and videos. The turnover of the company in the Indian music industry is also massive amounting to over ₹400 crores of the ₹750 crores. This is nowhere close to the competitors of the opposite party and thus it is very evident that it enjoys a dominant position in the market and by imposing the unfair conditions, it has abused the said dominant position. The CCI took all these factors into account when issuing its order and imposing a penalty of ₹2,83,28,000. Under Section 27 of the Act, the CCI has the authority to impose such a penalty. However, the penalty must not exceed 10% of the average turnover for the preceding three financial years. In this case, 8% of the average turnover for the last three financial years is imposed which very much falls under the domain of powers of the CCI. This imposition was necessary for a deterrence effect on the market so that such unfair anti-competitive conditions are not imposed in the market and there is no disruption of competition within India [10].

CONCLUSION

This case as decided by the CCI holds a major position in the determination of cases regarding the abuse of the dominant position in the market. We can see how the relevant market was determined by the DG in his report as the sale of rights of Bollywood music to the private FM radio channels operating where the Bollywood music is prevalent. The opposite party tried to expand the relevant market whereas the informant said that the DG’s findings were correct as it would always want the relevant market to be narrower so that the establishment of the dominant position of the opposite party becomes easier. If the market is wide, the establishment and determination of dominant position in the market becomes quite difficult. The CCI investigated all the aggravating and mitigation factors for the determination of whether the opposite party has abused its dominant position by imposing unfair conditions. The turnover of the company, size, economic power, resources, everything was investigated and this was compared to the position and resources of its competitors, and the competitors were found to be nowhere close to the opposite party. In fact, it was found that the revenue of the opposite party is 4 to 5 times to that of its competitors and all the exclusive rights over almost all the major Bollywood songs are owned by the opposite party, thus making it a dominant player in the market. Thus, all the factors were considered by the CCI and even the MCC was calculated and then determined whether its imposition is fair or not. The conditions were held to be unfair and thus the opposite party was held to have abused its dominant position, and the requisite penalty was imposed by the CCI. This was important to leave a deterrent effect and to ensure that the provisions of the Competition Act are not violated in any manner and there is smooth and healthy competition in the market devoid of any kind of unfair and discriminatory practices.

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