



THE FIFTEENTH NLU ANTITRUST LAW MOOT COURT COMPETITION, 2024

National Law University, Jodhpur

in association with

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MOOT PROPOSITION



1. Union of BinTin Land is a middle-income country in Asia (**‘BinTin Land’**). The country has ethnically and linguistically diverse population of nearly 1 billion people. BinTin Land enacted its competition law, the BinTin Land Competition Act (**‘the Competition Act’**) in 2002. The Competition Act was brought in force in a phased manner and was recently amended in 2023 in order to keep up with the changing market dynamics.
2. The Competition Act established the Competition Commission of BinTin Land (**‘CCB’**) as the regulatory body responsible for enforcement and administration of Competition Act in BinTin Land. The CCB treats decisions of the Competition Commission of India as well as other prominent antitrust regulators such as from the European Union, Germany, United Kingdom etc. as having high persuasive value. The CCB has been established under the aegis of the Competition Act, and is governed by it, as well as by associated regulations, notifications, and amendments published in the Gazette of BinTin Land from time to time, such as the Competition Commission of BinTin Land (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 (as amended) (**‘Combination Regulations’**).
3. Despite being a middle-income country, BinTin Land has a diversified economy with the media and entertainment sector contributing to a major portion of the GDP since the 2000s. The media and entertainment sector employs nearly 10 million people in BinTin Land. It has produced nearly 8,000 films and television shows in 15 languages in Financial Year (**‘FY’**) 2022-23 alone. Films and television shows of BinTin Land are watched across the world and are lauded for their complex and humorous storylines, subtle acting and direction.
4. The official records of the BinTin Land’s Ministry of Films and Television (**‘the Ministry’**) estimate that as of FY 2023, there are nearly 90 million viewers of film and television shows in BinTin Land. This is due to favorable factors such as presence of both single screen cinema halls and multiplexes, price subsidies in television channel bundles offered through Direct-to-

Home cable services (**'DTH'**). Further owing to rampant digitalization in the country and the internet boom, the viewers have access to internet at cheaper rates, allowing the citizens to access more content (film and television shows) through internet.

5. The people of BinTin Land consider certain actors and directors as heroes akin to God and worthy of worship due to their ability to act/direct across genres.
6. The Ministry promotes the media and entertainment industry, owing to its worldwide appeal. As a result, it has enacted regulation to promote artists' creative expression and enforces minimal censorship. It also runs financial support programs for actors, writers, and producers to ensure that participants in this sector are not constrained by financial uncertainty and costs associated with creating a film or a show. The Government of BinTin Land also promotes foreign film and TV producers, streaming service providers, but does not extend similar privileges to them. Foreign Direct Investment (**'FDI'**) in this sector is permitted up to 100%, after an amendment to the relevant FDI laws which increased the cap from the previous 49%.
7. In the film segment of the media and entertainment industry, major participants include creators/ directors, producers, distributors and exhibitors. In BinTin Land, the market consists of certain large producers such as Rambo Productions (**'Rambo'**), Rocky Productions (**'Rocky'**), Swathe Productions (**'Swathe'**), and several new producers like Dolittle Production (**'Dolittle'**), Capsicum Entertainment (**'Capsicum'**), ARS Productions (**'ARS'**); distributors such as Moby Dick Distributors (**'Moby Dick'**), Sinha Distributors (**'Sinha'**) and other small producers who are fringe players within the industry.
8. Rambo, Rocky and Swathe are the major production houses in the film industry and have nearly 69% of the market share collectively. These production houses usually sign a contract with the actors for a period of 2 years in order to make movies. When it comes to exhibition of these movies, they usually have a tie up with an exhibitor, from which they get a 40% of the

total fee from the ticket sales made by the multiplexes/exhibitor under a revenue sharing agreement. The exhibitors on the other hand, prefer this arrangement because they have a first mover advantage over other platforms, which in turn generates more revenue for multiplexes.

9. The market of film production and distribution has historically been dominated by the presence of large production houses/distributors and exhibitors owning cinemas halls (single screen and multiplex theatres). Whereas the television market has been dominated by large conglomerate networks. Before the entrance of the Over The Top Video streaming platforms (**OTT Platform(s)**), the traditional set up was that the producer would enter into contracts with the exhibitors to screen the movies in theatres in accordance with a revenue sharing model. However, as the dependency on multiplexes increased owing to their high revenue generating nature, exhibitors started to unilaterally impose a skewed non-negotiable revenue sharing agreement with all the producers alike for screening of their films. Due to this, the younger and independent producers in the market who make small budget films (**Small Budget Producers**) did not have a choice but to agree to the terms of the unconscionable revenue sharing agreement. This effectively consolidated the market where only four to five production houses collectively occupied the majority of the market share, with no new entrants in the recent years.

10. Unfortunately, in 2021, BinTin Land was hit by the Covid-19 pandemic, which induced a 1 year long lockdown in the country. During the lockdown, the market saw a rise in the presence of OTT Platforms as they could be enjoyed from the comforts of the house. When the pandemic started, the segment primarily had only 2 OTT Platforms, Bart Entertainment LLP (**Bart**) and Novak Studios LLP (**Novak**) which were owned by entities incorporated outside India. Before the 2020 amendment to the FDI cap, Novak US held 49% of the shares in Novak LLP, however, after the amendment, Novak US through a share acquisition, acquired the remaining 51% of the shares of Novak LLP, making it a 100% wholly owned subsidiary.

11. Previously, Bart and Novak only used to showcase foreign television series, which were not very popular at that time in BinTin Land. However, this segment saw an influx of multiple local OTT Platforms such as Velar Entertainment (**Velar**), Mickey Film (**Mickey**) and TV (**MFTV**) launched by broadcasting entities which were traditionally engaged in distribution of satellite television channels. OTT services refer to any type of video or media streaming service that allows a viewer to access movies or TV shows by sending the media directly to the internet. A typical OTT service provider requires the user to have an internet connection in order to stream their videos and media content. Most of the OTT services are accessed through the online websites and apps of the OTT provider which requires a subscription for their use against a recurring subscription fee.
12. With the rise in popularity of the OTT Platforms, many Small Budget Producers viewed these as an additional avenue for showcasing their movies, alongside multiplexes and satellite television networks. Accordingly, Small Budget Producers along with several creators/directors started entering into agreements with the OTT Platforms for production of (i) 100% OTT Platform Owned and Produced Movies and Shows; (ii) Co-Produced Movies and Shows.
13. Bart, Novak, Velar and MFTV are the most popular OTT Platforms in BinTin Land currently, with nearly 120 million active subscribers. While each OTT Platform contains a wide portfolio of films and television shows across genres and languages, each of the OTT service providers specialize in certain genres. The breakup of the genre specializations is given as under:

OTT platform	Genre (includes fiction and non-fiction titles)
Bart	Comedy, Western and European

Novak	Action, drama, thriller, Western
Velar	Romance, horror, Reality Shows based in BinTin Land, Drama (focused on BinTin Land)
MFTV	Science fiction/fantasy/Mythology and Regional Folklore

14. Star Blitz Report publishes market shares of the players operating OTT Platforms (*refer to Annexure 1*) along with an annual market study, in order to understand the traffic in a particular genre and *inter alia* determine which actors/production houses to financially support. The results of the latest survey regarding genre preferences from FY 2023 are given below:

Genre	Bart	Novak	Velar	MFTV
Comedy	60%	20%	10%	5%
Action	20%	40%	10%	20%
Drama	10%	35%	20%	5%
Drama (focused on BinTin Land)	15%	10%	60%	25%
Thriller	5%	35%	10%	30%
Romance	5%	5%	60%	20%
Horror	5%	5%	60%	20%

Science fiction/fantasy/ Mythology and Regional Folklore	30%	10%	35% (focused on regional folklore)	45% (focused on Mythology)
Western	20%	10%	5%	5%
Reality Shows based in BinTin Land	10%	10%	25%	25%

15. The aforementioned survey figures have largely remained consistent over the past three financial years, i.e., FY 23, FY 22 and FY 21.

16. Salman Raja Khan (SRK) is a famous star in BinTin Land who has starred in various thriller, drama, and action movies. Starting his career in the year 2000, Salman became a huge name in BinTin Land and amassed a huge fan following. The directors who worked with him say that *“because of his subtle and creative theatricals, it is easy for him to adapt to any role that he is put in.”* However, in the recent years, his movies have underperformed at the box office, as a result of which several production houses have not featured him in their movies. Salman and the famous director David Kashyap were inseparable kings of the box office, who made 5 back-to-back blockbuster hits. The rumour was that David would leave all his inheritance for Salman in his will.

17. David’s son was also an aspiring actor and was launched by his father. However, several of his initial movies directed by his father were flops at the box office. Further, as the young Generation ‘O’ constituted the majority viewership of films and TV shows, David’s old school

drama and action movies were not being appreciated. This started a series of box-office flops for David, thereby leaving him under a lot of financial distress.

18. However, in 2023, action and drama genres were in high demand again in BinTin Land. Considering this, many production houses engaged with directors for making movies under these genres to cater to the needs of its cinephile citizens.
19. David and Salman saw this as an opportunity for making a comeback of the erstwhile blockbuster duo. David contacted Swathe to produce his film with Salman as the lead actor, but he was rejected by Swathe stating that *“Salman is a washed actor whom no one wants to watch and David has lost his sense of creativity.”* However, this did not deter his resolve and he finally landed a contract with Capsicum to star in their latest and much awaited action drama “Rings of Fire”.
20. During the promotion of one of Capsicum’s movie “Agnidevta”, Capsicum expressed its discontent with the multiplexes stating that *“Our actual income has always been less than the projected earnings, as multiplexes have always miscalculated the fee earned from ticketing sales, due to either calculation errors or due to rescreening of movies which do not fall under purview of our agreements with the multiplexes.”* Because of this reason, to co-produce its next film being directed by David, Capsicum decided to contact Novak, to co-produce and showcase the movie on its platform. To sweeten the deal, Novak offered Capsicum a 4 movie deal, under which Capsicum will be required to co-produce 4 movies over the course of 5 years. Clause 5(a) of the Co-Production Agreement stated that *“four movies co-produced by Capsicum and Novak will be showcased by Novak on its OTT platform(s) and no other platform or theatre will screen / showcase such movies during the continuance of this Agreement”*. Clause 5(b) of the Co-Production Agreement further stated that *“Capsicum Productions is guaranteed remuneration based on the number of times the movie has been streamed on Novak’s platform. The remuneration per stream would be equal to 3000 BinTin Land Rupees. In addition, Capsicum Productions will be guaranteed a 5% bonus, based on achievement of total streams.”* However, Clause 6 of

the Co-Production Agreement stated that “*Novak will get the right to vet the script and to choose the lead actors before the shooting of the movie starts. In some cases and if deemed fit, Novak will also be given a right to nominate one actor to the movie.*”

21. Clause 10 of the Co-Production Agreement states “*movies containing 3D and 4D technology shall be released in multiplexes supporting such technology and shall be streamed on Novak 12 weeks after the theatre run.*” Looking at this win-win situation, Capsicum readily agreed to the deal.
22. A few days into the production of *Rings of Fire*, Salman was told by Capsicum that they cannot cast him further due to ‘budgetary constraints’ and a young superstar who has starred in action movies previously, Fawazuddin Qureshi was chosen in his place, who supposedly charged more money than Salman.
23. A few months after the release of the movie, Salman, while sitting with his colleagues, found that Novak has entered into a few other co-production agreements with various Small Budget Producers.
24. Gradually, Novak started entering into similar Co-Production Agreements with other production houses. As a result, the variety of films being screened by multiplexes started to decrease. The films being screened by multiplexes were of a similar genre, starring the same 2-3 actors due to which the audience got bored after a few weeks and were no longer interested in visiting the multiplexes for the movies.
25. Therefore, the multiplexes after creating a group named “Orion” filed an ‘Information’ with the CCB against Novak, alleging that their standard form contract with various production houses including Capsicum amounts to abuse of dominance, is a vertical restraint for production houses and leads to denial of market access for the multiplexes. It was alleged that the number of films released in multiplexes had reduced significantly owing to such restraints,

which was evident from the reduced footfall in multiplexes even in 2023. As such, members of Orion were suffering huge losses due to vertical restraints imposed by Novak on the production houses.

26. It was also noted that on its OTT streaming platform, Novak was highly regarded for its own production(s) of various long TV series which would continue for minimum 5 seasons lasting for 5-6 years. In this regard, some of Novak's famous long TV series were: "My Workplace; The Thakur Girls, The Lineage, The White Rose". The producers of these TV series are generally given long term contracts by Novak for producing the show for up to a specific number of years. Novak has full discretion to discontinue the production and the contract to stream the show on its platform in case the show loses its popularity.

27. Asmita Sengupta is the lead actress of a famous show called "Girlfriends" in which four girls in their 30s living in the city of Mumbai meet at their regular coffee shop "Dubko Coffee" every day and discuss their life issues. Novak entered into a contract with Asmita Sengupta for performing the role of "Ms. Sonika" in at least 6 seasons of the show Girlfriends (**'Artist Agreement'**). Some of the clauses in the Artist Agreement were as follows:

Clause 13 – Terms and Conditions

In accordance with the provisions of this agreement, the Artist hereby agrees to:

- 1. Play the part of Ms. Sonika in at least 6 seasons of the show "Girlfriends" ("**Show**") for a fixed remuneration.*
- 2. All rights, including but not limited to merchandising, trademarks etc. related to the character of Ms. Sonika shall be retained by the platform i.e., Novak.*
- 3. The Artist is obligated to make herself available for the shoot of the Show during the course of the planned 6 seasons. The schedule for the shoot of the Show will be duly communicated by the producer and Novak*

to the Artist. Such scheduling will be subject to the requirements of the producer and Novak and the Artist will be expected to align her schedule as per the shoot dates for the Show.

4. *During the continuance of the 6 seasons of the Show, the Artist is obligated to exclusively work with Novak and cannot work with another OTT / streaming platform or producer, without obtaining prior consent from Novak.*

28. Ms. Sengupta informed Novak that the provisions of the Artist Agreement were restrictive, exploitative and exclusionary in nature. To rectify this, Novak amended Clause 13 of the Artist Agreement to say that the Artist can be a part of a different show and/or work with another OTT / streaming platform and producer in between two seasons of “Girlfriends”. Such period would be a conflict-free window of at least 6 months in a year, when the new season of Girlfriends would not have been announced. Novak’s lawyers further clarified to Ms. Sengupta that the primary objective behind such a clause in the Artist Agreement is to ensure that the artists are not occupied with any other show when the producer wants to begin shooting. They emphasised that in a long duration TV series, the audience has a fair expectation to view the same artist playing a certain character. Therefore, the availability of the artists becomes an indispensable aspect of shooting any particular show and for ensuring timely delivery of streaming on the platform.

29. Since the introduction of the Co-Production and Artist Agreements, Novak has gradually started to experiment more with its genres. For example, it has showcased two movies in the drama genre (focused on the cultural issues in BinTin Land) which were a hit with the audience and now has three more movies in the pipeline under the same genre. Independent market studies while referring to ranking of top 10 shows in BinTin Land, claim that because of Novak’s new venture, it is steadily becoming a popular platform for the viewers in BinTin Land as they could relate to the characters in the movies and could in near future could replace the favorite MFTV in this genre.

30. Since the factum of the Artist Agreement was known by relevant individuals, an Assistant Director on the sets of the show 'Girlfriends' submitted an anonymous Information to the CCB stating that Novak is abusing its dominant position. The key allegations in the Information were that such exclusive contracts are becoming the industry norm in the OTT streaming industry and as an effect, there has been at least 2% increase in the market shares of Novak, post the introduction of the Artist Agreements.
31. The CCB in the complaint filed by the Assistant Director observed that there is *prima facie* case of violation of Section 3 and Section 4 of the Competition Act. The DG investigation report found that Novak had entered into anti-competitive agreements with the Artists which were in the nature of vertical restraints. Post the investigation by DG, CCB heard both the parties and found out that Novak was in violation of Section 3 and Section 4 and imposed appropriate penalty. Aggrieved by the order given by the CCB, Novak planned to appeal in the BinTin Land Company Law Tribunal ("**BCLT**"), however, this was delayed on account of Novak planning further expansion of its business operations.
32. In the meantime, unbeknownst to the people, Novak had altered its Co-Production Agreement and the Artist Agreement by changing the following points:
- a) In its Co-Production Agreement, it changed the time period of the applicability of the Agreement to 3 years and introduced a revenue sharing clause with the parties, allowing them to get 2% of the total revenue generated from clicks on their streaming platform.
 - b) In its Artist Agreement, it allowed the actors to work with other producers during the conflict free window, but they had to sign a confidentiality clause with Novak, under which they could not disclose any work in progress by Novak to other producers.

33. Novak justified such contracts by stating that the demand for new content including new movie shows on its OTT Platform has been at an all-time high since the Covid-19 related lockdown was enforced. Novak further clarified that this segment has a presence of multiple players including small, regional and innovative players. Novak stated that it is not dominant in the market since it is the only independent OTT Platform in the country, unlike the other major OTT Platforms which are subsidiaries of a large satellite television broadcasting conglomerate such as Pony, Moon Network Ltd., Dee Networks etc. Novak also emphasised that it is solely a streaming platform unlike its counterparts which are part of group entities that sell their own Smart Televisions, Set-top boxes etc.
34. Novak's lawyers also emphasised that two months after the Co-Production Agreements by Novak, it started seeing an increase in subscriber traffic. Consequently, Novak increased its subscription fee by 10%, however, this proved to be slightly unpopular with existing subscribers who did not renew their subscriptions. Moreover, the volume of traffic on their streaming platform did not have any significant impact because Novak did not enforce restrictions on password sharing, due to which, based on its internal estimates, one user shares its password with ten other people.
35. Feeling the competitive pressure of the OTT market and to strategically expand the genres of the content streamed on its platform, Novak acquired 28% equity shareholding in another OTT platform named **Sierra** ("**Sierra Acquisition**"). In the interest of full disclosure, it was notified to CCB under Section 6(2) of the Competition Act. It was *inter alia* mentioned in the notification for Sierra Acquisition that Sierra was only a small player in the market, and the market can be characterised by presence of multiple small OTT Platforms, and therefore, no appreciable adverse effect on competition (AAEC) will be caused by the Sierra Acquisition. Accordingly, the CCB via its order dated May 26, 2023 approved the Sierra Acquisition. However, Mr. Samesh Rippey, a majority shareholder of Bart (another streaming platform) has

requested a further detailed review of this transaction and challenged the CCB's approval to Sierra Acquisition with the BCLT under Section 53B of the Competition Act.

36. The CCB in the complaint filed by Orion observed that there is prima facie case of violation of Section 3 and Section 4 of the Competition Act. The DG investigation report found that Novak had abused its dominant position in the market and entered into anti-competitive agreements. Post the investigation by DG, CCB heard both the parties and found out that Novak was in violation of Section 3 and Section 4 and imposed appropriate penalty.

37. Aggrieved by the orders of CCB, Novak has now filed two separate appeals at the BCLT:

- i) Appeal number BA 2222/23, against the CCB order in the Information filed by Orion;
and
- ii) Appeal number BA 2192/23, against the CCB order in the Information filed by the Assistant Director.

38. Further, Mr. Samesh Rippy filed an appeal with the BCLT with referenced Appeal number BA 2323/23, against the approval order of CCB providing clearance to the Sierra Acquisition.

39. Owing to the nature of the appeals, common parties and inter-related issues, the BCLT decided to club these appeals together. Following issues have been raised by the parties:

- A. Whether Novak is in violation of Section 3 of the Competition Act?
- B. Whether Novak is in violation of Section 4 of the Competition Act?
- C. Whether Mr. Samesh Rippy has locus to challenge the order of the CCB dated May 26, 2023 within the meaning of Section 53B of the Competition Act, 2002.
- D. Whether the Sierra Acquisition causes AAEC in the market in light of various factors under Section 19(4) of the Competition Act?

Annexure 1

Consolidated Market Shares of the Players operating OTT Platforms

OTT Platform	Consolidated Market Shares (FY 2023)
Bart Entertainment LLP	40%
Novak Studios LLP	25%
Velar Entertainment	20%
Mikey Film and TV	10%
Sierra Entertainment	5%

Notes:

1. The laws of BinTin Land are *pari materia* with the laws of India, with the limited exceptions created in this Proposition.
2. The participants are allowed to change the order of the issues, if convenient.
3. Counsels for both sides are required to address the issues and arguments specifically mentioned in the Proposition, if any. However, they are free to frame sub-issues and make other arguments, that they deem fit. Further, the counsels are at liberty to place reliance on the relevant sub-provisions of Sections 3 and 4, as well as other provisions under the Competition Act, for their arguments.
4. Issues pertaining to maintainability of the clubbed proceedings and jurisdiction must not be argued.