



**BEFORE THE
COMPETITION COMMISSION OF PAKISTAN**

**In the matter of Show Cause Notice issued to
M/S. CINEPAX LIMITED
(File No: 07/CINEPAX/CMTA/CCP/10)**

Date of hearing:

March 1, 2011

Bench Members:

Ms. Rahat Kaunain Hassan
Chairperson

Dr. Joseph Wilson
Member

Present for:
M/s. Cinepax Limited

1) Mr. Danny Sidhwa, C.E.O
2) Mr. Pir Saad Ahsanuddin, Director

ORDER

1. This Order will dispose of the proceedings pursuant to Show Cause Notice No. 25/2010 dated July 29, 2010 (hereinafter “SCN”) issued to M/s Cinepax Limited (hereinafter “Cinepax” or “the Undertaking”), for *prima facie* violation of Section 3(1) read with Sections 3(2) and 3(3)(c) of the Competition Act, 2010 (hereinafter “the Act”).

A. FACTUAL BACKGROUND

2. Cinepax is a company registered under the Companies Ordinance, 1984 and is in the business of operating Pakistan’s only multiplex cinema in Jinnah Park, Rawalpindi and is an undertaking as defined in Section 2(1)(q) of the Act.
3. The Competition Commission of Pakistan (hereinafter the “Commission”) received a complaint alleging a tying of movie tickets with food coupons. In order to formally verify the concern expressed by the complainant, the Cartels, Monopolies and Trade Abuse (CMTA) Department of the Commission wrote a letter to Cinepax on May 7, 2010, informing them the concern raised in the Complaint, i.e., the sale of cinema tickets contingent on the mandatory purchase of food coupons worth PKR 50 each. Cinepax was asked to explain the policy on sale of cinema tickets along with food coupons and to provide historical price information. The CMTA department also requested the Commission to consider the matter and initiate a suo moto enquiry.
4. Cinepax replied vide its letter dated May 14, 2010 essentially asking for further time to submit the reply. The request was granted vide the Commission’s letter dated May 17, 2010 and Cinepax was allowed to file the required information by 21 May 2010.

5. Cinepax submitted the required information vide its letter dated May 20, 2010, stating that it had started selling the coupon with the cinema ticket as a marketing strategy to make an inevitable price increase of the latter more acceptable to customers. According to the letter, this policy was in place from September 21, 2009 till April 7, 2010 (approximately six months). An important portion of Cinepax's response is reproduced below:

“... it is correct that for a certain period of time customers were required to buy a Rs. 50 voucher along with the ticket of the face value of Rs. 250 (or Rs. 150 for matinees). However, this was only a temporary marketing exercise to try and make an overall increase in prices more palatable to the buying public. Prior to 20.9.2009, ticket prices had not been increased for almost 17 months even though there had been a considerable rise in all other prices and consumer goods. This marketing exercise was then discontinued on 7 April 2010 after which a simple ticket of Rs. 300 (Rs. 200 for matinee) has been sold instead of a ticket + voucher.”

6. During the period when the food voucher was tied in with the ticket, the sales volume was as follows:

Concession Utilized

Month	Vouchers	In RS. (Amount)
20 Sep 2009	19,139	956,950
Oct 2009	23,704	1,185,200
Nov 2009	26,803	1,340,150
Dec 2009	24,008	1,200,400
Jan 2010	60,995	3,049,750
Feb 2010	24,675	1,233,750
Mar 2010	13,567	678,350
07 April 2010	2,906	145,300
TOTAL	195,797	9,789,850

7. The letter also contained the following price table as required by the Commission:

Time Period	Ticket Price	
	Normal	Matinee
14.10.2007 – 15.11.2007	200	
16.11.2007 – 15.05.2008	200	100
16.05.2008 – 20.09.2009	250	150
21.09.2009 – 7.4.2010	250 (+Rs 50 voucher)	150 (+Rs. 25 voucher)
8.4.2010 – time of receipt of reply	300	200

B. ENQUIRY, SHOW CAUSE NOTICE, REPLIES

8. The Commission in its meeting dated May 21, 2010 considered the matter and decided to formally enquire into the matter. Mr. Syed Umair Javed, Deputy Director (CMTA), was appointed the enquiry under Section 37 of the Act.
9. The enquiry officer completed the enquiry by producing the Enquiry Report dated, July 28, 2010 (hereinafter the “Enquiry Report”). The salient findings of the Enquiry Report are as follows:

17. The products in question are distinct in nature and are not generally sold together. While food courts are common in multiplexes and high end cinemas, and customers do buy drinks and food item in the midst or in between movies, mandatory sale of food coupons is not. Such a tying places an unnecessary burden on the customers who do not have any choice but to buy the food coupon in addition to the cinema ticket. Such an arrangement is even more problematic when there is only one food service provider and no outside food is allowed in the cinema premises as is true in this case.

18. It is of no consequence that the tying was a marketing strategy to make an imminent price rise more acceptable to the consumers; the arrangement still bore all the characteristics of a tie-in. Notices placed at the cinema, and information provided to the Commission in the 21 May 2010 letter from Cinepax, clearly mentioned that the food coupon was priced separate from the cinema ticket but was being sold along with the latter.

19. *This sort of tying is a classic method for a dominant entity in one market to try and benefit from access to another by coercion. Cinepax, which is in the business of running a cinema, was trying to benefit from the food court market by coercing customers to purchase the food coupons. Many of the customers may not have wanted to buy food items from the food court; many may not have wanted to buy any food item at all. Such an action therefore restricted the choice of consumers considerably.*

20. *In light of the above-said findings, the tying arrangement put in place by Cinepax between 21 September 2009 and 7 April 2010 was, prima facie, in violation of Section 3(1) read with Sections 3(2) and Section 3(3)(c) of the Ordinance.*

10. Based on the above findings it was recommended that Section 30 proceedings maybe initiated against Cinepax for, *prima facie*, violations of Section 3(1) read with Sections 3(2) and Section 3(3)(c) of the Act.

11. The Commission taking into account the recommendations put forward by the Enquiry Officer decided to initiate proceedings under Section 30 of the Act against Cinepax and issued Show Cause Notice No. 25/2010 dated July 29, 2010, to explain why its practice of tying food coupons with tickets be considered abuse of dominance under Section 3 of the Act. They were required to reply to the SCN within fourteen days of the SCN and an opportunity for hearing was also provided to them on August 16, 2010.

12. The hearing scheduled by February 22, 2011 was adjourned at the request of Cinepax, and was intervened on March 1, 2011 at the Commission's offices in Islamabad. Mr. Danny Sidhwa, CEO and Mr. Pir Saad Ahsanuddin, Director appeared as authorized representatives on behalf of Cinepax before the Commission. At the hearing Mr. Saad emphasized on Cinepax's desire to always maintain good corporate governance. He stated that Cinepax had added the 50 PKR coupon with the movie ticket to benefit the public as well as to increase the price of the tickets which had been the same for seventeen months. He submitted that the tie-in was done for public benefit as the Undertaking had no knowledge they were violating competition law. He submitted that the tie-in had lasted for six

months and ended before the enquiry was even initiated by the Commission and after the six month period it was just the ticket that was sold for PKR 300. The representatives argued that the Enquiry Report was incorrect when it said that Cinepax was dominant and had no competition as there are eleven other cinemas in Rawalpindi which show the same movies and therefore are Cinepax's competitor. The second submission made was for a clarification by the Commission as to the relevant market in this matter.

13. The Commission is inclined to accept the Undertaking's submissions that the tie-in had been done bona fide keeping in view that the tie-in practice ended on April 7, 2010 before the Commission even initiated an enquiry into the matter and the fact that the ticket price increase actually took place soon after the tie-in was lifted seems to substantiate the plea taken that the tie-in was more of an attempt to make the price increase more acceptable to the consumer. It is, however, clarified that once an undertaking is dominant in the relevant market and is forcing a customer to buy a distinct product, it is deemed under the Act as an abuse of dominant position which prevents, restricts, reduces or distorts competition in the relevant market. With regard to the relevant market, we believe that parallel markets cannot be termed as interchangeable or substitutable by the consumers even if the intended use may be the same. It is clear that the market differs in its characteristics as well as the price. The ambience, the quality of the theatre and screen, the service, and the prices of tickets at Cinepax put it in a distinct market. Cinepax is the premium cinema in the twin cities and the other eleven cinemas are not in the same category. Therefore the relevant product market for Cinepax is different than other cinemas operating in the same geographical market. Cinepax thus has a dominant position based on its distinct product: premium cinema.
14. We reckon that if it was just free food sold in the price of the ticket inclusive of food coupon without the bifurcation or bundling, there would have been no violation but since it was sold in the form of a PKR 50 food coupon which customers were obliged to purchase, technically this falls within the purview of

tie-in as envisaged under Section 3(3)(c). For ease of reference we are reproducing the provision in its relevant parts:

“3. (2) An abuse of dominant position shall be deemed to have been brought about, maintained or continued if it consists of practices which prevent, restrict, reduce, or distort competition in the relevant market.

(3). The expression “practices referred to in sub section (2) shall include , but are not limited to-

(c) tie-ins, where the sale of goods or service is made conditional on the purchase of other goods or services.”

15. Since the basic issue is whether the tying of food coupons with cinema tickets constitutes, *prima facie*, a violation of Section 3(1) read with Sections 3(2) and 3(3)(c) of the Act. In this regard it needs to be appreciated that an undertaking is liable for the violation for committing a tie-in practice in terms of Paragraph 14 above.

16. In the *Takaful and Travel Agents Association Pakistan Ltd.*¹, Appeal Order the Appellate Bench observed that:

it is interesting to point out that in the Jefferson Parish case the court as a threshold element for unlawful tying arrangement established that there should be significant market power in the tying product market and that such power should be of the ‘degree or the kind’ that enables the sellers of the tying product to ‘force’ customers to purchase the tied product. Furthermore, in determining whether there are two distinct products unlawfully tied the court required proof that “there is sufficient demand for the purchase of the tied product separate from the tying product to identify a distinct product market in which it is efficient to offer the two separately.

17. With regard to separate products, two products are distinct if, in the absence of tying, the buyer purchases them from two different markets. In the instant matter,

¹ *Takaful and Travel Agents Association Pakistan Ltd Appeals Order dated July 16, 2010.*

by selling the movie tickets with the PKR 50 food coupon as a tied product, Cinepax did in fact tie-in two separate products; the cinema tickets and food coupons. Customers who merely wanted to watch a movie were also obliged to buy a PKR 50 food coupon even if they did not want to have any food at the cinema, which are two products distinct from each other. Therefore it is concluded that there was a violation of Section 3(1) read with Sections 3(2) and 3(3)(c) of the Act.

18. In this regard, Cinepax sought clarification from the Commission whether:

“During any future price increase Cinepax may provide customers with the option of choosing: a) to purchase a ticket for Rs. 350; or b) purchase a ticket for Rs. 300 + food voucher for Rs. 350, thereby offering them a choice/value proposition.”

19. We believe that the proposition is bit of a stretch. It does not really give the customer a real choice. While in theory a choice is being provided to the consumers who are seemingly free to buy and choose between the two options, practically speaking these are not alternatives for each other. Selling the unbundled ticket at the price of a bundled ticket is irrelevant for the subject analysis. However, if the price of the unbundled ticket was lower than that of a tied ticket with the food coupon then we could have stated that choice is available to the consumer. We are convinced that, if not all, the overwhelming majority amongst consumers are most likely to opt for a movie ticket in the amount of PKR 300 which is bundled with food voucher of PKR 50 rather than buying an individual ticket for the same price. Accordingly it is observed that offering such a choice would still fall within the purview of Section 3 of the Act.

20. Taking the peculiar facts of the case into account, we do appreciate the amicable approach of Cinepax in the matter and its desire to maintain good corporate governance with the forthcoming approach during the hearing. It offered to hold

five free movie showings during the year for the underprivileged, in their biggest screen, comprising of 300 seats, in lieu of its inadvertent violation. Moreover, the violation did not continue for long and was stopped prior to taking of cognizance by the Commission. Therefore following the Commission's compliance oriented approach where businesses are keen to rectify their behaviour and discipline themselves in accordance with law, we deem it appropriate under the circumstances to take a lenient view and accept the Undertaking's offer of holding a minimum of five free shows for the underprivileged during the year 2011.

21. We appreciate Cinepax's entrepreneurship and effort in reviving the cinema in at least the twin cities. We, however, hope that now Cinepax is aware of competition law in Pakistan, it will ensure that its commercial practices comply with the Act.

22. Ordered accordingly.

(RAHAT KAUNAIN HASSAN)
CHAIRPERSON

(JOSEPH WILSON)
MEMBER

ISLAMABAD, THE MARCH 28th, 2011.