



Case No. 10 of 2014

In Re:

Mr. Om Datt Sharma

A-82, Sector-14, Noida – 201301

- Informant

And

M/s Adidas AG

Adi-Dassler-Strasse 1, D-91074,

Herzogenaurach, Germany

- Opposite Party No. 1

M/s Reebok International Limited

1895, J. W. Foster Boulevard, Canton

Massachusetts 02021, USA

- Opposite Party No. 2

M/s Reebok India Company

Sector B, Pocket No. 7, Plot No. 11

Vasant Kunj, New Delhi- 110070

- Opposite Party No. 3

CORAM

Mr. Ashok Chawla

Chairperson

Mr. Anurag Goel

Member

Mr. M. L. Tayal

Member

Mr. S. L. Bunker

Member

Present: Shri K. K. Sharma, Advocate (on behalf of the Informant)



ORDER UNDER SECTION 26(2) OF THE COMPETITION ACT, 2002

1. Mr. Om Datt Sharma, the Managing Partner of M/s Kalpataru Enterprises, has filed the information in instant case under Section 19(1) (a) of the Competition Act, 2002 (“**the Act**”) alleging that the Opposite Parties *i.e.*, M/s Adidas AG, M/s Reebok International Limited and M/s Reebok India Company, as a group, have infringed the provisions of Section 4 of the Act with respect to sale of premium sports goods to it.
2. The Informant is stated to be engaged in the business of retailing of single brand sports goods on a franchisee model. The Opposite Party No. 1 is a listed German stock corporation and is the holding company of the Adidas Group. It has been engaged in the business of designing, developing, manufacturing and marketing of sports and leisure goods including footwear, apparel, and equipment. The Opposite Party No. 2 is a USA based renowned manufacturer of sports goods such as shoes, apparel, accessories/equipments and casual footwear, apparel *etc.*, for non-athletic use. The Opposite Party No. 3 is a registered company under the Companies Act, 1956 and, *inter alia*, is engaged in the business of supply of footwear, apparel, accessories, sports equipment *etc.*, in India.
3. It is stated in the information that the Opposite Party No. 2, through its wholly-owned subsidiary Reebok (Mauritius) Company Limited, owns 93.15% equity in the Opposite Party No. 3 and the Opposite Party No. 1 acquired 100% equity in the Opposite Party No. 2 in 02.08.2005. Thus, since 02.08.2005, all the Opposite Parties belong to a group headed by the Opposite Party No. 1(henceforth, “**the Adidas AG Group**”), as provided in the Act.
4. Relying on a research study report of the Indian Council for Research on International Economic Relations (ICRIER) on ‘*Sports Retailing in India*’, different newspaper articles, case laws of the European Commission and India, a market study report by a group of students of MDI (Management Development Institute), on “*Marketing Strategy of Reebok in India*”, and its own assessment



the Informant submitted that the Adidas AG Group held a dominant position in the relevant of “*market of sale of premium sports goods in Noida*”.

5. As per the information, through a Franchisee Agreement (“**the Agreement**”) on 27.08.2003, the Opposite Party No. 3 appointed the Informant as franchisee for sale of its manufactured and/or branded premium sports goods in a retail outlet at F-26, Sector 18, Noida, Uttar Pradesh. The duration of ‘the Agreement’ was three years, subject to renewal.
6. Following the expiry of the term of ‘the Agreement’, the Informant was orally assured by the Opposite Party No. 3 that ‘the Agreement’ shall be replaced by a new franchisee agreement with more favourable terms. Based on its assurance, the Informant continued to carry on the business as per ‘the Agreement’ and purchased goods numerous times from the authorized distributor of the Opposite Party No. 3 and sold its product till February, 2009.
7. The Informant averred that thereafter, the Opposite Party No. 3 had failed to fulfil its several obligations such as to pay the amount due under ‘the Agreement’, to collect the unsold stocks/goods *etc.*, which caused financial loss to it which amounts to imposition of unfair terms and conditions in contravention of the provisions of Section 4(2) (a) (i) of the Act. In this regard the Informant had sent last email to the Opposite Party No. 3 on 16.01.2014 to remind it to collect the unsold goods from it.
8. The Informant alleged that the terms and conditions of ‘the Agreement’ are not only unfair but also discriminatory *vis-a-vis* other franchisees. To substantiate its claim, the Informant submitted that the Opposite Party No. 3 had entered into a franchisee agreement with one M/s Neelkanth Traders on 27.03.2006 which had more favourable terms than the one entered with it. The rate of commission given to the Informant was 28% whereas M/s Neelkanth Traders was given 33%. It is averred that such discriminating practice of the Opposite Party No. 3 had put some franchisees/retailers at a competitive disadvantage position *vis-a-vis* the others thus, causing an appreciable adverse effect on competition in the downstream market. The Informant alleged that the said acts of the Adidas AG



Group amounted to imposition of discriminatory conditions which is in infringement of the provisions of Section 4(2) (a) (ii) of the Act.

9. The Informant contended that though ‘the Agreement’ was executed prior to ‘the Act’ coming into force, however, the Adidas AG Group become liable since the anti-competitive effects of ‘the Agreement’ continued even after the enforcement of the relevant provisions.
10. Based on the above stated facts and grounds, the Informant prayed before the Commission to initiate an investigation into the matter; to restrain the Adidas AG Group from the above said activities; to recommend such clauses which the Adidas AG Group should uniformly apply across all their franchise agreements; and to pass such other and further order(s) as the Commission may deem fit and proper.
11. The Commission has perused the material available on record and heard the learned counsel appearing on behalf of the Informant. Facts of the matter reveal that the allegations of the Informant pertains infraction of the provisions of Section 4 of the Act by the Opposite Parties.
12. The first issue needs to be examined is that whether the Opposite Parties can be treated as a ‘group’ for applicability of the provisions of Section 4 of the Act? As per Explanation (b) of Section 5 of the Act, “group” means:

“two or more enterprises which, directly or indirectly, are in a position to-

 - (i) exercise twenty-six percent or more of the voting rights in the other enterprise; or*
 - (ii) appoint more than fifty percent of the members of the board of directors in the other enterprise; or*
 - (iii) control the management or affairs of the other enterprise”*
13. It is observed that the Opposite Party No. 1 acquired 100% equity in the Opposite Party No. 2 on 02.08.2005 and the Opposite Party No. 2, through its wholly owned subsidiary Reebok (Mauritius) Company Limited, owns 93.15%



equity share in the Opposite Party No. 3. Thus, based on the above said provisions of 'the Act' all the Opposite Parties can be treated as 'a group' for the purpose of Section 4 of the Act.

14. For examining the alleged abusive conduct of the Adidas AG Group, the first essential requirement is to delineate the relevant market and then, to assess its dominance in the relevant market followed by the examination of its alleged abusive conduct.
15. On the issue of relevant product market, the Informant contended that the market for premium branded sports goods including footwear, sports apparel, protective equipment, and sport-specific equipment like cricket bat, football, hockey sticks and pucks *etc.*, manufactured by the prominent and well-known brands such as Adidas AG (brand "Adidas"), Reebok (brand "Reebok"), Nike AG (brand "Nike") and Puma AG Rudolf Dassler Sport (brand "Puma") constitutes a separate product market.
16. The Commission notes that for determining the relevant product market, the demand side substitutability is the decisive factor because whether a consumer would consider any other product as a substitute or inter-changeable with the products manufactured by the Opposite Parties will determine what all goods can be included in the relevant product market definition. Seemingly, sports goods like sports apparel, sports shoes, sports equipments have a different intended end-usage and are generally not-substitutable for a consumer intending to purchase the same. With the growing trend of premiumisation, the consumers seek to purchase better quality and innovative product, thereby making the non-branded sports goods non-substitutable for premium branded sports goods. Further, substantial price difference between the branded and non-branded sports goods makes the market for branded sports goods a separate relevant product market because there are different consumer groups for the above said two types of markets. Accordingly, the Commission is of the opinion that the relevant product market in this case is '*the market of premium sports goods*'.



17. With regards to the relevant geographic market, the Informant urged the Commission to consider the territory of Noida as the relevant geographic market because it is operating at Noida and for a franchisee a particular geographic area is not substitutable for another area. As per Section 2(s) of the Act, relevant geographic market comprising the area in which the conditions of competition for supply of goods or provision of services or demand of goods or services are distinctly homogenous and can be distinguished from the conditions prevailing in the neighbouring areas. Based on the provisions of the Act, the territory of Noida appears to be the relevant geographic market in the instant case. Because a consumer prefers to purchase such products from a location which is easily accessible by him. A consumer residing in Noida would not prefer to go to National Capital Region (NCR) or other cities solely with a view to purchase the sports goods as it involves additional transportation cost and time. Thus, *prima facie*, the relevant market in the present case appears to be *'the market of premium sports-goods in Noida'*.

18. On the issue of dominance, the Informant contended that the Adidas AG Group held a dominant position in the relevant market as defined above. In support of its contention the Informant placed reliance on the ICRIER study report (June, 2010) on 'Sports Retailing in India' which states that Reebok held 50% of the market and Adidas held between 20%-25% in the premium branded sportswear market in India. Though Nike and Puma seems to operate in the same market but the majority of the market is catered by the Adidas AG Group which runs thousands of stores across India. However, the Informant has not provided the market share data of the Adidas AG Group pertaining to the geographic area of Noida. Based on the all India market share figure submitted by the Informant, it seems that the same set of players operate in the market for sale of premium sports-goods across India and the market share distribution of the Adidas AG Group and its competitors in Noida is likely to follow the similar pattern. Considering the nature of distribution of relevant product market in India, the Commission feels that market share of the players in Noida will not be substantially different from their market shares in India. Accordingly, the Commission, in consonance with the Informant's contention, is of the *prima*



facie view that the Adidas AG Group appears to be in a dominant position in the relevant market as defined above.

19. Having established that the Adidas AG Group is in a dominant position in the relevant market, the next issue is to examine whether its alleged conduct is abusive in terms of the provisions of Section 4 of the Act. On the issue of abusive conduct of the Adidas AG Group, the Informant contended that the terms of ‘the Agreement’ which it entered into with the Opposite Party No. 3 to run a franchise store at Noida are unfair and discriminatory *vis-a-vis* the agreement the Opposite Party No. 3 entered into with another franchise namely, M/s Neelkanth Traders. Some of such conditions are: difference in the rate of commission assured to the Informant and M/s Neelkanth Traders, assurance of a minimum guaranteed payment for operating the retail outlet to M/s Neelkanth Traders whereas Informant was not offered such term, M/s Neelkanth Traders was promised a monthly rent to be paid to the property owner of the retail outlet whereas Informant was not offered such term, the Opposite Party No. 3 has unilateral power to terminate ‘the Agreement’, no liberty was given by the Opposite Party No. 3 to the franchise to return the unsold goods, *etc.* As per the Informant, the said acts of the Adidas AG Group are in contravention of section 4(2) (a) (i) and 4(2) (a) (ii) of the Act.
20. It was also pointed out by the Informant that after the expiry of the term of the franchisee Agreement in 2006, the Informant and OP 3 continued to do business as per that Agreement and Informant continued to function as OP 3’s franchisee till February, 2009 i.e., when the last sale of OP 3’s products from the Informant’s Franchisee was being made. Thereafter, allegedly OP 3 never took back the dead stock lying at Informant’s store leading to insurmountable losses to the Informant.
21. After having perused these allegations, the Commission is of the opinion that the allegations seem baseless and not amounting to an abuse of dominant by the Adidas AG Group within the meaning of Section 4 of the Act. Without going into greater details of the allegations posed, it may be pertinent to take note of the chronology of events that took place from 2003 to 2009. ‘The Agreement’



was entered into between the Opposite Party No. 3 and the Informant on 27.08.2003 when the Opposite Party No. 3 was not part of the Adidas AG Group alleged to be dominant in this case. In August, 2005, the Opposite Party No. 1 acquired the Opposite Party No. 2 (and also the Opposite Party No. 3) and the Adidas AG Group came into existence. 'The Agreement' expired on 26.08.2006 as per the terms stated therein. The Informant submitted that 'the Agreement' continued thereafter on oral understanding between the parties on the same terms and conditions. On 27.03.2006, another franchisee agreement between the Opposite Party No. 3 and its another franchisee M/s Neelkanth Traders was entered into which was alleged to be more favourable than the one entered into between the Informant and the Opposite Party No. 3 in 2003.

22. The Commission finds two fundamental flaws in the allegations made by the Informant. Firstly, 'the Agreement' which was termed as unfair and arbitrary was entered into in 2003 when the alleged dominant group had not even come into existence. Secondly, even if the submission of the Informant regarding dominance of the Adidas AG Group is accepted post the formation of group in 2005, the conduct of the Adidas AG Group *vis-a-vis* the Informant remained same (as 'the Agreement' was said to be continued on same terms and conditions). Further, as per Informant's own submissions, the agreement with M/s Neelkanth Traders was more favourable than the one with it which fact goes against the allegation of abuse by the Adidas AG Group.

23. Although there were certain differences between the two franchisee agreements as stated above, the differences cannot be termed as abusive unless they are discriminatory within the meaning of section 4(2) (a) (i) and 4(2) (a) (ii) of the Act. These franchisee agreements were entered into on different dates, the first one (between the Opposite Party No. 3 and the Informant) was executed in August 2003 and the second (between the Opposite Party No. 3 and M/s Neelkanth Traders) in March 2006. It may also be pertinent to note that a manufacturer is not be obligated to follow a single template agreement throughout its existence. With passage of time and operations, the commercial arrangements may undergo a change. It is not the case of the Informant that the



margin of 28% was imposed on him even after the expiry of 'the Agreement' in 2006. 'The Agreement' was renewable/terminable after 3 years (*i.e.*, after 27.08.2006) by mutual consent of the parties. Moreover, the difference of margins is not substantial which can be termed as abusive within the meaning of Section 4 of the Act.

24. The Commission further notes that the allegation of the Informant regarding the Opposite Party No. 3 not taking back the dead stock lying in the custody of the Informant which allegedly inflicted financial harm on it, *prima facie* does not raise any competition concern. Otherwise also, the Informant did not provide any correspondence sent to the Opposite Party No. 3 regarding the dead stock lying at its store between February, 2009 (when the last sale of the Opposite Party No. 3's products from the Informant's Franchise was being made) and 16 January, 2014 when allegedly a request was made to take back the dead stock. It seems unlikely that a person feeling aggrieved by the abusive conduct of the Adidas AG Group selects to suffer silently for five long years. In the backdrop of this fact the e-mail which was purportedly sent on 16.01.2014, just before filing the information, appears to have been sent only to bring the case within the jurisdiction of the Commission. Therefore, the contention of the Informant that though 'the Agreement' was executed prior to the Act coming into force, the Opposite Parties are liable as its anti-competitive effects continue even after the enforcement of the provisions of the Act, in the absence of any evidence to this effect, cannot be accepted.
25. Based on the foregoing, the Commission is of the considered opinion that the conduct of the Adidas AG Group, *prima facie*, does not amount to any contravention of the provisions of Section 4 of the Act. Therefore, even though the Adidas AG Group appears to be a dominant group in the relevant market defined *supra*, the facts available on record show no violation of provisions of Section 4 of the Act in the present matter.



Competition Commission of India



26. For the reasons stated above, the case deserves to be closed down under Section 26(2) of the Act.
27. The Secretary is directed to send a copy of the order to all concerned.

Sd/-
(Ashok Chawla)
Chairperson

Sd/-
(Anurag Goel)
Member

Sd/-
(M. L. Tayal)
Member

Sd/-
(S. L. Bunker)
Member

New Delhi
Dated: 13-05-2014