



सत्यमेव जयते



Fair Competition for Greater Good

**COMPETITION COMMISSION OF INDIA**

**Case No. 104 of 2013**

**In Re:**

**Shri. Jeetender Gupta**

**Informant**

**And**

**1. BMW India Ltd**

**Opposite Party No. 1**

**2. BMW India Financial Services Pvt. Ltd.**

**Opposite Party No. 2**

**CORAM**

**Mr. Ashok Chawla  
Chairperson**

**Dr. Geeta Gouri  
Member**

**Mr. Anurag Goel  
Member**

**Mr. M. L. Tayal  
Member**

**Mr. Justice (retd.) S.N. Dhingra  
Member**

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



**Order under Section 26(2) of the Competition Act, 2002**

1. The present information has been filed on 30.12.2013 by Shri Jeetender Gupta (the “Informant”) under Section 19(1)(a) of the Competition Act, 2002 (the “Act”) against BMW India Ltd & Ors. (Opposite Party No.1/BMW) and BMW India Financial Services Pvt. Ltd. (Opposite Party No. 2) alleging contravention of the provisions of section 4 of the Act.
  
2. The Informant, Shri Jeetender Gupta, is stated to be an advocate at Delhi High Court, residing in Faridabad, Haryana. It has been averred that the Informant is one of the directors of M/s Ispace Buildwell Pvt. Ltd., a company incorporated under the Companies Act, 1956 (the “Companies Act”), which has purchased a BMW X1 branded automobile from Opposite Party 1 on 31.12.2011.
  
3. The Opposite Party No. 1 is a company incorporated under the Companies Act 1956. It is 100% subsidiary of BMW Group, world’s largest manufacturer of premium & luxury cars. The Opposite Party No. 2 is a wholly owned subsidiary of Opposite party No. 1 which provides financing, motor insurance, leasing and other similar services to existing and prospective BMW customers in India.
  
4. It has been averred in the information that Opposite Party No. 1 does not provide a spare tyre popularly called Stepney in the trunk of the cars manufactured/sold by them. It has been stated by the Informant that the “BMW” brand of cars made/ marketed by Opposite Party No.1 employ a run flat tyre technology which allows the vehicle to operate in flat tyre running mode at a speed of 80 km/h (50 mph) and a distance of 80 km when operating in flat tyre running mode.



5. According to Informant, since spare tyre is a standard feature and its absence would normally not be expected, this omission is likely to remain unnoticed even during the test drives, unless notified explicitly. The Informant has alleged that that the Opposite Party No. 1 makes no suitable efforts to inform their prospective customers about the missing spare tyre feature either through their promotional advertisements or promotional material at various showrooms etc. Their sales team also allegedly deviate the subject by selectively informing prospective customers about the features & advantages of run flat tyre technology. They neither clearly spell out that there would be no provision of a spare tyre in the car nor they inform about the likely procedure a customer would be required to adopt in the event of any tyre puncture or flat tyre.

6. According to the Informant, the Opposite Party No. 1 capitalizes on the run flat tyre technology to bundle with every new sales a specialized insurance policy called “BMW Secure Advance” from its subsidiary i.e. Opposite Party No. 2. This is marketed as an essential feature that would enable consumers to get tyres replaced free of cost subject to certain terms & conditions. The Informant has alleged that while the Opposite Parties project the insurance policy to be something exclusive, it is not the case. The tyres that can be replaced through insurance are restricted to four in number, in a given year. Tyre replacement is not at all free of cost, but depending upon the quality of the tyre, only a percentage of tyre value is provided by the insurance policy.

7. According to the Informant, The Opposite Party No. 1 not only forces upon the flat tyre technology but also misuses this as an advantage to market an insurance policy through Opposite Party No. 2 thereby adversely affecting the competition to sell insurance policies for the cars or preventing the consumers to consider alternate insurance policy. The insurance policy sold through BMW, are much higher priced than the competitors, even though the same facilities are also provided by most other insurance companies. Thus BMW is misusing its dominant position to force upon a tyre technology which would provide them leverage to sell insurance through them at a higher price



than market, which is clearly an abuse both towards the consumer as well as the competition. Also, it has been alleged that the Opposite Party No. 1 uses its dominant position in the market of luxury cars to enter into the market for insurance. Thus, the Informant has alleged contravention of Section 4(2)(c), 4(2)(d) and 4 (2)(e) of the Competition Act 2002.

8. The Informant alleges that the Opposite Party No. 1 does not clarify to the prospective customers that for every puncture or flat tyre, however minor it may be, they would have no option than to get the tyre replaced. Since no spare tyre is provided, the car would continue to run for a few kilometres before it could be sent to a “BMW” service centre which would affect the tyre damage and hence the value that can be recovered through the insurance.

9. The Informant has prayed that the Commission pass suitable orders, *inter alia*, to restrain the respondents for further misuse of their dominant position in causing prejudice to consumers and competition, direct the Opposite Party No. 1: (a) to provide a spare tyre or to streamline the tyre replacement procedure and (b) not to provide undue advantage to Opposite No. 2 in selling motor insurance policy. The Informant has also petitioned the Commission to impose suitable penalty upon the Opposite Parties No. 1 and 2 for misusing their dominant position and causing financial/emotional harassment to consumers and competition.

10. The Commission has perused the information and other material available on record. The Commission, on 19.02.2014 heard the Informant’s arguments on the point of a *prima facie* case and decided to pass an appropriate order in due course.

11. Under the provisions of section 4 of the Competition Act, the alleged dominance of the Opposite Parties needs to be examined within the context of a relevant market. For determining whether a market constitutes a ‘relevant market’ for the purposes of the Act, the Commission is required to have due regard to the ‘relevant geographic market’ and ‘relevant product market’ by



virtue of the provisions contained on section 19(5) of the Act. To determine the 'relevant geographic market', the Commission is to have due regard to all or any of the following factors viz., regulatory trade barriers, local specification requirements, national procurement policies, adequate distribution facilities, transport costs, language, consumer preferences and need for secure or regular supplies or rapid after-sales services. Further, to determine the 'relevant product market', the Commission is to have due regard to all or any of the following factors viz., physical characteristics or end-use of goods, price of goods or service, consumer preferences, exclusion of in-house production, existence of specialized producers and classification of industrial products.

12. In light of the above, the relevant market needs to be determined. As noted above, the informant in the present case appears to be aggrieved by the alleged business practices of the Opposite Parties which allows them to impose unfair prices/conditions upon their customers as well as cause denial of market access to their competitors in the Indian luxury car market. Thus, the relevant product market in the present case appears to be the market for luxury cars in India. For the purpose of elaborating, Luxury cars have been defined in the Government of India's budget for the financial year 2013-14 (for the purpose of imposition of customs duty) as vehicles costing more than US\$40,000 and/or having an engine capacity exceeding 3,000cc for petrol run vehicles and exceeding 2500cc for diesel run vehicles. Although the aforesaid definition of the Indian luxury car segment has been defined from a customs duty point of view, the Commission is of the opinion that the same would be helpful for the present purposes. Given that the conditions of competition in the luxury car market are homogeneous throughout the territory of India, the relevant geographic market in both categories appears to be the entire territory of India.

13. Once the relevant market is defined, the next step is to examine whether the opposite parties are in dominant position in the said relevant market. By virtue of explanation (a) to section 4 of the Act, 'dominant



position' means a position of strength, enjoyed by an enterprise, in the relevant market, in India, which enables it to operate independently of competitive forces prevailing in the relevant market; or to affect its competitors or consumers or the relevant market in its favour.

14. Further, the Commission, while inquiring whether an enterprise enjoys a dominant position or not under section 4 of the Act, is required to have due regard to all or any of the following factors *viz.* market share of the enterprise; size and resources of the enterprise; size and importance of the competitors; economic power of the enterprise including commercial advantages over competitors; vertical integration of the enterprises or sale or service network of such enterprises; dependence of consumers on the enterprise; monopoly or dominant position whether acquired as a result of any statute or by virtue of being a Government company or a public sector undertaking or otherwise; entry barriers including barriers such as regulatory barriers, financial risk, high capital cost of entry, marketing entry barriers, technical entry barriers, economies of scale, high cost of substitutable goods or service for consumers; countervailing buying power; market structure and size of market; social obligations and social costs; relative advantage, by way of the contribution to the economic development, by the enterprise enjoying a dominant position having or likely to have an appreciable adverse effect on competition; and any other factor which the Commission may consider relevant for the inquiry.

15. The Commission has noted that the Opposite Party No. 1, entered the Indian luxury car market in 2006 and has been a major player with significant market share. It toppled Mercedes Benz to become the largest seller in the market in 2009. But recently, its market share has dropped and Audi has taken over as the leading brand in the market. The Commission has also considered the fact that the Indian luxury car market is a nascent, rapidly growing and highly competitive market with fluctuating market shares. In such a scenario, a high current market share cannot be construed as a sign of market power or dominance. At the same time, Opposite Party No. 1 is a reputed global brand with loyal brand following and given the price-insensitivity of the product, it



may be thought of carrying significant market power, but it does not extend to the degree of 'dominance'. The fluctuating market shares of luxury car manufactures in India is evident from the following table:

Sale of luxury cars in India			
Companies	2012	2013	% of change
Audi	9,003	10,002	11
Mercedes	6,840	9,003	32
BMW	9,375	7,327	-22
JLR	2,383	2,913	22
Volvo	810	913	13
Total	28,411	30,158	6

*Source: The Economic Times, BMW loses crown to Audi, Mercedes in luxury car market, January 17, 2014*

16. It is evident from the table above, that the market share of the entire luxury car segment and that of the individual luxury car manufacturers are transient in nature and the swing in their market shares within a period of a single year is remarkably high, for the Commission to conclude that any one of these companies can be dominant, since for a company to be dominant in a relevant market, it should have substantial market power and should be able to hold on to that market power for a reasonable period of time. The Commission is of the opinion that it is not so in the case of Opposite Party No. 1.

17. Significant competitive constraints exist on BMW in the Indian luxury car market as its competitors are adopting an aggressive strategy to gain market share and are rolling out broader product portfolios, expanding dealer networks and competitive add-on offerings. The Commission is of the opinion that in the primary market, although Opposite Party No: 1 is a major player in a highly concentrated industry with significant market power, but is not a dominant player, as per explanation (a) to section 4(2) of the Act, with an ability to act independent of its competitors and customers. In the absence of dominance, the question of abuse of dominance in the relevant market does not arise.



18. The Commission would like to point out that the allegation of the Informant that the Opposite Party No. 1 does not provide a spare tyre is not entirely correct. Although, the Opposite Party No. 1 does not provide a spare tyre (a stepney) however, as noted in a product brochure of BMW X1 dated February 2013; the company provides in India an emergency spare wheel system, under the accessories segment, on the payment of additional cost. Therefore, from a functional perspective, a BMW customer can have a spare tyre in the trunk of its car, especially while travelling long distances or when travelling to remote locations. The Informant has also alleged that the 'run flat tyre' technology is not a standard feature of Indian automobiles. The Commission has noted that the Automotive Research Association of India has promulgated 'Automotive Industry Standard-110' (May 2009) which provides the Indian standard for use of 'run flat tyre'. Therefore, the allegation that the Opposite Party No. 1 is using a non-standard vehicle equipment on its brand of cars sold in India, is not correct.

19. Finally, the Commission on perusal of the information is of the opinion, that the Informant has alleged that the Opposite Party No.1, uses its dominance in the Indian luxury car market to:

- (a) Use deceptive trade practices by not informing prospective consumers about the employment of the run flat tyre technology by BMW vehicles and the customer often realizes the absence of a spare tyre only after the delivery of the purchased car;
- (b) Bundle the sale of BMW cars with a specialized insurance policy called "BMW Secure Advance" from its subsidiary, Opposite Party No. 2, with onerous terms and which increase the tyre replacement costs of BMW consumers;
- (c) To leverage into the market to sell insurance, since the 'BMW Secure Advance' is priced higher than similar insurances provided by other insurance companies in India;





- (d) Such bundling of insurance policy with the sale of BMW branded cars also cause ‘denial of market access’ to other insurance companies, tyre manufacturers or tyre sale/repair/service agencies etc.

The Commission finds that since, as per the Informant, the allegations of abuse emanates from the Opposite Part No. 1 having a dominant position in the relevant market of luxury cars in India. Since the Commission has already found that the Opposite Party No. 1 is not dominant in the relevant market, the question of abuse of such dominance by Opposite Party No. 1 is moot. The Commission is of the view that there is no *prima facie* case of violation of section 4 of the Act as the Opposite Parties:

20. In the result, the information is misconceived and deserves to be closed forthwith in terms of the provisions contained in section 26(2) of the Act.
21. It is ordered accordingly,
22. The Secretary is directed to inform the parties accordingly.

**Sd/-  
(Ashok Chawla)  
Chairperson**

**Sd/-  
(Geeta Gouri)  
Member**

**Sd/-  
(Anurag Goel)  
Member**

**Sd/-  
(M. L. Tayal)  
Member**

**Sd/-  
S.N. Dhingra  
Member**



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**Sd/-  
(S. L. Bunker)  
Member**

New Delhi

Date: 28/02/2014