



Competition Commission of India



Case No. 105 of 2013

In Re:

M/s Bull Machines Pvt. Ltd.

Informant

And

1. M/s JCB India Ltd.

Opposite Party No. 1

2. M/s J.C. Bamford Excavators Ltd.

Opposite Party No. 2

CORAM

Mr. Ashok Chawla
Chairperson

Dr. Geeta Gouri
Member

Mr. Anurag Goel
Member

Mr. M. L. Tayal
Member

Mr. S. L. Bunker
Member

Present: Shri Ramji Srinivasan, Senior Advcoate along with Advocate Shri Anand S. Pathak,
for the Informant.



Order under Section 26(1) of the Competition Act, 2002

The present information has been filed under Section 19 (1) (a) of the Competition Act, 2002 (**‘the Act’**) by M/s Bull Machines Pvt. Ltd. (**‘the Informant’**) against M/s JCB India Ltd. (**‘the Opposite Party No. 1’**) and M/s J.C. Bamford Excavators Ltd. (**‘the Opposite Party No. 2’**) [collectively hereinafter to be referred as **‘JCB’**] alleging *inter alia* contravention of the provisions of Section 4 of the Act.

2. Factual matrix of the matter, as unfolded in the information, is stated below:

2.1. The Informant, a small scale industry company, is stated to be engaged in manufacturing of low cost backhoe loaders, called **‘Bull Smart’**, a light construction equipment. The Opposite Party No.1 is a public limited company incorporated under the Companies Act, 1956, having its registered office in New Delhi, is stated to be India’s largest manufacturer of construction equipments and is a wholly owned subsidiary of the Opposite Party No. 2. The Opposite Party No. 1 has been engaged in manufacturing of 21 different construction and earthmoving machines under 7 product types such as Backhoe Loaders, Loading Shovels, Tracked Excavators, Compactors, Telehandlers, Skid Steer Loaders and Pick and Carry Cranes in India.

2.2. As per the information, the product **‘Bull Smart’** of was exhibited at **‘Excon 2011 Exhibition’**, Bangalore; India’s premier earthmoving machinery exhibition (and stated to be South Asia’s largest construction equipment exhibition) and the product was due to be launched in 26th November, 2011 in the said exhibition. It is stated that **‘Bull Smart’** became a sensation and received overwhelming appreciation from existing and potential customers and peers from across the industry and attracted heavy crowds on the very first day of the exhibition because it is an indigenously developed 60 Hp hydrodynamic transmission based backhoe loader.

2.3. It is alleged that during the formal launch of **‘Bull Smart’** at the **‘Excon 2011 Exhibition’**, the Informant was served with an ex parte interim injunction order granted by the



Hon'ble High Court of Delhi in I.A. No. 18812 of 2011 in CS (OS) No. 2934 of 2011 dated November 25, 2011 by JCB wherein it was alleged that the Informant had infringed the design registrations/copyright of JCB in developing the backhoe loader 'Bull Smart'. The said order restrained the Informant and its dealers 'from making, selling, offering for sale, dispatch, advertising, directly or indirectly dealing in/launching backhoe loaders in any manner.

- 2.4. It is the case of the Informant that JCB obtained the *ex-parte ad interim* injunction order based on misrepresentation of images/design registration number/documents and bogus numbers, suppression of its pre-existing UK patent, misrepresentation by comparing the wrong angle of the images in the application and reliance upon fraudulent design registrations which were pre-existing in the public domain.
- 2.5. It is further averred that JCB, armed with the *ex parte* order of the Hon'ble Delhi High Court, forced the Informant to remove the backhoe loader 'Bull Smart' from 'Excon 2011 Exhibition' in front of a huge crowd of dealers, existing and potential customers, end-customers, financing company officials, bankers, suppliers, foreign delegates and peers in the industry and media.
- 2.6. Furthermore, it is stated that on the same day *i.e.*, November 26, 2011, pursuant to the said order, two teams consisting of local Commissioners appointed by the Hon'ble Delhi High Court alongwith JCB officials and their advocates visited the Informant's plant located at Coimbatore and the office at Noida and stopped the operations and production of the backhoe loader 'Bull Smart'. In the process, all the documents, moulds, components were seized and sealed. Resultantly, the new dedicated modern plant of the Informant for manufacture of 'Bull Smart' at Coimbatore was closed. The said *ex parte* order of the Hon'ble Delhi High Court prohibited even the dealers from displaying any sales, promotional material or the product itself at the dealer(s) showroom and, as a result, the dealerships were closed across India on the day of the formal launch and even before the formal sale of 'Bull Smart' could commence.
- 2.7. On November 29, 2011, the Informant filed IA No. 19122 of 2011 in CS (OS) No. 2934 of 2011 under Order 39 Rule 4 of the Civil Procedure Code, 1908 for vacation of the *ex-*



parte interim stay order and submitted all the evidence required to show that there is no similarity in the design of backhoe loader ‘Bull Smart’ developed by it and the designs registered by JCB. The Informant also stated that in its application for vacating the *ex-parte* ad interim order, it submitted evidences to show that JCB misrepresented the images and the design registration numbers/documents and misled the Hon’ble Delhi High Court to secure an *ad interim ex-parte* injunction order in its favour. Further, the Informant also adduced evidence before the Controller of Designs to show that the design registrations obtained by JCB were fraudulently obtained.

2.8. During the hearing of the application of the Informant, JCB informed the Hon’ble High Court that it wish to inspect ‘Bull Smart’ through their engineers to verify if any of its registered designs were infringed by the Informant. Resultantly, a consent order was passed by the Hon’ble High Court on December 12, 2011 whereby it was ordered ‘...*that parties have arrived at a workable interim arrangement by which it is agreed that: (i) the interim order dated 25.11.2011 shall stand suspended, till further orders; and (ii) the defendants will permit the engineers of the plaintiff to inspect the product in question at a time, date and place to be mutually agreed upon between the parties within ten days from today*’.

2.9. It is averred in the information that after nearly 10 months from the filing of the said suit, JCB, much to the surprise of the Informant, voluntarily withdrew its application for *ex-parte* interim injunction without submitting any inspection report or reply. In view of the above, the Hon’ble Delhi High Court dismissed (as withdrawn) the said I.A. No. 18812 of 2011 in CS (OS) No. 2934 of 2011. Therefore, the *ex-parte interim* order procured by JCB by misrepresenting facts before the Hon’ble Delhi High Court was vacated, but unfortunately huge irreparable damages had been already caused to the Informant and JCB’s objectives achieved, alleges the Informant.

3. Based on the above averments and allegations, the Informant has prayed to the Commission to:

(a) *direct JCB to cease and desist from misusing or abusing judicial process to exclude competitors, including the informant, and all other anti-competitive activity; and*



(b) penalize JCB for its anti-competitive practices in contravention of the provisions of the Act.

4. The Commission has perused the information and the written submissions filed on behalf of the Informant and heard the senior counsel appearing for the Informant at length.
5. From the information, it appears that the parties herein *i.e.*, the Informant and JCB both develop and manufacture construction and earthmoving equipments. Construction and earthmoving equipments cover a wide range of machines that are used in the preliminary phases of building construction and civil engineering. These machines excavate, remove, level and displace stones and other heavy materials over a short distance earth.
6. The sector of machines for construction appears to be divided into two sub-sectors: (a) heavy construction equipment, which includes the machines used for large construction and reclamation, as well as major infrastructure projects; and (b) light construction equipment, covering machines with similar characteristics to heavy construction equipment, but with lesser power, weight and ability to work, and generally intended for maintenance work. Such machines are generally used in urban areas or in restricted environments. The light construction equipments include five product groups: skid steer loaders, mini and midi excavators, small wheel loaders, backhoe loaders and telescopic handlers.
7. It may be noted that Section 2(t) of the Act defines ‘relevant product market’ to mean a market comprising all those products or services which are regarded as interchangeable or substitutable by the consumer, by reason of characteristics of the products or services, their prices and intended use.
8. The Commission observes that as no two equipments (construction and earthmoving)/products can perform exactly the same function, they cannot be substituted by the users/consumers for their end use. Thus, each equipment/product forms a distinct product market. Accordingly, the market for backhoe loader is a distinct product market which may be taken as the relevant product market in this case.
9. So far as the ‘relevant geographic market’ is concerned, it may be pointed out that as per the definition of the term as given in Section 2(s) of the Act, it comprises 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. As nothing has been brought on record or is otherwise discernible therefrom to reflect heterogeneity in the conditions of competition with respect to the relevant product, it is to be assumed that the conditions of competition for supply of the product in question are homogenous throughout India. Hence, the relevant geographic market in the present case may be taken as whole of India.

10. Accordingly, the Commission considered *'the market for manufacturing and sale of backhoe loaders in India'* as the relevant market in the present case.
11. It is observed from the information that the Opposite Party No. 1 is a wholly owned subsidiary of the Opposite Party No. 2 and as such both entities constitute a 'group' within the meaning of the term as used in the Act.
12. In the aforesaid relevant market, the Informant has stated that JCB is super dominant. In support of its claim the Informant stated that JCB's market share in the relevant market is 75% and is the world leader. It has vast financial resources and in a position to curtail or curb competition in the relevant market and can operate independent of competitive forces. It is pointed out that JCB is a highly vertically integrated manufacturer and can make their own transmission systems, hydraulic cylinders and cabs in the plant. Further, JCB has a network of 54 dedicated dealers and over 450 sale and service outlets throughout the country, more than 3000 trained service engineers more than and 56 mobile service vans. Also, JCB India recorded 30% growth in sales in fiscal year 2011 compared to the year 2010. During 2011, the market size of backhoe loaders was 33,500 units in India, wherein JCB alone sold 24,500 units. It is submitted that being the market leader, the consumers are dependent on JCB and because of its global brand name. It is also stated that sunk costs contribute to high entry barriers in the relevant market because a new entrant would be required to set up complex and costly infrastructure and a distribution/dealership network and other systems to run the business and to incur expenditure on research and development, quality improvements and advertising to compete effectively in the relevant market.



13. From the afore noted details about JCB on market share, size and resources, dependence of consumer on it, etc., *prima facie*, it appears that JCB is a dominant entity in the relevant market for manufacture and sale of backhoe loaders in India.
14. The entire case of abuse as laid and made by the Informant is predicated upon the alleged bad faith litigation filed by JCB before the Hon'ble High Court of Delhi. It is the case of the Informant that the bad faith litigation initiated by JCB against it alleging infringement of its design rights was totally false and that the said legal proceedings before the Hon'ble High Court of Delhi were only initiated to harass it and prevent the launch of 'Bull Smart', which in effect would have competed with backhoe loaders of JCB in the relevant market. Furthermore, it is the case of the Informant that the injunction was obtained on the basis that the Informant had allegedly infringed the registered designs and copyrights of JCB while manufacturing 'Bull Smart', which designs/ copyrights themselves were obtained fraudulently.
15. The Commission observes that the predation through abuse of judicial processes presents an increasingly threat to competition, particularly due to its relatively low anti-trust visibility.
16. In view of the allegations projected in the information and as detailed hereinabove, the Commission is of *prima facie* opinion that JCB by abusing their dominant position in the relevant market sought to stifle competition in the relevant market by denying market access and foreclosing entry of 'Bull Smart' in contravention of the provisions of Section 4 of the Act.
17. Accordingly, the Commission directs the Director General (DG) to cause an investigation into the matter and to complete the investigation within a period of 60 days from receipt of this order.
18. The DG is also directed to investigate the role (if any) of the persons who were in charge of, and were responsible to the companies for the conduct of the businesses of such companies, after giving due opportunity of hearing to such persons.



Competition Commission of India



19. It is, however, made clear that nothing stated herein shall tantamount to an expression of final opinion on the merits of the case and the DG shall conduct the investigation without being influenced by any observations made herein.
20. The Secretary is directed to send a copy of this order alongwith the information and the documents filed therewith to the Office of the DG forthwith.
21. It is ordered accordingly.

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

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

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

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

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

**New Delhi
Date: 11-03-2014**