

COMPETITION COMMISSION OF INDIA

Case No.17/2012

Dated 03/05/2012

Sanjeev Pandey

... Informant

V.

Mahendra & Mahendra & Ors.

... Opposite Parties

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

The present information has been filed before the Commission by Sanjeev Pandey, practicing advocate based at Jaipur ('the informant') under section 19(1) of the Competition Act, 2002 (the Act) against the Mahendra & Mahendra Ltd. (O.P. No. 1), the manufacturer of vehicle named XUV 500, alleging that it was selling the vehicle only in the selected metropolitan cities in India and denying its availability to its dealers in the State of Rajasthan where this vehicle was required more than the other metropolitan cities. The informant submitted that the O.P. No.1 holds a dominant position since the vehicle in question was distinguishable from other similar vehicles as it was the only monocoque vehicle available in India (no separate chassis) and there was no other monocoque vehicle manufactured by any company within India. Therefore, the informant prayed that suitable action be taken under the provisions of the Act against O.P. No.1 for abusing its dominant position.



2. As per the information, the informant has to move frequently to other cities, especially the Supreme Court at New Delhi for attending matters. The informant alleged that XUV500 was most suited for long journeys on metaled and rough roads and therefore, he booked the said vehicle from Delhi as it was not available in Rajasthan. The O.P. No.1 though aware of the fact that the said vehicle would be high in demand, in the States like Rajasthan because of poor road conditions compared to metropolitan cities, still, O.P. No.1 denied its access to the public of Rajasthan and was selling it in some selected metropolitan cities in an arbitrary manner and was booking the said vehicle only with selected authorized dealer based in the metropolitan cities. Thus, O.P. No.1 was restricting the sale of said vehicle to metropolitan cities without a plausible reason.

3. He further alleged that the consumers based at Rajasthan were forced to buy the said vehicle from Delhi, Haryana or Punjab and forced to pay additional local taxes in Rajasthan which according to him was exploitation of general consumers. He, therefore, requested the Commission to order an inquiry under section 26(1) of the Act. He further prayed that appropriate penalty be imposed on opposite parties under section 27 of the Act.

4. The main reason to file this information appears to be that, inspite of booking the said vehicle by the informant in the month of January, 2012 with O.P. No. 2, he did not receive the delivery of the said vehicle in the second draw held on 15.02.2012.

5. In order to attract provisions of the section 3 and/or section 4 of the Act, the relevant market needs to be defined in clear and unequivocal terms. This includes identifying relevant product market and the relevant geographical market. The informant submitted that the O.P.No.1 was the only manufacturer of monocoque vehicles in India and therefore, dominant



in the market of monocoque vehicles as per explanation (a) to section 4(2) of the Act. Thus, according to the informant, the relevant product market was the monocoque vehicles market, because of it being a distinguishable and non-substitutable with other vehicles available in the market. However, it is hard to accept the argument that a distinguishable or unique feature of a vehicle can make it non-substitutable with other similar vehicles available in the market. Substitutability of a product is to be seen from its utility and not from its looks or features only. The vehicle in question seems to be a rough terrain cross country vehicle. A large number of vehicles of this utility are available all over India. Therefore, the relevant market as understood by the informant is incorrect and the vehicle in question is substitutable and interchangeable with other various vehicles available in India. Even, Rajasthan is full of such vehicles that negotiate rough and tough terrains of Rajasthan, day in day out, and there is no dearth of their availability. The opposite party therefore, cannot be said to be a dominant player in any segment of four wheeled vehicles.

6. The informant has misunderstood the Act and probably confused it with the Consumer Protection Act, 1986. The scope of the Act is primarily aimed to curb the anti-competitive practices having adverse effect on competition and to promote and sustain competition in the relevant markets in India. Whereas the Consumer Protection Act, 1986 is aimed to protect the interest of individual consumers against the unfair practices being widely prevalent in the market.

7. In the instant case, the informant has failed to make out a case under the aegis of the Act as that the main grievance of the informant of allegedly not getting the delivery of the said vehicle from the dealer in time cannot be entertained under the Act.



8. Further, informant failed to show as to how O.P.No.1 was acting unfairly or deriving any material benefit by selling the said vehicle only in metropolitan cities. Can it be said that the decision of O.P.No.1 to sell its vehicle only in the big cities can be anticompetitive. The answer has to be emphatic no. There is nothing on record to suggest that the O.P. No.1 has violated the provisions of the Act in any manner.

9. We find that no prima facie case was made out against the opposite party for referring the matter to DG for investigation. It is a fit case for closure under section 26(2) of the Act and is hereby closed.

Secretary is directed to inform all concerned accordingly.

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Member (G)

Sd/-
Member (R)

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Member (GG)

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Member (AG)

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Member (T)

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Member (D)

Sd/-
Chairperson

Certified True Copy

