

COMPETITION COMMISSION OF INDIA

Case No. 23 of 2020

In Re:

Mr. Mainej Prasad Gupta
C/o Hojai Motors, Mazid Road,
P.O-Hojai, P.S-Hojai,
District -Hojai, Assam, 782435

Informant

And

Bajaj Auto Ltd.,
Mumbai Pune Highway, Main Road
Near Ganapati Mandir,
Akurdi, Pune-411035

Opposite Party No. 1

M/s S.K.Automobiles
Near Police Outpost, Nilbagan
P.O-Nilbagan, P.S-Nilbagan, District-Hojai,
Assam-782445

Opposite Party No. 2

CORAM

Mr. Ashok Kumar Gupta
Chairperson

Ms. Sangeeta Verma
Member

Mr. Bhagwant Singh Bishnoi
Member

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

1. The present information has been filed by Mr. Mainejer Prasad Gupta (**Informant**) against Bajaj Auto Ltd. (**Bajaj Auto/OP-1**), and M/s S.K. Automobiles (**OP-2**), alleging contravention of provisions of Sections 3 and 4 of the Competition Act, 2002 (“**Act**”).
2. The Informant is a businessman stated to be interested in taking dealership of motorcycle and motorcycle parts and is running his proprietary business under the name and style of “*Hojai Motors*” at Mazid Road, District Hojai, Assam.
3. Bajaj Auto is a company primarily engaged in manufacture and sale of automobiles and various types of vehicles and is having its registered office at Pune.
4. M/s S.K. Automobiles is a dealer of Bajaj Auto which has been given the dealership for the areas of Nagaon and Tezpur and recently at Nilbagan in Hojai District. It has its registered office at Tezpur.
5. Bajaj Auto published an advertisement in Assam Tribune Daily Newspaper dated 04.04.2017 offering dealership opportunity in Hojai and Mangaldoi towns in the State of Assam. In response to the said advertisement, the Informant had applied for the same besides many other aspirants from the Informant’s town of Hojai. However, the application form was not received in hand by the Regional Office of the Bajaj Auto and was instead dropped in the application box placed at the said office.
6. For several months, the Informant along with others who had applied for dealership, went to the Regional Office of Bajaj Auto, at Guwahati, but they were misinformed that the idea of dealership opportunity had been dropped for the time being. It was further assured to the Informant and others that they shall be informed if there is any development in the allotment of the dealership.
7. After one and half year of the advertisement and the Informant’s making of the application for dealership in response thereto, the Informant got to know that the dealership of Bajaj Auto was allotted in an area called Nilbagan which is 8 kms away

from Hojai town falling under a Gaon Panchyat. The said dealership was not granted to any person from Hojai town, rather it was allotted to OP-2 which has its office and main showroom situated in Tezpur and already had a dealership of Bajaj Auto in Nagaon and Tezpur towns in the state of Assam. The allotment in favour of OP-2 was done without giving any opportunity to the Informant or other eligible enterprises who had applied for the dealership for Hojai area.

8. Being aggrieved with the said act of Bajaj Auto of giving dealership to OP-2, the Informant has preferred this Information before the Commission alleging violation of the provisions of Sections 3 and 4 of the Act.
9. It has been alleged that setting up of a showroom at Nilbagan which does not fall within Hojai is clearly in violation of the terms of the advertisement dated 04.04.2017 and as such the same is impermissible. It is also stated that one of the requirements for grant of dealership as given in advertisement was that, the stockyard is to be in and around the showroom, however, in the present case, OP-2 which is running the dealership at Nilbagan has its stock kept at Tezpur which is about 120 Kms away. In spite of the same, the allotment of dealership in favour of OP-2 is clearly a case which reveals collusion between Bajaj Auto and OP-2.
10. It has been stated that Bajaj Auto has been acting in a fashion which is against the provisions of the Act. During the present period, dealership was also allotted at Mangaldoi in the name of M/s Preet Bajaj, Ward No.2, Begamukh Darang, Assam and at Mankachar in the name of M/s Bothra Bajaj, Mankachar Tinali, Near HP Petrol Pump, Main Road, South Salmara. It is stated that both these dealers in the State of Assam had complied with all the requirements of Bajaj Auto dealership, whereas the dealership allotted to OP-2 at Nilbagan lacks infrastructure and is no where similar or at par with the other dealership at Mangaldoi and Mankachar in the State of Assam. This also clearly shows a case of collusion between Bajaj Auto and OP-2.
11. In this regard, the Informant also made a representation to Bajaj Auto *vide* his letter dated 16.01.2020. However, Bajaj Auto failed to give any reply and had kept mum on the entire issue.

12. It has been alleged that the allotment of the dealership in favour of OP-2 without giving an opportunity to the Informant has led to limiting and controlling the market which has caused an appreciable adverse effect on competition, in violation of Section 3(3) of the Act. It has been further stated that allotment of market in favour of OP-2 amounts to execution of “exclusive distribution agreement” by violating the rights of the other aspirants and firms capable of fulfilling the needs and requirements for a dealership of Bajaj Auto.
13. Since OP-2 already had a dealership of Bajaj Auto with respect to the areas of Nagaon and Tezpur towns in the State of Assam, it has a dominant position over the relevant market in comparison to the Informant as well as another aspirant, from Hojai town, who had applied for dealership. By abuse of such dominant position, OP-2 in collusion with Bajaj Auto has procured the dealership and has also got the area of the dealership changed. Such misuse and abuse of dominant position has led to violation of Section 4 of the Act. Such act of the Opposite Parties is unfair and discriminatory and operates against the concept of competition.
14. As per the informant, in the instant case, there are two relevant markets, *i.e.* Tezpur and Hojai. In Tezpur, OP-2 has been enjoying a dominant position and by virtue of and use of that dominant position, it has entered into Hojai which is another relevant market.
15. In view of above, the Informant has stated that an inquiry should be conducted against Bajaj Auto and OP-2 in accordance with the provisions of the Act.
16. The Commission considered the present information in its ordinary meeting held on 22.07.2020. The case of the Informant pertains to allegations of non-grant of dealership by Bajaj Auto to the Informant, despite the Informant having applied for such dealership with the regional office of Bajaj Auto, in response to its advertisement dated 04.04.2017. The Informant has stated that he is interested in taking dealership of motorcycle and motorcycle parts and had accordingly applied for dealership with Bajaj Auto. It has been alleged that for several months Informant and others who had applied for dealership were misinformed by Bajaj Auto, that idea of giving dealership in the area has been dropped. Further, after one and half year of advertisement (issued by Bajaj Auto on 04.04.2017), the Informant came to know that dealership has been

allotted to one M/s S.K.Automobiles (OP-2) in an area called Nilbagan, which is 8 kms away from Hojai town and not to any applicant, based in Hojai. Further, the office and showroom of said OP-2 is located at Tezpur, which is about 120 km away from Hojai and OP-2 already has dealership of Bajaj Auto in Nagaon and Tezpur. Bajaj Auto granted dealership to OP-2, without an opportunity to Informant and other eligible enterprises, who had applied for such dealership.

17. The Informant has alleged that setting up of showroom by OP-2 and OP-1, in Nilbagan, which does not fall in Hojai is clearly in violation of the terms of advertisement of OP-1. Further, as per the terms of advertisement, the requirement was that stockyard should be in or around the showroom, whereas OP-2 is running its dealership in Nilbagan and stock is kept at Tezpur. Thus, there is collusion between OP-1 and OP-2. Further, while the dealership allotted in the area of Mangaldoi and Mankachar in Assam has been done in consonance with advertisement of OP-1 and there is proper infrastructure, the same has not been followed in case of OP-2, which is evidence of collusion. It has been further alleged that act of OPs has led to limiting and controlling the market and there is appreciable adverse effect on competition in violation of Section 3(3) of the Act. Further allotment of market in favour of OP-2 amounts to execution of exclusive distribution agreement by violating rights of other aspirants and firms capable of fulfilling the needs and requirements of OP-1. Since OP-2 had dealership of OP-1 with respect to areas of Nagaon and Tezpur, it has a dominant position over relevant market in comparison to Informant. By abuse of such dominant position, OP-2 in collusion with OP-1 has procured dealership and got the area of dealership changed. This, as per the Informant, is unfair and discriminatory and operates against the concept of competition and in violation of Section 4 of the Act. There are two relevant markets Tezpur and Hojai and OP-2 by virtue of its dominance in Tezpur has entered Hojai and abused its dominant position. The Informant has prayed that an inquiry be conducted against OPs for violation of Sections 3 and 4 of the Act.

18. Upon an analysis of facts, it is noticed that the grievance of Informant arises out of non-grant of dealership of OP-1 at Hojai. As per information dealership has not been granted to anyone at Hojai, but to its existing dealer (OP-2) at a place called Nilbagan. OP-2 is already a dealer of OP-1 at Nagaon and Tezpur.

19. The Commission notes that submission of an application form in response to an advertisement is a mere invitation to offer and unless accepted by the other party does not result in an agreement/contract. There is no evidence that the application of the Informant has been accepted and, in these circumstances, mere submission of an application will not confer any right on the Informant. Even otherwise the relationship between OP-1 and OP-2, is that of a manufacturer and distributor who are not horizontally placed and is therefore not amenable to examination under Section 3(3) of the Act. Thus, no case of contravention of provisions of Section 3(3) of the Act arises in the present case against the Opposite Parties.
20. With respect to allegations of existence of “exclusive distribution agreement” between OP-1 and OP-2, under the provisions of Section 3(4) of the Act, the Commission observes that firstly there is no evidence of the same, and secondly even assuming that there was such an agreement, for it to be termed as anti-competitive, appreciable adverse effect on competition in the market needs to be established as a consequence of such agreement, based on factors enunciated under Section 19(3) of the Act.
21. As per the information available in public domain¹ in respect of overall two wheelers’ market in India, Bajaj Auto cannot be said to be presently having significant market power (market share of 12%) and there is existence of well entrenched inter-brand competition in the form of players like Hero MotoCorp Ltd., Honda Motorcycles & Scooters India Private Limited, TVS Motor Company, Royal Enfield, India Yamaha Motor Pvt. Ltd. and Suzuki Motorcycle India Private Ltd. Even in respect of OP-2, it cannot be said that the said dealer has any market power by virtue of it having dealership of Bajaj Auto in another place *viz.* Tezpur, when there are dealers of other brands operating in and around Hojai, even if the geographic territory of the market were to be defined very narrowly.
22. Further, given the apparent absence of market power, with any of the Opposite Parties as aforementioned, there does not seem to be any requirement of assessing dominance of either of the said parties under Section 4 of the Act. Thus, there appears to be no apparent restrictions of barriers to new entrants or foreclosure of competition by

¹ CRISIL Research, 2020

hindering entry into the market such that a person wanting to start any business of dealership of two wheelers is impeded in exercise of his choices in any manner, other than dealing with Bajaj Auto, especially in the circumstances when the said company has not even evinced any interest of doing business and consequently such a business relationship has not even commenced. The Commission observes that in the facts and circumstances of the present case, a mere willingness on the part of the Informant to commence a particular type of business relationship, with OP-1, for a particular location, if does not fructify, cannot be said to give rise to any competition concern, warranting an intervention by the Commission. In respect to the allegations that Bajaj Auto has not granted dealership in Hojai, but at some other place, contrary to its own advertisement, the Commission observes that it is the prerogative of company to determine the place and number of dealers it wants to appoint based on its commercial and business considerations. Merely because the Informant has its premises at Hojai, is no ground to say that it should be offered dealership at that place.

23. Recently, the Commission *vide* its order dated 03.05.2020, passed in the Case No.3 of 2020 (*Accessories World Car Audio Pvt. Ltd and Sony India Private Ltd*) has held as under:

“In this regard, the Commission observes that an important and crucial consideration for analysing vertical restraints under the provisions of Section 3(4) of the Act is the requirement of market power. It is also noted that in order to appreciably restrain free competition in the downstream market for distribution of car audio products, seller must have sufficient market power in the upstream market for car audio products. Moreover, vertical restraints are not generally perceived as being anti-competitive when substantial portion of the market is not affected.

In view of the above, the Commission observes that the market for car audio products is fragmented with presence of large number of players without any entity enjoying a significant market power. The presence of such players exerts competitive constraints on OPs. Therefore, the purported vertical restraints imposed by OPs are not likely to have any appreciable adverse effect on competition in India.”

24. Based on the aforesaid, the Commission does not find alleged contravention of the provisions of Section 3 or 4 of the Act against the Opposite Parties.

25. In view of the foregoing, the Commission is of the opinion that there exists no *prima facie* case, and the information filed is directed to be closed forthwith against the Opposite Parties under Section 26(2) of the Act.

26. The Secretary is directed to communicate to the Informant accordingly.

Sd/-
(Ashok Kumar Gupta)
Chairperson

Sd/-
(Sangeeta Verma)
Member

Sd/-
(Bhagwant Singh Bishnoi)
Member

New Delhi

Date: 06.08.2020