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**COMPETITION COMMISSION OF INDIA**

**Case No. 36 of 2021**

**In Re:**

**Royal Motors,  
Represented by its Partner,  
Mr. Mohamed Jaffarsha,  
No.14, Venkateswara Nagar,  
Sirkali Main Road,  
Mayiladuthurai- 609118,  
Tamil Nadu, India**

**Informant**

**And**

**Yamaha Motors Company Limited  
2500, Shingai, Iwata,  
Shizuoka, Japan**

**Opposite Party No. 1**

**India Yamaha Motor Private Limited,  
Having registered office at  
1st Floor, The Great Eastern Centre,  
70, Nehru Place, Behind IFCI Tower,  
New Delhi -110019,  
India.**

**Opposite Party No. 2**

**And**

**Corporate Office at:  
A-3, Surajpur Industrial Area,  
Noida-Dadri Road,  
Surajpur, Gautam Budh Nagar,  
Uttar Pradesh.**

**Also at:**

**VV1, Sipcot Industrial Park,  
Valladam Vadagal Taluk,  
Sriperumbudur,  
Tamil Nadu 602105.**

**Mr. Hiroyuki Yanaghi  
Chairman, Yamaha Motors Company Limited  
2500, Shingai, Iwata, Shizuoka,  
Japan.**

**Opposite Party No. 3**



सत्यमेव जयते



**Mr. Motofumi Shitara**  
**Managing Director, India Yamaha Motor Private Limited,**  
Having registered office at  
1<sup>st</sup> Floor, the Great Eastern Centre,  
70, Nehru Place, Behind IFCI Tower, New Delhi  
110019, India.

**Opposite Party No. 4**

**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 Royal Motors (hereinafter, the “**Informant**”) under Section 19(1) (a) of the Competition Act, 2002 (hereinafter, the “**Act**”), alleging contravention of the provisions of Section 4 of the Act by the aforementioned Opposite Parties.
2. As per the Information, the Informant is a dealer of India Yamaha Motor Private Limited (hereinafter, referred to as “Yamaha”) in Mayiladuthurai, Tamil Nadu and has entered into a dealership agreement with the said OP in the year 1993. Thereafter, the said dealership agreement was extended by mutual consent on multiple occasions, the most recent being the dealership agreement executed on 01.04.2018, which was amended vide the Amendment cum Addendum to Dealership Agreement dated 28.01.2021.
3. As stated by the Informant, Yamaha is a company registered under the provisions of the erstwhile Companies Act, 1956, having its registered office at, New Delhi and is, *inter-alia*, engaged in the manufacture and sale of various bi-wheelers (two wheelers) including fittings, spare parts and accessories.



सत्यमेव जयते



4. The Informant has stated that Yamaha is an “enterprise” as defined under Section 2(h) of the Act and has dealerships all across India in such a way that the major sale of the vehicles would be targeted towards persons residing within the territorial limits of the locality in which the dealer is located. Yamaha has thus divided the territory into different zones based on metropolitan cities and town limits for appointing its dealer and the Informant has been appointed as a dealer in a small locality of Mayiladuthurai, Tamil Nadu.
5. The Informant further states that he is bound to abide by Clause 4.2 of the Dealership Agreement, wherein Yamaha has specifically restrained the Informant from dealing in products other than those of Yamaha, thereby making the Informant solely dependent on Yamaha and that the Informant has not been able to deal with spare parts or bi-wheelers of any other manufacturers.
6. It has also been averred that, owing to the non-exclusive dealership clause (Clause 11.2 of the Dealership Agreement), Yamaha has proposed bringing in another dealer in the same geographic area where the Informant has been operating for over 25 years, and that the Informant would not be able to enjoy the sole right of selling Yamaha products in the designated area.
7. The Informant has also stated that Yamaha, at its sole discretion, could terminate the dealership by virtue of Clause 14.4 of the said agreement, without assigning any reasons, despite the fact that the Informant has invested huge amounts in establishing the dealership, with an investment of over Rs. 4 crores over a period of 28 years i.e. from 1993 to 2021.
8. The relevant clauses of the aforementioned Dealership Agreement which have been impugned by the Informant are reproduced as under:

*“4. Obligations of the dealer*

*4.2 The DEALER, in order to have the specialisation of the PRODUCTS of IYM so that after sales services could be given to the customers as per IYM standards and quality, undertakes not to engage in promotion, marketing or selling of the PRODUCTS manufactured or marketed by any other party, which products are identical or in any manner, directly or indirectly, compete with PRODUCTS of IYM, without prior consent of IYM.*



सत्यमेव जयते



*11. IYM-Dealer Relationship*

*11.2 The DEALER, its employees, agents and representatives, shall provide services as an independent “entity” on a non-exclusive basis and nothing contained herein shall be deemed to create any partnership, joint venture, employment or relationship of principal and agent between the PARTIES hereto or with the DEALER representatives and employees or to provide service with any right, power or Authority, or to provide service with any right, power of Authority, or to provide the DEALER with any right, power or authority, whether express or implied to create any such duty or obligation.*

*14. Term and Termination*

*14.4. Notwithstanding anything contained herein, the PARTIES have a right to terminate this Agreement by giving a prior written notice of sixty (60) days, without incurring any liability and without assigning any reasons. In such a case IYM at its sole discretion shall be at the liberty to deal with the DEALER including non-supplies of all the PRODUCTS to the DEALER during notice period.”*

9. The Informant has averred that it has, in many instances, requested Yamaha to refrain from appointing other dealer(s) in the geographic area of Mayiladuthurai, along with a request to strike off Clauses 4.2 and 11.2 of the Dealership Agreement, but in vain. The Informant has also enclosed a letter dated 20.10.2021, wherein Yamaha conveyed to the Informant that it had decided to terminate the dealership with the Informant (with a notice of 60 days) without assigning any reason thereof.
10. Consequently, the Informant has alleged that Yamaha has abused its dominant position by restraining the Informant’s free market access and by imposing unfair terms and conditions under the dealership contract with the Informant, thereby indulging in contravention of Section 4(2) (c) of the Act.
11. The Informant has also sought interim relief from the Commission, seeking a direction of restraining Yamaha from appointing other dealer(s) in the relevant geographic area/market of Mayiladuthurai, Tamil Nadu, India, till the completion of proceedings before the Commission.



12. The Informant has, *inter- alia*, prayed to the Commission to:

- i. declare that Clauses 4.2 and 11.2 of the Dealership Agreement between Yamaha and Informant as void,
- ii. strike down the Clauses 4.2 and 11.2 of the Dealership Agreement between Yamaha and Informant, and
- iii. direct Yamaha to refrain from appointing other dealer(s) in the said relevant geographic area/market of Mayiladuthurai, Tamil Nadu, India.

13. The Commission considered the present Information in its ordinary meeting held on 15.12.2021 and decided to pass an appropriate order. Thereafter, *vide* order dated 16.12.2021, the Hon'ble High Court of Madras, in Writ Petition No. 27063 of 2021, directed the Commission to afford an opportunity of hearing to the Informant and the OPs on 21.12.2021, and to pass an appropriate order on merits, in accordance with law, within a period of two weeks from the date of 21.12.2021. Accordingly, the Commission notified the parties of the preliminary conference to be held before it on 21.12.2021 at 12 noon. On 21.12.2021, the Commission heard the Informant. None appeared for the Opposite Parties. It was, *inter-alia*, submitted by the Informant that it has had a very long association with Yamaha, and has been the only authorized non-exclusive dealer of Yamaha in the territory of Mayiladuthurai, Tamil Nadu, dealing in sale and service of its motorcycles and now, Yamaha is seeking to appoint another dealer in the said territory after terminating the dealership of the Informant, without assigning any reasons and which conduct is an abuse of dominant position by the OPs.

14. At the outset, the Commission notes that the Informant is aggrieved by the fact that Yamaha has proposed to bring in another dealer in the small geographic area of the Mayiladuthurai, Tamil Nadu, especially against the background that the Informant has invested financial resources in establishing the dealership showroom and necessary peripherals (in a span of 28 years from the year 1993 to 2021) and that it has been restrained from selling products of other competing manufacturers.

15. The Commission notes the allegations of the Informant that Yamaha has imposed unfair terms and conditions on it, in the form of Clauses 4.2, 11.2 and 14.4 under the Dealership Agreement (latest agreement being entered into on 01.04.2018). These clauses have been extracted above.



सत्यमेव जयते



16. The Commission observes that Yamaha, is an enterprise under Section 2(h) of the Act. The Commission further observes that for a *prima facie* analysis of the allegations of abuse of dominant position by Yamaha, the relevant market may be delineated keeping in view the product and geographic dimensions, followed by an assessment of dominant position of Yamaha in such relevant market. Then the Commission will proceed to examine the allegations of abuse of such dominance, if any, in the facts and circumstances of this case.
17. As per its website, Yamaha made its foray into the Indian market in 1985 as a joint-venture. In August 2001, it became a 100% subsidiary of Yamaha Motor Co., Ltd, Japan (OP-1). In 2008, Mitsui & Co. Ltd. entered into an agreement with OP-1 to become a joint-investor in India. Yamaha's manufacturing facilities comprise 3 State-of-the-art Plants at Surajpur (Uttar Pradesh), Faridabad (Haryana) and Kanchipuram (Tamil Nadu). The infrastructure at these plants support the production of two-wheelers and parts for domestic as well as overseas markets. Yamaha has a country-wide network of over 2,200 customer touch-points including 500 dealers and has wide range of products both of motorcycle and scooters.
18. The Commission also notes its earlier order dated 07.09.2020, passed in Case No. 27 of 2020 (*Shri Vijay Chaudhry and M/s India Yamaha Motor Private Limited*) wherein it was observed as under:

*“16. The Commission finds that Yamaha is engaged in the manufacture and sale of motorcycles and scooters. From the point of dealership, a dealer stocks scooters as well as motorcycles. Also, the Informant has pointed out that he used to sell both the scooter and motorcycles of Yamaha. Moreover, based on the information available at this stage, it appears that motorcycles and scooters may not be regarded as substitutable in terms of characteristics and consumer preference and may constitute two different relevant product markets. Therefore, the relevant product markets in the facts and circumstances of the present case can be delineated as market for “manufacture and sale of scooters” and market for “manufacture and sale of motorcycles”. As far as the geographic market is concerned, the conditions of competition for two-wheelers are homogenous across India. Therefore, the Commission is of the view that the relevant markets appear to be “market for*



सत्यमेव जयते



*manufacture and sale of scooters in India” and ‘market for manufacture and sale of motor-cycles in India”.*

19. For an analysis of the case, the Commission notes that the Informant has not delineated the relevant product and geographic market in any precise terms, though has stated that the geographic area of Mayiladuthurai is the relevant market.
20. Based on the facts of the present case, the Commission is of the *prima facie* view that Yamaha is one of the popular and well-known brands in two wheelers, particularly in the motorcycles and has a presence all over India through its wide distribution network. Also, the present matter emanates out of a dealership pertaining to motorcycles and related spares. Accordingly, the Commission deems it fit to delineate the relevant product market as “*manufacture and sale of motorcycles*”. As regards the relevant geographic market, the Commission notes that Yamaha has a presence throughout India and the conditions of competition for supply of goods or provision of services or demand of goods and services appear to be homogenous throughout such territory. Thus, in the view of the Commission, the relevant geographic market appears to be the “*territory of India*”. Consequently, the relevant market is delineated as the “*market for manufacture and sale of motorcycles in the territory of India*”, in line with the delineation of the relevant market as done in Case No. 27 of 2020 as referred above.
21. The Commission notes that the Informant has not filed any data/statistics to show the dominance of Yamaha in the relevant market. As per the information available in public domain (*CMIE Industry Outlook*), there exists well entrenched inter-brand competition in the form of other important constituents of the industry like Hero Motocorp Ltd., Bajaj Auto Ltd., Honda Motorcycle & Scooter India Pvt. Ltd., TVS Motor Co. Ltd, etc. From the same source, the Commission notes that the competitors of Yamaha in the motorcycles market in India enjoy higher market shares while Yamaha has a market share of less than 10%. Accordingly, Yamaha cannot be said to be having a dominant position in the aforesaid delineated relevant market. *Ergo*, there arises no case for assessing the alleged abuse of dominant position by Yamaha.
22. In view of the foregoing, the Commission is of the opinion that there exists no *prima facie* case of contravention of the provisions of Section 4 of the Act against Yamaha and other Opposite Parties and therefore, the matter be closed forthwith under Section



सत्यमेव जयते



26(2) of the Act. Consequently, no case for grant for relief(s) as sought under Section 33 of the Act arises, and the same is also rejected.

23. The Secretary is directed to communicate to the Informant and Yamaha/other Opposite Parties, accordingly.

**Sd/-**  
**(Ashok Kumar Gupta)**  
**Chairperson**

**Sd/-**  
**(Sangeeta Verma)**  
**Member**

**Sd/-**  
**(Bhagwant Singh Bishnoi)**  
**Member**

**New Delhi**  
**Dated: 31/12/2021**