



COMPETITION COMMISSION OF INDIA

(Case No. 57 of 2013)

In Re:

M/s Amit Auto Agencies ... Informant

And

M/s King Kaveri Trading Co. ... Opposite Party

QUORAM:

Mr.Ashok Chawla
Chairperson

Dr.GeetaGouri
Member

Mr.Anurag Goel
Member

Mr.M.L.Tayal
Member

Mr.Justice (Retd.) S.N. Dhingra
Member

Mr.S.L. Bunker
Member

Present: Informant in person.

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

The present information was filed against the Opposite Party [OP] by the informant who was trading in Truck and Trailer parts in the State of Rajasthan, under the provisions of section 19(1) of the



Competition Commission Act 2002 (herein after referred as “the Act”).

2. The informant alleged that the OP entered into a Sole Selling Agent (CSA) agreement (the agreement) with Informant on 23.07.2007 whereby OP appointed the Informant as CSA for selling its products in the State of Rajasthan. The Informant claimed to have made huge investments after the said appointment as sole selling agent by establishing and maintaining showrooms for promoting the sale of the products of OP. The informant's contention is that the clauses of the agreement were one sided and heavily loaded in favour of OP, including restrictive clauses such as not to deal with the products of the competitors of OP directly or indirectly. A restriction was also imposed on informant not to sell similar products supplied by any other party. It was also stated that vide Clause 13, the informant would appoint sales officers and service engineers for selling the product and pay for all expenses of the said persons. The informant was to provide information to the OP from time to time/ or on demand about details of such staff in the organization. The informant was not to engage any person whom OP considered undesirable and the decision of OP in that respect was to be conclusive and binding on the informant. It was alleged that OP abused its dominant position by imposing unfair and discriminatory conditions in the normal and smooth functioning of the business of informant, and had, therefore, committed violation of section 4(2)(a) of the Act. The informant also alleged that OP had absolute freedom and discretion for fixation of prices of the products to be sold by its dealers and sub dealers in



contravention of Section 3(3)(a) of the Act. It was also alleged that OP had supplied the products to the informant regularly till 21.05.2011 and after that, without stating any reasons, supply of the products was stopped in contravention of Section 4 of the Act which had hampered the business lifeline of informant. The OP by not supplying its product was stated to have spoiled the reputation of informant as it had not been able to live up to its commitments of supplying the products to other trading partners. According to the Clause 5 of the agreement, the OP was not to appoint any other agent or CSA in Rajasthan state without the written permission of the informant. But the OP appointed four more dealers in the State of Rajasthan and restricted supply of the products after 21.05.2011 to the informant without giving reasons or issuing any notice, thus violating the terms and conditions of the agreement and the provisions of the Act. The informant had lost considerable money and reputation by the act and omission of OP. It was contended that OP was abusing its 'Dominant Position' in contravention of Sec. 4 of the Act by imposing unfair and discriminating conditions and by imposing unreasonable restrictions which had impaired the right of the free trade and had thereby jeopardized the business future of Informant.

3. The informant prayed for the institution of an inquiry/investigation into the violations of Sections 3 and 4 of the Act by OP and for direction to OP to refrain from indulging in abusive conduct in the future; and for imposition of such penalty/ Cost on the Opposite Party as may be deemed fit.



4. The Commission considered information, oral arguments of informant and written submissions. From the facts of the case, it is evident that the relevant product market would be 'the market of Truck and Trailer Components/ parts and accessories and the informant was appointed as sole-selling agent in the State of Rajasthan which means that the relevant geographic area would be area of Rajasthan. Thus, the relevant market can be considered as "the market of Truck and Trailer Components/ parts and accessories in the State of Rajasthan".

5. Explanation (a) to Section 4 says that the "dominant position" means a position of strength, enjoyed by an enterprise, in the relevant market, in India, which enables it to—(i) operate independently of competitive forces prevailing in the relevant market; or (ii) affect its competitors or consumers or the relevant market in its favour. Section 19(4) of the Act states that the Commission needs to consider various factors stated therein while assessing whether an enterprise enjoyed a dominant position or not. The informant did not supply relevant data regarding the market share of OP in the relevant market. It is inferred from the information available in public domain that the OP was not the only trader of Truck and Trailer Components/ parts and accessories in State of Rajasthan. There were many other players like JRDC (Jag Ratan Daan Singh & Co.) Products, TRATEC, Disha Engineers, Shree Modi Material Handling Co., Agro Engineers Work, Shree Durga Equipment, Seamless Autotech Pvt Ltd, Vasant



Fabricators Pvt Ltd, Mendiratta Trailer, Vishwakarma Engineering and Trailer Body Works, VMT Industries Pvt Ltd, West End Motors, Banaskantha, Narmada Manufacturing, Motor & General Sales Ltd, Mehar Agricultural Works, Bharat Tanks and Vessels Limited, Gourika India Limited, Natraj Enterprises, Indico Motors, Bhansali Trailors Pvt Limited, Automotive Coaches and Components Ltd. (ACCL) etc. Presence of other traders of repute shows prevalence of competition. It is not a case where OP could operate independent of competitive forces. Thus, *prima facie*, OP was not a dominant player in the relevant market.

6. Since OP, *prima facie*, does not appear to be a dominant player in the relevant market, the question of abuse of dominance by OP in that market in contravention of the provisions of Section 4 of the Act does not arise. The OP had appointed the informant as its CSA, thus the OP and the informant were at different stages of production chain and were in different markets. Thus, the agreement between the informant and OP was a vertical agreement. To constitute violation of Section 3(4) read with Section 3(1) of the Act, The agreement should be of the nature as stated in the section and should cause or likely to cause AAEC (appreciable adverse effect on Competition).
7. Informant contended that its agreement with OP was an “Exclusive Supply Agreement”. Such an agreement includes an agreement restricting in any manner the purchaser in the course of his trade from acquiring or otherwise dealing in similar goods other than those of the seller. The other allegations of the informant is that the



OP fixed the prices of the products to be sold to dealers and sub-dealers and it falls within the provisions of Section 3(4) of the Act and would be like “Resale Price Maintenance”. Considering it so, the Commission has to consider AAEC keeping in view Section 19(3) of the Act and having regard to all or any of the following factors, namely:—

- a. creation of barriers to new entrants in the market;
 - b. driving existing competitors out of the market;
 - c. foreclosure of competition by hindering entry into the market;
 - d. accrual of benefits to consumers;
 - e. improvements in production or distribution of goods or provision of services;
 - f. promotion of technical, scientific and economic development by means of production or distribution of goods or provision of services.
8. While assessing AAEC it can be prima-facie seen from the facts supplied by the Informant that the alleged clauses of the agreement could hardly be said to create barriers to new entrants in the market or were likely to drive the existing competitors out of the market or had the potential to foreclose the competition by hindering entry into the market. Considering the above position and also the fact that there were many competing traders, the Commission is of the view that prima-facie the impugned clauses of the agreement were not likely to have appreciable adverse effect on competition in



relevant market of Truck and Trailer Components/parts and accessories in the State of Rajasthan.

9. For the reasons stated above, *prima facie*, no case is made out under Sections 3 and 4 for directing DG for investigating into the case and as such the case deserves to be closed under section 26(2) of the Act. The Secretary is directed to inform the parties accordingly.

New Delhi
Date: 08/10/2013

Sd/-
(Ashok Chawla)
Chairperson

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(GeetaGouri)
Member

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