



COMPETITION COMMISSION OF INDIA

Case No. 64 of 2015

In Re:

**Shri Arvind Sood
C-II- 2836, Vasant Kunj,
New Delhi**

Informant

And

**Hyundai Motor India Ltd.
Banni Building, Plot No. 5, 5th & 6th Floor,
Commercial Center, Jasola Vihar,
New Delhi**

Opposite Party

CORAM

**Mr. Ashok Chawla
Chairperson**

**Mr. S. L Bunker
Member**

**Mr. Sudhir Mital
Member**

**Mr. Augustine Peter
Member**

**Mr. U. C. Nahta
Member**

**Mr. M.S. Sahoo
Member**

**Mr. G.P. Mittal
Justice (Retd.)
Member**



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

1. The present information has been filed under section 19(1)(a) of the Competition Act, 2002 (the 'Act') by Shri Arvind Sood (hereinafter referred to as the '**Informant**') against Hyundai Motor India Ltd. (hereinafter referred to as '**OP**') alleging, *inter alia*, contravention of the provisions of section 3 and 4 of the Act.
2. Facts of the case, in brief, may be noted.
3. As per the information, OP is the second largest manufacturer of motor cars & Sports Utility Vehicles (SUVs). It is averred that OP has launched its new SUV in the name of 'Hyundai Creta (SUV)' in competition with SUVs like Ford Eco Sport, Renault Duster, Mahindra XUV and Nissan Terrano, Tata Safari, Mitsubishi Out Lander who are all well established players in the Indian market and also control an appreciable market share.
4. The Informant states that OP had started booking of Hyundai Creta, through its 700 authorised dealers who are located in the State capitals and Tier-A cities from 07.06.2015 with a booking amount of Rs.1,00,000/- or Rs.50,000/- or even Rs.25,000/-. The Informant has delineated the relevant market in the information as the State capitals in India and Tier-A cities. OP is stated to have given lucrative gifts to the media people for wide publication of its Hyundai Creta. By paying initial booking amount of Rs.25,000/-, the Informant had booked Hyundai Creta on 13.07.2015 from Konzept Cars India Pvt. Ltd.
5. OP is alleged to have collected Rs.900/- crores (approx.) through booking from the customers without providing details of the product *i.e.* price, availability, mode of allotment/ sale, waiting period, variants,



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service procedure, policy regarding cancellation of booking *etc.* It is alleged that OP lured the Informant to book the said vehicle.

6. It is further stated that OP had advised its authorized dealers to retain the booking amount aggregating to Rs.900 crores till the launch of the said vehicle. OP is, thus, alleged to have entered into anti-competitive agreements in terms of section 3(1) of the Act. It is also averred that the conduct of OP in adopting unfair means to collect the booking amount for the said vehicle which was not launched in the market, has appreciably affected the business of other SUV and car manufacturers. It is further alleged that OP has engaged in a cartel like behaviour with its dealers in violation of the provisions of section 3(3) of the Act.
7. Contravention of the provisions of section 4 of the Act is also alleged by arguing that OP by allowing booking of 'Hundai Creta' without providing the details thereof to the potential buyers, has caused 100% denial of market access to the other SUV manufacturers.
8. Based on the above allegations and the information, the Informant has alleged that the conduct of OP is in contravention of the provisions of sections 3 and 4 of the Act.
9. The Commission has perused the information and the documents filed therewith.
10. The grievance of the Informant primarily appears to emanate out of the conduct of OP in collecting the booking amount through its dealers without giving any details of the product.
11. So far as the allegation of contravention of the provisions of section 4 of the Act, the Commission notes that even as per the averments made by the Informant in the information OP is the second largest manufacturer



of motor cars and SUVs. Further, the Informant has itself admitted in the information that there are other well-established players in the SUV market in India who control an appreciable market share. In the face of such admitted market construct, it is difficult to appreciate as to how OP can be said to enjoy any market power which can enable it to operate independent of competitive forces.

12. In this connection, the Commission notes that as per the provisions of section 4 of the Act no enterprise or group shall abuse its dominant position. The term “dominant position” has been defined in the Act as a position of strength, enjoyed by an enterprise, in the relevant market, in India, which enables it to operate independently of competitive forces prevailing in the relevant market; or affect its competitors or consumers or the relevant market in its favour.
13. Notwithstanding the averments made by the Informant, the Commission has also examined the issue of dominance independently. Taking into consideration the similarities between SUVs and MUVs in terms of size, seating capacity, price, appearance and feature hence, it appears that both can be a substitute of each other. Accordingly, the relevant product market in the instant case may be taken as “*market of Sports /Multi Utility Vehicles*”. As the competition in this segment is not restricted to any specific geographical area, the relevant geographic market may be taken as the whole of India. Accordingly, the relevant market in the instant case would be the “*market of Sports/ Multi Utility Vehicles in India*”.
14. As per CMIE data on company wise market share, the relevant market appears to be an oligopoly market with good number of SUV/MUV manufactures such as Mahindra & Mahindra Ltd. (33.64%), Ford India Pvt. Ltd. (17.04%), Toyota Kirloskar Motor Pvt. Ltd. (12.77%), Maruti Suzuki India Ltd. (12.48%), Renault India Pvt. Ltd. (6.83%), Honda



Cars India Ltd. (5.16%), Tata Motors Ltd. (3.94%), General Motors India Pvt. Ltd. (3.41%), Nissan Motor India Pvt. Ltd. (3.32%), Force Motors Ltd. (0.46%) and Hyundai Motor India Ltd. (0.3%). As per the CMIE data, Mahindra & Mahindra Ltd. consistently leads the MUV/ SUV market for the last several years followed by Ford India Ltd. and Toyota Kirloskar Motor Pvt. Ltd. whereas OP occupies the last position in the list.

15. Be that as it may, the existence of good number of automobile players with comparable size and resources as well as the capability of manufacturing differentiated car models in terms of price, design, type of fuel, engine displacement, distributor network, after sale service *etc.* indicates that there exists choice for the consumers in the relevant market. Thus, OP does not appear to be in a dominant position in the relevant market. In the absence of dominance of OP, its conduct need not be examined under the provisions of section 4 of the Act.
16. It is also observed that the booking reference number or the expected date/ period of delivery of the vehicle was not printed on the 'Booking Form' and it is mentioned therein that the customer had booked the vehicle after reading and agreeing to the terms, conditions and instructions printed on the reverse of the order form which the Informant has not placed on record. Furthermore, the receipt dated 13.07.2015 for a sum of Rs.25,000/- issued by the dealer *i.e.* Konzept Cars India Ltd. clearly mentions that the price, schemes (discount), taxes which will be prevailing at the time of delivery will be applicable and that the charges for the cancellation of the booking will be Rs.5,000/-. The Informant has also chosen not to implead the dealer as a party in the present case.
17. The allegation of cartelization between OP - which is an OEM - and its dealers is thoroughly misconceived. Further, no agreement has been



placed on record by the Informant which can be examined within the purview of section 3 of the Act.

18. In the result, the information is devoid of any merit as the same does not disclose any competition issue which can be examined within the ambit of section 3 or 4 of the Act and accordingly, the case is ordered to be closed forthwith in terms of the provisions of section 26(2) of the Act.

19. The Secretary is directed to inform the parties accordingly.

Sd/-
(Ashok Chawla)
Chairperson

Sd/-
(S .L. Bunker)
Member

Sd/-
(Sudhir Mital)
Member

Sd/-
(Augustine Peter)
Member

Sd/-
(U. C. Nahta)
Member

Sd/-
(M.S. Sahoo)
Member

Sd/-
(G.P. Mittal)
Justice (Retd.)
Member

New Delhi
Date: 29/09/2015