



(Case No. 67/2013)

**M/s Nanavati Wheels Pvt. Ltd.**

Plot no. 125, Opp ISCON Mall,  
Piplod, Surat-Dumas Road  
Surat, Gujarat - 395007

...Informant

And

**M/s. Hyundai Motor India Ltd**

Plot no. H-1, SPICOT Industrial Park,  
Irrungattukotai,  
Sriperumpudur Taluk,  
Kancheepuram,  
Tamil Nadu 602105

...Opposite Party

**CORAM:**

Mr. Ashok Chawla  
Chairperson

Dr. Geeta Gouri  
Member

Mr. Anurag Goel  
Member

Mr. M. L. Tayal  
Member

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

Mr. S. L. Bunker  
Member

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

The information in the present case was filed under Section 19(1)(a) of the Competition Act, 2002, (“Act”)alleging violation of the provisions of Sections 3 and 4 of the Act by the Opposite Party (“OP”) with regard to dealership of car companies.



2. As per the information, OP, an automobile company, was engaged in the business of manufacture and sales of automobiles, accessories and spare parts under the trademark of 'Hyundai'. OP carried out its business through authorized dealers along with its own sales network to sell and service its products. Nanavati Motors, a firm in which the promoter director of the Informant was a partner, was an authorized dealer for retailing motor cars, spare parts and accessories of OP from 1998 till 2007 at Surat district in Gujarat. It had very good performance in the sales of OP's products and 'after sale services' on such products during 1998 to 2007, which was acknowledged by OP in the form of conferring several awards on it. OP vide its letter dated 29.08.2007, terminated the dealership contract with Nanavati Motors with a 30 days' notice period without assigning any reason thereof. The Informant alleged that this dealer ship was terminated because a partner of Nanavati Motors had taken dealership of Toyota. After termination of the said dealership, a new dealer was appointed for said region by OP in 2008, however, the new dealer was unable to run the dealership and thus the said dealership was terminated within a year of operations. Nanavati Motors was again approached by OP to take dealership of its business at Surat. Pursuant to discussions with OP's officials and on getting an assurance of non-termination of dealership as in 2007, the Informant company was constituted and it commenced its dealership operations in February 2010. A new dealership agreement was executed between the Informant and OP on 25.06.2010 ("**Dealership Agreement**") under which the Informant was appointed as the non-exclusive dealer of the vehicles of OP for the territorial region of Surat in the state of Gujarat.

3. It is averred by the Informant that a relative of the Informant's promoter took dealership for Renault brand of cars in October 2012 at Surat. OP expressed its displeasure on this and verbally threatened the Informant of termination of dealership. OP vide its letter dated 25.07.2013 terminated the dealership contract with a 30 days' notice period giving the reason that the Informant was selling the goods of competitors from the rural sales outlets. The real reason, according to the Informant, was Renault dealership of a relative of the promoter.



4. It is submitted that the dealers of OP had approached the Ministry of Heavy Industries, Government of India against the sudden termination of the dealership contracts by OP. The said Ministry, in its letter dated 10.08.2013, directed OP to keep all terminations of dealerships in abeyance. The Informant had also filed a petition before the Madras High Court against termination of its dealership contract and the High Court restrained the OP from giving effect to the termination till 26.08.2013, i.e. upto the next date of hearing.

5. Based on the above submissions, the Informant alleged that OP being a dominant entity, was abusing its dominance by restraining the Informant from taking the dealership of another car company and limiting the number of eligible dealers at Surat in the state of Gujarat. The Informant also alleged that OP was in violation of Section 3(4) as it restricted the Informant from taking dealership of its rival companies thereby restricting competition in the market.

6. The Commission issued notice to the OP, who filed its reply to the information along with documents. The Commission considered the information, the reply and the submissions of both the parties as well as the material placed before it.

7. The OP has placed on record the letter dated 06.07.2007 written by Mr. Hitendra A. Nanavati to OP wherein Mr. Hitendra A. Nanavati had stated that he would not be able to look after the firm's dealership operations due to certain family circumstances. His brother Mr. Deepak Nanavati who was joint managing partner of the firm would look after the activities of the dealership. OP stated that this letter was the reason for termination of the dealership. OP was mainly dealing with Mr. Hitendra A. Nanavati, who expressed his inability to look after the business due to family circumstances. OP also denied that it approached Mr. Hitendra A. Nanavati asking him to take the dealership telling that the other dealer appointed by it was not successful. OP has placed an e-mail of Mr. Hitendra A. Nanavati to Mr. Heung Soo Lheem of OP expressing his intense desire to take the dealership of OP again. In this e-mail, he mentioned that earlier there was some misunderstanding within the family. It was also mentioned that the dealership premises of Nanavati Motors had been offered to the other



franchisee of OP for the dealership business but now Mr. Hitendra A. Nanavati was interested in revival of the dealership at Surat and wanted that his request be considered sympathetically. After this e-mail of 03.11.2009 it appears that Mr. Hitendra A. Nanavati constituted a private limited company in the name of the Informant and a new dealership agreement was executed with the Informant company. The dealership contract between the parties is on record and this contract does not show that restrictions were put on the Informant company from taking dealership of other car manufacturers. The OP in its reply stated that it had put no restrictions on any of its dealers from taking dealership of other car manufacturers and submitted that 143 of its dealers in India were having dealership of other car manufacturers. The list of such dealers was enclosed as Annexure 'F' to the OP's submissions.

8. It is also submitted by OP that the Informant was doing forum shopping. The Informant had moved Madras High Court against termination of dealership and before Madras High Court it had entered into a compromise with OP. Under this compromise, dealership of Informant was to continue up to 31.12.2013 or till its stock lasted whichever was earlier and thereafter it will have no claim of any sort against the OP. The Madras High Court recorded this compromise and passed an order to this effect on 27.08.2013. Copy of order has been placed on record as Annexure-B to the OP's submissions.

9. The Informant has alleged that OP was the second largest car manufacturer in India and second largest seller of cars at Surat with market share of 26.6% in 2011 and 23.7% in 2012. The market share of Maruti Suzuki in Surat was 36.9% and 37.4% in 2011 and 2012 respectively. The data furnished by the Informant makes it evident that OP was not dominant in the market of sale of cars in Surat region. Maruti Suzuki was having about 10% more market share than the OP. It is obvious that in dealership network also, Maruti Suzuki would have more spread in the region than that of OP and it cannot be said that in the market of providing dealership, OP was dominant. Since OP cannot be said to be a dominant player in providing dealership in the area of Surat, the question of dominance would not arise.



10. The Informant has claimed violation of Section 3 on the ground of violation of section 3(4)(c) of the Act. However, the agreement entered into between the parties does not contain a clause restraining the Informant from taking dealership of other car manufacturers. OP has also filed a list of its 143 dealers having dealership of other car manufacturers. This fact has not been refuted or denied by the Informant. Considering this, we consider that no *prima facie* case was made out of violation of Sections 3 or 4 of the Act.

11. The matter is liable to closed and is hereby closed under section 26(2) of the Act.

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

New Delhi  
Date: 05/02/2014

Sd/-  
(Ashok Chawla)  
Chairperson

Sd/-  
(Geeta Gouri)  
Member

Sd/-  
(Anurag Goel)  
Member

Sd/-  
(M.L. Tayal)  
Member

Sd/-  
(Justice (Retd.) S.N. Dhingra)  
Member

Sd/-  
(S.L. Bunker)  
Member