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Fair Competition
For Greater Good

COMPETITION COMMISSION OF INDIA

Case No. 82 of 2014

In Re:

St. Antony's Cars Pvt. Ltd.

Informant

And

Hyundai Motor India Ltd.

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

Order under section 26(1) of the Competition Act, 2002

1. The present information has been filed by M/s St. Antony's Cars Pvt. Ltd. ('**the Informant**') under section 19(1) (a) of the Competition Act, 2002 ('**the**



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Act') against M/s Hyundai Motor India Ltd. ('the Opposite Party'/ 'HMIL') alleging *inter alia* contravention of the provisions of section 3 of the Act.

2. The Informant is stated to be a private limited company engaged *inter alia* in the business of distribution of passenger cars. The Opposite Party is a public limited company and is engaged in the business of manufacturing, sale and servicing of automobiles as well as accessories and spare parts thereof under the brand name of 'Hyundai'.
3. It is averred that the Informant has entered into a Dealership Agreement ('the Agreement') with the Opposite Party on 24.08.2009. Under the terms of 'the Agreement', the Informant was appointed as a non-exclusive dealer of the Opposite Party for the territory of Kollam, Trivandrum for a period of three years from the date of execution of 'the Agreement'.
4. The Informant alleges that clause 5(iii) of 'the Agreement' restricts the freedom of the dealers of the Opposite Party from investing in any new or existing business not relating to Hyundai dealership. The Informant alleges that as a result of the said clause it could not take dealership of competitors of the Opposite Party, even if the dealership is a completely separate entity from the dealership of the Opposite Party. As per the Informant, the said clause amounts to refusal to deal within the meaning of section 3(4) (d) of the Act.
5. It is further alleged that inclusion of clauses such as clause 5(iii) in the said 'the Agreement' severely restricts the ability of experienced dealers, like the Informant, to deal with competing manufacturers and thereby causing appreciable adverse effect on competition which is in violation of section 3(4) (d) read with section 19(3) of the Act. To substantiate the same, the Informant has enclosed a letter dated 30.04.2010 from the Opposite Party to the dealers requesting them to keep its regional offices informed in case they intend to invest in new or existing business not related to Hyundai dealership as per 'the Agreement'.



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6. Based on the above averments and allegations, the Informant has filed the instant information against the Opposite Party.
7. The Commission has perused the information and the documents filed therewith.
8. It may be observed that the Informant, a non-exclusive authorized dealer of the Opposite Party, is aggrieved of clause 5(iii) of 'the Agreement' whereby it is unable to take up dealership of other car manufacturing companies. It is alleged that the said clause has restricted the Informant to further expand its business in the market as it requires that the Informant to first take written approval from the Opposite Party before venturing into new business if the said business is not related to Hyundai.
9. For felicity of reference, it would be appropriate to excerpt the said clause from the Agreement:

'5. Change in Dealership Ownership or Management:

Except with HMI's prior written approval, the Dealer shall not:-

- (i)*
- (ii)*
- (iii) invest in any new or existing business not relating to Hyundai dealership; or*
- (iv)*

Failure on the part of the Dealer to obtain HMI's prior approval as mentioned above shall entitle HMI to terminate this Agreement forthwith.'

10. The Commission notes that such non-compete clause in which the dealer is required to seek written approval from the manufacturer before it can enter



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into dealership with other companies *prima facie* creates an entry barrier for the dealer to enter into business/ dealership of other brands of cars.

11. The Commission also notes that the letter dated 30.04.2010 of the Opposite Party to its dealers further confirms that if the Opposite Party's dealers intend to enter into the business with its competitors, they should take written approval of the Opposite Party as agreed in 'the Agreement'. It appears that the Opposite Party's object *vide* the said letter is to preclude competitors from gaining access to the market which in turn restricts inter-brand competition.
12. It may also be noted that the Commission in Case No. 36 of 2014 has already ordered investigations against HMIL on *inter alia* similar set of allegations where *prima facie* it was opined that such conduct is in contravention of the provisions of section 3(4) of the Act. The said investigation is pending before the Director General ('the DG').
13. In view of the above, the Commission opines that *prima facie* the Opposite Party has contravened the provisions of section 3(4) read with section 3(1) of the Act by imposing restriction on the dealers to deal with competing brands in the market and thereby restricted inter-brand competition. Accordingly, the DG is directed to cause an investigation into the matter and to complete the investigation within a period of 60 days from receipt of this order.
14. It is also ordered that the present case shall stand clubbed with Case No. 36 of 2014 which is pending investigation before the DG involving *inter alia* similar allegations against the Opposite Party.
15. It is clarified that nothing stated in this order shall tantamount to final expression of opinion on the merits of the case and the observations made herein shall not affect the investigations in any manner.



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16. The Secretary is directed to send a copy of this order alongwith the information and the documents filed therewith to the Office of the DG forthwith.

Sd/-

(Ashok Chawla)

Chairperson

Sd/-

(S. L. Bunker)

Member

Sd/-

(Sudhir Mital)

Member

Sd/-

(Augustine Peter)

Member

Sd/-

(U. C. Nahta)

Member

New Delhi

Date: 20.11.2014