



**COMPETITION COMMISSION OF INDIA**  
**(Case No. 98/2013)**

**In Re:**

- (i) **Tristar Trading Private Limited**  
Represented by Manjit Singh Bala, Director,  
Jugiana adjoining IBP Petrol Pump,  
GT Road, Ludhiana 0141001  
...Informant No. 1
- (ii) **Sh. Manjit Singh Bala, Director**  
Flat No. 31, Royalton Towers, DLF Phase -5  
Gurgaon, Haryana 122002  
...Informant No. 2
- (iii) **Smt. Harleena Bala, Director**  
Flat No. 31, Royalton Towers, DLF Phase -5  
Gurgaon, Haryana 122002  
...Informant No. 3

**And**

- M/s Nissan Motors India Private Limited**  
Plot No, 1A, SIPCOT Industrial Area,  
Orgadam, Mattur Post,  
Sriperumpudur -602105  
...Opposite Party No. 1
- M/s. Hover Automative India Private Limited**  
1001A, Godrej Coliseum, 10<sup>th</sup> Floor, Somaiya  
Hospital Road, Off Eastern Express Highway,  
Sion (East), Mumbai 400022  
...Opposite Party No. 2
- M/s Dada Motors Private Limited**  
2 W Savitri-III, Near Dholewal Chowk,  
Ludhiana 141001  
...Opposite Party No. 3

**CORAM:**

Mr. Ashok Chawla  
Chairperson

Dr. Geeta Gouri  
Member

Mr. Anurag Goel  
Member

Mr. M. L. Tayal  
Member

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

Mr. S. L. Bunker  
Member



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**Present:** Mr. Ashish Bhagat, Ms. Manisha Svri and Mr. Mohit Arora,  
Advocates for the Informant

### **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 Section 4 of the Act by the Opposite Parties (“OPs”) with regard to dealership of Nissan cars.

2. Informant No. 1 is a private limited company having its showroom in Ludhiana(Informant No. 1 along with its directors - Informants No. 2 and 3 are collectively referred to as “**Informants**”).Opposite Party No.1 (“**OP1**”) is engaged in the design, manufacture, assembly and/or sale of motor vehicles under the brand name of Nissan. Opposite Party No. 2 (“**OP2**”) is a service partner of OP1 in the field of marketing, sales, after-sales and dealer development operations of Nissan vehicles in India. Opposite Party No. 3 (“**OP3**”) is an authorised dealer of OP1 for the districts of Ludhiana and Jalandhar in Punjab.
3. It is averred that in 2009, OP1 invited invitations for the dealership of Nissan. Pursuant to the execution of letter of intention 15.05.2009 and dealership agreement on 19.06.2010, Informant No. 1 was authorized to sell OP1’s vehicles including its products on a non-exclusive basis in Ludhiana. The Informants submitted that while they were in the process of getting the showroom constructed, they were barred from selling latest models of 2010 of Teana and X-trail cars and were allowed to sell only older models. According to the Informants, this was done so that OPs could clear their old stock. The reason given by OP2 was that they required clearance from Japan for the dealership for which the showroom had to be complete in all aspects. However, OPs 1 and 2 had allowed OP3 to sell cars in a showroom where the workshop was not complete as per Nissan norms. Further, another dealer (Bhagat Nissan) handling Chandigarh territory was



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- allowed to sell new cars despite not having proper facilities as per the guidelines & standards and also sell cars of other brands (Ford and Volvo).
4. Due to undue pressure from OPs 1 and 2, an understanding was reached between OP3 and the Informants to the effect that the Informants would transfer their bookings to OP3 and get cars billed from OP2 and receive balance payments from customers upon sales with commission sharing on 50-50 basis with OP3. However, no commission was shared between the Informants and OP3 despite the fact that the Informants had transferred 40 cars booked by them to OP3. During the month of October 2010, OPs had advertised OP3 as their only authorised dealer in Ludhiana in newspapers. On 12.11.2010, Informant No. 1's dealership agreement was terminated without any reason or proper notice and without any heed to the huge investments made by the Informants for construction of workshop and infrastructure facility.
  5. Based on the above contentions, the Informants alleged that OPs 1 and 2, by abusing their dominant position indulged in malpractice resulting in denial of market access for the Informants by favouring OP3 in contravention of Section 4(2) of the Act. The Informants also drew attention to certain abusive clauses of the dealership agreement such as non-exclusive dealership, prior consent of OP1 for change of ownership of dealer, etc. According to the Informants, OPs 1 and 2 in collusion with OP3 has been trying to preserve, increase and consolidate the dominant power of OP3 in the relevant market, thereby unreasonably preventing or distorting competition in sales and services of Nissan cars.
  6. The Commission considered the information, facts and data placed on record by the Informant. For analysing violation of Section 4 of the Act, the relevant product market and relevant geographic market has to be determined. In the present case, OP1 appears to be engaged in the design, manufacture, assembly and sale of Nissan passenger cars and passenger cars components. Informant No. 1 was dealer of OP1 for the sale, service



and repair of passenger cars in Ludhiana on non-exclusive basis. Therefore, the relevant product market will be „market for dealership of passenger cars“. The relevant geographic market will be Ludhiana and its surrounding areas as it is not necessary that a car buyer in Ludhiana will purchase a car from Ludhiana area only. Therefore, the relevant market in the instant case will be „market for dealership of passenger cars in Ludhiana and surrounding areas.“

7. The Informants have not provided any information to indicate market share of OP1 in Ludhiana. The market share of various car manufacturers on a pan-India basis in 2010-11<sup>1</sup> is as under:

Name of the company	Market Share (in %)
Maruti	44.94
Hyundai	14.26
Tata Motors	13.97
Ford	3.91
General Motors	4.25
Mahindra	7.19
Toyota	3.34
Honda	2.36
Skoda	0.91
Fiat	0.84
<b>Nissan</b>	<b>0.52</b>
Hindustan Motors	0.39
Volkswagen	2.21
Mercedes Benz	0.26
BMW	0.28

As per the above data, it is evident that a number of other automobile manufacturers have established their presence in India and that OP1 has a very negligible share in the passenger car segment in India. As a result, in dealership network OP1 will not have much spread than that of Maruti, Hyundai, Tata, etc. Therefore, it cannot be said that in the market of providing dealership, OP1 was dominant. Since OP cannot be said to be a

<sup>1</sup>Production and sales data compiled by Society of Indian Automobile Manufacturers



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dominant player in the relevant market, the question of abuse of dominance would not arise.

8. The Informants appear to be aggrieved by the termination of the dealership agreement on 12.11.2010. From the material available on record, it appears that the dealership agreement was terminated as OP1 received complaints from customers that they had paid advance to the Informant No. 1, however, the money was not remitted to OP1 for delivery of vehicles as per their arrangement. There were also allegations relating to misrepresentation of facts by Informants with respect to sale of Micra diesel cars. The issue between the car manufacturer and its erstwhile dealer arising out of termination of the dealer agreement appears to be a commercial and contractual dispute and does not raise any competition concern.
9. For the reasons mentioned above, the Commission is of the *prima facie* opinion that there arises no competition concern actionable under Section 4 of the Act and the case deserves to be closed under Section 26(2) of the Act. The case is therefore, hereby closed under Section 26(2) the Act.
10. The Secretary is directed to inform the parties accordingly.

New Delhi  
Date:11/03/2014

Sd/-

**(Ashok Chawla)**  
**Chairperson**

Sd/-

**(Geeta Gouri)**  
**Member**

Sd/-

**(Anurag Goel)**  
**Member**

Sd/-

**(M. L. Tayal)**  
**Member**

Sd/-

**(S.L. Bunker)**  
**Member**