

COMPETITION COMMISSION OF INDIA
[Case No 25/2011]

Dated: 19-7-2011

Information Filed by:

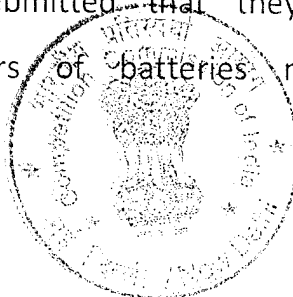
1. *M/s Amar Batteries & Electricals, New Delhi*
2. *M/s Automen, Noida*
3. *M/s Graf-Tech Park, New Delhi*
4. *M/s JVC Industrial Corporation, Noida*
5. *M/s Mahajan Batteries, New Delhi*
6. *M/s New Delhi Motor House, New Delhi*
7. *Surya Battery, New Delhi*

Information Against:

M/s Tudor India Limited

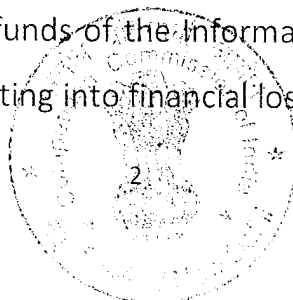
Order under Section 26(2) of the Competition Act, 2002

1. The instant matter has been considered by the Commission on the basis of an information received on 30.05.2011, under Section 19 (1) (a) of the Competition Act, 2002 (hereinafter referred to as "the Act"), from M/s Amar Batteries & Electricals, M/s Automen, M/s Graf-Tech Park, M/s JVC Industrial Corporation, M/s Mahajan Batteries, M/s New Delhi Motor House and Surya Battery (hereinafter, referred to as "Informants") against M/s Tudor India Limited (hereinafter referred to as "Opposite Party"), inter-alia alleging contravention of provisions of Section 4 of the Act.
2. The facts and allegations as stated in the information are, in brief, as under:
 - 2.1 The informants have submitted that they are the authorized dealers/distributors/resellers of batteries manufactured by the

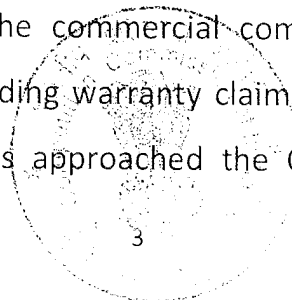


Opposite Party (OP) in Delhi and National Capital Region. They were appointed as distributors during the year 2000-2009.

- 2.2 The Informants have alleged that by abusing its dominant position, the OP has dictated terms upon them and compelled them to buy inferior products manufactured by it at a different price and under different schemes.
- 2.3 As regards the nature and manner of business, it has been submitted by the informants that the orders for batteries are placed by them telephonically or in writing and after receiving advance cheques towards the orders so placed, the OP dispatches the batteries to them along with an invoice and a warranty card for each battery.
- 2.4 The informants have submitted that batteries are sold in India with limited period replacement guarantee, which varies from 12 to 30 months, depending upon the guarantee provided by the manufacturers. This replacement guarantee, however, is generally effective from the date of sale to the customer/end user and not from the date of manufacturing. If any manufacturing defect is noticed in the sold batteries, the customers have to approach the Informants within the warranty period for replacement. If the complaint of the customer is found true, the battery is replaced by the Informants from their own stock and defective batteries are returned to the manufacturer for replacement.
- 2.5 According to the informants, earlier the defective batteries used to be replaced by the OP within a maximum period of 30-60 days, but this period has gradually increased and now it takes 2-3 years for replacement. As a result, funds of the Informants remain blocked for a longer period of time resulting into financial loss to them.



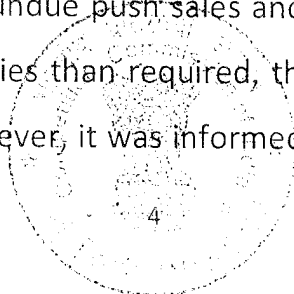
- 2.6 Further, over the years, the OP was offering various schemes/discounts to the informants. Under one of such schemes, if say, purchase of 100 batteries at the rate of Rs.1000 per battery worth Rs.1,00,000 was made, and OP offered a discount of Rs.200 on each battery, then the informants were entitled to a refund of Rs.20,000. As per practice, instead of refunds, credit notes were issued, which were to be adjusted against the subsequent purchases. Thereafter, in subsequent purchases of Rs.1, 00,000, the informants were supposed to pay only Rs. 80,000 and not the full amount.
- 2.7 It has further been submitted that instead of issuing written credit notes, a credit entry used to be made against which future deliveries were made. Over the years, these credit notes kept on mounting, as full/complete deliveries could not be made against each credit note, which as per the informants, amounts to denial of the legitimate right of the informants over their own money.
- 2.8 The informants have further submitted that since 31.03.2009, without any verbal or written communication, the OP has stopped supplying batteries to them. As per the informants, this is due to the fact that a major change has taken place in the organizational structure of the OP, whereby old employees have been replaced by the new sets of employees.
- 2.9 The informants have alleged that the new employees of OP are acting against the interest of the informants, are not willing to co-operate with them and are denying the commercial commitments made by the previous employees regarding warranty claims, credit notes, discounts etc. When the Informants approached the OP to resolve the issue,



especially of mounting warranty claims, it was replied that non-supply of batteries was due to the outstanding amount due and payable by the informants. As per the Informants, the outstanding amount attributed to them is nothing, but manipulated computer generated bills prepared by the OP. As regards replacement of batteries, which were found with manufacturing defects and had been pending replacement under warranty, the OP refused to replace them even though they were within the warranty period.

2.10 The Informants have alleged that in last 8-10 years, the OP never gave them a detailed ledger pertaining to books of account, in and out ledgers of warranty and transit damaged batteries, ledger of unsold defective batteries etc., even when asked repeatedly. Without providing these details, the OP is compelling the informants to pay inflated/manipulated amount, which is otherwise not due or payable. According to the Informants, because of this approach, they are neither getting new supplies nor getting replacement batteries, causing considerable losses to them.

2.11 The informants have submitted that the problem has its origin in November-December 2008, when the OP forcibly supplied a large quantity of batteries, over and above the normal average off-take of last 2-3 years to them, with a view to manipulate its balance sheet for showing higher sales. The OP made promises to the Informants to provide compensation in terms of discount on old as well as new stocks. But, these commitments were never honoured. After realizing that they have been subjected to undue push sales and have been supplied with higher quantity of batteries than required, the Informants took up the matter with the OP. However, it was informed that extra batteries were



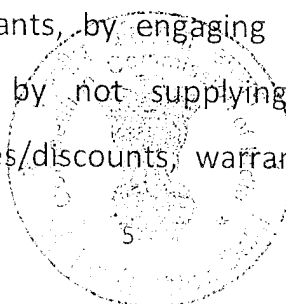
being billed to meet the yearly end targets and the same would be taken back in January 2009. But, in spite of repeated reminders, the excess batteries were not taken back as promised. In between the old employees changed and new employees joined who refused to entertain the request of the informants and started demanding payment for the batteries supplied to the informants in November – December 2008.

2.12 The Informants have also alleged that besides above, the OP has also indulged in practice of raising bogus bills in their names on numerous occasions.

2.13 According to the informants, the OP suffered losses at the end of F.Y.2008-09, due to which it substantially reduced prices w.e.f. January 2009. As a result, the prices of batteries which were earlier supplied to the Informants had to be sold at lower price, since it was not feasible for the Informants to ^{sell} their old stock (earlier excess supply) at higher prices when the same products were available at lower prices in the market.

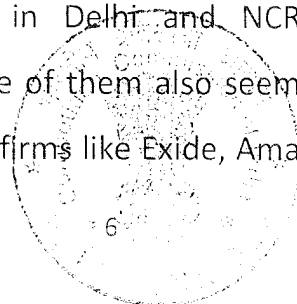
2.14 The Informants have also alleged that instead of reconciling the differences with the Informants, the OP started appointing new distributors in the same area/locality wherein the Informants had been operating for more than a decade. The new distributors sold batteries at a lower price which led to reduction in sale and customer base of the Informants.

2.15 According to the informants, by engaging in various practices like exorbitant/higher billing, by not supplying fresh/new stock, not honouring the credit notes/discounts, warranty claims and incentive



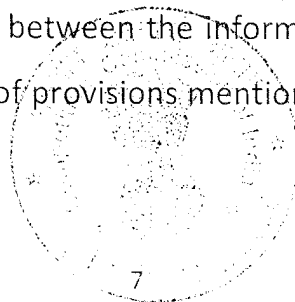
schemes, forcing informants into push sales and by not providing ledger/replacement/warranty details, the OP has abused its position of dominance.

- 3 The matter has been considered by the Commission in its meetings held on 14.06.2011 and 19.07.2011. The Commission has heard the informants through their advocates, Sidharth Yadav, K.B. Thakur and Wasim Ashraf and has also carefully examined the facts on record to arrive at a decision in the matter.
- 4 The issue for consideration before the Commission in the present case is whether the conduct of the OP is violative of the provisions of section 4 of the Act.
- 5 The Commission is of view that in order to examine whether any enterprise is engaged in any abusive conduct within the meaning of provisions of Section 4 of the Act, it is necessary to examine whether the said enterprise is enjoying any position of dominance in a relevant market. In the instant information, there is no mention of any relevant market in terms of provisions of the Section 2 (r) read with 19 (5), 19(6) and 19(7) of the Act. Further, there is nothing in information to suggest or establish that the OP enjoys a position of dominance.
- 6 The Commission, after going through the content of the information, has noted that the OP manufactures and markets automotive batteries under Prestolite and other brands, having its principal place of business and registered office at Gandhinagar, Gujarat. The informants are having place of business in Delhi and NCR and are authorized distributors of the OP. Some of them also seems to be the authorised dealers of other companies/firms like Exide, Amaron and Tata Batteries.



There are a large number of established companies like Exide, Standard Batteries, Amara Raja etc. which are manufacturing and selling batteries in India and also in and around Delhi and NCR. These companies are having substantial market share in this business. Besides, there are a number of local battery manufacturers present all over India. Thus, as per available information, the OP does not seem to be a dominant player in the market of batteries within the meaning of explanation (a) to Section 4 of the Act. The informants have also not been able to produce any cogent evidence on record to prove that the OP is a dominant player in the business of manufacture and supply of automotive batteries either all over India or in Delhi and NCR.

- 7 On the basis of above, the Commission concludes that there is no case made out for violation of Section 4 of the Act.
- 8 The Commission has also noted that there are no allegations in the information regarding contravention of any provisions of Section 3 of the Act. However, even when the allegations contained in the information are looked into from the point of view of any possible contravention under the provisions of Section 3, the Commission finds that the existing materials on record do not suggest any such contravention. The OP and the informants are at different levels of supply and production chain and there is no horizontal agreement between them, so as to establish a case of contravention under Section 3(3) of the Act. The allegations in the information also do not indicate agreement of such nature between the informants and OP, which may be suggestive of violation of provisions mentioned in Section 3(4) of the Act.



- 9 The Commission further observes that the informant has also not come out with any cogent argument to establish any adverse appreciable adverse effect on competition in the market of batteries because of the alleged practices and conduct of the OP. The Commission feels that the allegations contained in the information are more in the nature of non-commitment of commercial and business deals between the informants and the OP and they do not give rise to any competition concern.
- 10 The Commission, therefore, is of the view that *prima facie* no case is made out for making a reference to the Director General for conducting investigation into this matter under section 26 (1) of the Act. Therefore, the proceedings relating to this case are closed forthwith under Section 26(2) of the Act.
- 11 Secretary is directed to inform accordingly.

sel/-
Member (R)

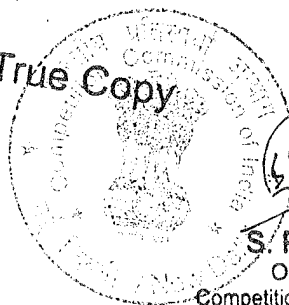
sel/-
Member (P)

sel/-
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Certified True Copy



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08/08/2011
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