

**BEFORE THE**  
**COMPETITION COMMISSION OF INDIA**  
**NEW DELHI**  
**Case No.33/2011**

Date of Decision: 03.07.2012

Automobiles Dealers Association, Hathras, U.P.

....Informant

through Advocate Mr. Sanjeev Kumar Dubey &

Mr. Rahul Trivedi.

Versus

1. Global Automobiles Limited
2. Pooja Expo India Private Limited  
through Advocate Punit Jain

.....Opposite Parties

**Final Order**

1. The Commission has received the present information from M/s. Automobile Dealers Association, Uttar Pradesh (hereinafter referred to as the "Informant") on 28.06.2011 under the provisions of Section 19 (1) (a) of the Competition Act, 2002 (hereinafter referred to as "the Act"), against M/s. Global Automobiles Limited (GAL or Opposite Party No. 1) and Pooja Expo India Private Limited (Opposite Party No. 2 or Pooja Expo) for their alleged contravention of the provisions of Section 3 and Section 4 of the Competition Act, 2002.



2. A brief profile of the parties is given below:-

2.1 The Informant is an Association of Automobile Dealers at Hathras, Uttar Pradesh formed by M/s R.K Motors, Banda, Uttar Pradesh; M/s Patliputra Agro Pvt. Ltd, Patna, Bihar and Kashish Automobile, Gorakhpur, Uttar Pradesh and registered under Society Registration Act, 1860.

2.2 The Opposite Party No. 1 is a company incorporated under the provisions of Companies Act, 1956 having its registered office at Hooghly, West Bengal engaged in the business of manufacturing, marketing and sale of two wheelers i.e. Motor Cycles and Scooters in the name of M/s Global Automobiles. Xenitis Group is the erstwhile shareholder of the Opposite Party No. 1. Xenitis Group of Companies consists of Companies namely Xenitis Infotech (Electronics) Private Limited; Xenitis Cycles Private Limited; Aamar PC Computer Private Limited; Xenitis Group Services Private Limited; Xenitis Telecommunications Private Limited & Xenitis Atuomobiles Private Limited duly incorporated under the Companies Act, 1956 and having its registered office at Kolkata. Opposite Party No. 2 is a Carrying and Forwarding Agent(C&F) of the Opposite Party No.1 for the state of Haryana and some part of Uttar Pradesh.

3. The facts as stated in the information, in brief, are as under:

3.1 It has been stated that GAL floated an advertisement in the open market to appoint dealers for the two wheelers (motorcycles and scooters) manufactured by the Company. Following the advertisement the members of the Automobile Dealers Association were appointed dealers of GAL for marketing and selling of the two wheelers manufactured by it.



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Subsequently, a Letter of Intent (LoI) was signed between the GAL and each of the dealers across the country.

**3.2** As per the Informant, the conditions of LoI are one sided and heavily loaded in favour of the Opposite Party No.1. LoI included restrictive clauses such as not to deal with the products of its competitors, restricting the areas of operation etc. It has been pointed out that especially Clauses Nos. 6-17 of the LoI are anti-competitive which run as follows:-

- "6. You will establish and maintain a service station of approx 1000 sq. ft. covered area with your proposed showroom exclusively for rendering service to the customers of GLOBAL products. This service station will be as per company specifications and layout and will carry equipment, tool, fixtures etc, as specified by the company and will be completed by 20<sup>th</sup>, February, 2008. This will include as area of 300 sq. ft. which will be used to stock, display & sell spare parts.*
- 7. You shall also provide close to your showroom adequate covered area to be used for stocking two wheelers, as indicated to you from time to time.*
- 8. You will provide necessary computer hardware and software at your dealership for automation of your entire operations which would include sales, service, spares, inventory etc.*
- 9. Your remuneration for free service to customers as per company's warranty policy will be according to the schedule of labor charges of the company for free service which is application to all dealers. For paid service you will charge as per and not more than the standard labor charge schedule made available to you by us from time to time.*



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10. *After Sales Services as an important element in our business and we attach great importance to the quality of service rendered. Continuous poor after sales service will constitute a breach of the terms and conditions of our agreement.*
11. *To achieve total consumer satisfaction through excellent after sales service, you will source all your spare parts directly from us.*
12. *From time to time you will be required to carry out local sales promotional activities such as publicity, hoarding, wall painting, mechanic meets etc. to promote sale of GLOBAL products in your territory.*
13. *At all times you will be required to provide adequate color model mix to your customers to choose from and for this you will maintain a minimum physical paid stock of approximately 21(Twenty One) days sale of each category of two wheelers viz. Motorbikes, Scooters and Scooterettes. In addition you will maintain spare parts inventory of Approx. 1.0 lacs to be able to service the two wheelers reporting to your workshop. For this you should provide adequate working capital as discussed and agreed upon by you. The working capital may increase from time to time subject to introduction of new models and in life with requirement of the new business.*
14. *It is important that to provide service to the customers, qualified manpower both for sales and service shall be employed by you. You will make available such manpower for training.*
15. *Your appointment at Authorized Dealer will commence after your showroom and service centre are established in conformity with the company specifications to our satisfaction. This should be done at not later*



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that 10<sup>th</sup> February 2008. The formal inauguration of dealership will take place minimum 7 days after your showroom and workshop are certified to be ready by our certified personnel, so that necessary product & spare part kits can be lined up.

16. This LOI is being issued with the understanding that your authorized signatory as mentioned in clause 5(iii) above shall be fully involved and available as our full time showroom contact person for the dealership with full authority on all matters including financial authority for all transactions. Should it ever happen that in our considered opinion (which opinion shall neither be constables nor be open to any arbitration before any outside authority your said representative's availability for this dealership seems to fall below our expectations, or there seems to be change in your dealership, we want you to understand this very clearly and endorse your signature here in acknowledgement of an in assent to this condition. This condition is being laid down because in our business, the person involved is as important as the showroom and finance.
17. That company shall be entitled to terminate your appointment as Authorized Dealer for any breach of the terms and conditions. The appointment can also be terminated by either party giving two months' notice to the other without assigning any reason."

3.3 The Informant has alleged that in terms of the conditions of the agreement, the members of the Informant made huge investments and have established and maintained show rooms and service stations as per GAL's specifications. Furthermore, equipments, tools and fixtures as specified were made available within the premises of the service stations. It has been alleged



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that the GAL has not reimbursed their expenditure incurred for establishing and maintaining the aforesaid facilities and promoting the sale of the product of the GAL.

**3.4** It has been further alleged that the quality of the products of GAL was defective and inspite of the request by the members of the Informant it failed to replace the defective motorcycles which further imposed monetary burden on the dealers as they had to engage mechanics to remove and rectify the defects without receiving any compensation from the GAL. Not only this, the GAL also failed to provide spare parts for replacement and did not provide training to their employees. It has been stated that because of these conduct of the GAL the business of the dealers has virtually stopped. It has been also alleged that GAL has also stopped the supply of two wheelers to the dealers against the express terms of Lol.

**3.5** It has also been alleged that the members of the Informant were not allowed to accept any other two wheeler agency or dealership of any other automobile company without written approval of the GAL vide clause 3 of Lol and in case any dealer desired to do business with any other two wheeler automobile company he was threatened with cancellation of dealership. Informant has stated that GAL is enjoying dominant position and is not allowing its members to do business in proper manner and thereby affecting the competition in the market.

**3.6** It has been alleged that after the Lol was signed the GAL on its own motion and without informing the members of the Informant introduced a new Company Pooja Expo India Pvt. Ltd./ Opposite Party No. 2 as the C&F of





the Global Automobiles and informed the dealers to take stock, pay for it and deal directly from the said C&F Company. It has been submitted that Pooja Expo Pvt. Ltd. was appointed for some areas of U.P. but for other parts of India the Opposite Party No. 1 have appointed different C&F Companies. But, when the dealers approached their respective C&F Company, they were told that the GAL had not given such instructions to C&F Company.

- 3.7 As per the averment made by the Informant neither the dealers could take any action against Opposite Party No. 1 fearing that their dealership might get cancelled nor they could discontinue the business with Opposite Party No. 1, in view of the fact that they had already invested huge money in order to promote the business of Opposite Party No. 1:
4. The Commission considered the matter in its meeting held on 12.07.2011 and decided to give the Informant an opportunity to explain his case with liberty to file additional written submissions. Mr. Rahul Trivedi, Advocate appeared on behalf of Informant on 04.08.2011 and requested for adjournment. Acceding to the request of the Advocate, the Commission deferred the matter for hearing to 06.09.2011.
5. On 06.09.2011, Mr. Sanjeev Kumar Dubey, Advocate and Mr. Rahul Trivedi, Advocate appeared on behalf of Informant and argued the matter. The Advocates also sought four weeks' time to file additional information to substantiate their arguments and the matter was deferred for consideration on 11.10.2011.



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6. On 11.10.2011, after considering the information and having found that a *prima facie* case existed in the matter, the Commission passed an order under section 26(1) directing DG to conduct an investigation into the matter and submit his investigation report. In compliance of the order of the Commission the DG conducted investigation into the matter and submitted his investigation report on 28.03.2012.

## **7. Investigation by DG**

7.1 DG has based the investigation on the facts and evidences gathered from various primary and secondary sources. During investigation, DG has collected information pertaining to the allegations from Informant, Opposite Parties, Registrar of Companies-West Bengal, Commissioner of Police- West Bengal etc.. To understand the commercial trade practice of two wheelers automobile industry, DG has also issued notices to the other competitors of the industry namely TVS Motors Limited- Chennai, Bajaj Auto Limited-Pune, India Yamaha Motor Private Limited and Hero Motorcorp Limited with regard to appointment of dealers, distributors, C & F agents and service center.

### **Summary of replies filed before the DG**

#### **7.2 Reply of Global Automobile Limited (GAL)**



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**7.2.1** GAL submitted that in November, 2010, the management and control of GAL was taken over by Saradha Group of companies (headed by Mr. Sudipta Sen as MD) from the Xenitis Group of Companies alongwith all assets and liabilities. The intermediate period during the completion of the transfer of the said company (along with all assets and liabilities) was beset with voluminous exchange of information and due diligence and in between the business of the GAL saw a dip and encountered co-ordination problems with its Dealer and Distributor Network. It also submitted that presently, GAL appears to be in a more stable position to deal with all issues with better understanding and clarity. GAL denied that the company has indulged into anticompetitive activities as has been alleged by the Informant.

**7.2.2** GAL submitted that Clause 3 of the Letter of Intent was aimed at creating a specialized knowledge of the product i.e. motorcycles of the company in as much as the manufacturing process of the motorbikes of the company and sales and promotion including after sales services of the motorcycles were being executed in technical collaboration with Guangzhou Panyu Huanan Motors Group Co. Ltd., China. The product being new it required expertise in dealing and to promote better sales of the newly launched motorcycles the products were to be supported with after sales services with specialized knowledge about the products including their maintenance, spares etc. It was submitted that the exclusivity clause was aimed at building such specialized



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expertise by dealing specially and exclusively in the product motorcycles so as to build knowledge commitment of the product motorcycles, which in turn was aimed at giving the purchasers/consumers a better support and services, which was desirable during the infancy of the business of the company.

**7.2.3** Further, GAL also submitted that it did not enjoy a dominant position as it had less than 1% market share in the two-wheeler industry and it also cannot be said to have any dominant bargaining position vis-à-vis the dealers or distributors. As per Indian Automobile Industry Report relating to Two Wheelers, as also available in the public domain, from April, 2010 to September 2010 (six months) – All India sales figures for two wheelers units sold were as follows:- Hero Honda – 25.55 Lakhs, Bajaj – 11.98 Lakhs, TVS – 5.08 Lakhs, Suzuki – 1.21 Lakhs and Others (including GAL) 50 thousand only. It also submitted before the DG that since the takeover of GAL by Saradha Group of Companies i.e., from November 2010 till date, only 611 units of two wheelers have been dispatched by GAL and no production or manufacturing activity has been taking place. The sale of such old stock includes two wheelers dispatched to Nepal and some units given to the employees of the company itself. It also submitted that the policies of GAL are aimed at benefitting the end consumer and have no adverse effect on competition.





**7.2.4** It was submitted that GAL is taking steps to redress the grievances of the distributors/dealers/vendors and for which it has published an advertisement in the newspaper 'Bengal Post' dated 19.01.2012 inviting dealers, distributors and vendors for reconciling their relevant papers / documents for redressing their grievances.

### **7.3 Reply of Pooja Expo India Private Limited**

**7.3.1** Pooja Expo submitted that GAL had appointed it as its C&F- Cum-Consignment agent on 23th, Jan. 2008 for one year unless extended for another year and had given non-exclusive right for the state of Haryana and some part of UP. Pooja Expo has stated that GAL has appointed it as C & F cum- consignment agent with limited powers restricted to receiving, storing, forwarding the product on the direction of GAL. It also stated that GAL had directly appointed their authorized dealers for all over India who in turn are unknown to Pooja Expo. Further, Pooja Expo is a stranger to any MOU/agreement executed between the GAL and their authorized dealers.

**7.3.2** Pooja Expo has also submitted that in principal-agent agreement there was no direct relation between C&F cum consignment agent with the authorized dealers of the GAL. In agency model the principal has the liability to indemnify the agent.

**7.3.3** Pooja Expo also submitted that as per C&F cum consignment agreement with GAL, it received the products sent by the GAL to store the products



under its control and to deliver and/or forward them to such person(s) in such lots on the directions of the GAL from time to time.

**7.3.4** Pooja Expo submitted that it does not have the information related to other C & F dealers appointed by GAL. Pooja Expo further informed that the terms and conditions of the C & F were mentioned in the agreement signed between the two companies and all the technical aspect of the products was managed by GAL.

**7.3.5** Pooja Expo also sought to clarify that it has not sold any product to M/s. R.K. Motors, Banda, UP., M/s. Patliputra Agro Pvt. Limited., Patna, Bihar and Kashish Automobiles, Gorakhpur, UP.

**7.4** During the course of Investigation the DG also sent notices and considered the replies submitted by the competitors of the GAL namely TVS Motors Ltd, Bajaj Auto Ltd., India Yamaha Motor Pvt. Ltd., Hero Motor Corp. Ltd. to ascertain their commercial practices in two wheelers automobile Industry as well as their market share etc.

### **Relevant Market**

**7.5** As per DG report, GAL is engaged in manufacturing two wheelers namely Rock 100 motorcycle (97.2CC), X PRESSION plus 125 motorcycle (124CC) and UFO scooter (149.6CC), therefore the relevant product market in the present case would be the manufacturing/marketing of two wheeler in the



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capacity range of 100CC to 150CC” and the relevant geographic market would be “The National boundaries of India”. Thus, as per DG, the relevant market in the present case is the “manufacturing/marketing of two wheeler in the capacity range of 100CC to 150CC in the territory of India” in terms of Section 2 (r) of the Act.

### Conclusion in the DG Report

7.6 After considering the terms and conditions contained in clause 3 of LOI, statement of the Opposite Parties and other material available on record the DG has concluded that the said agreement entered between GAL and the dealers was in the nature of “exclusive distribution agreement” in terms of clause (c) of the section 3(4) of the Act. The DG has concluded that the said dealership agreement clearly restricted the members of the Informant and other dealers from acquiring or otherwise dealing with in any other two wheeler agencies or dealership other than the GAL.

7.7 After analysing the factors provided in section 19(3) of the Act the DG has concluded that the execution of aforesaid agreement clearly results in creation of barriers to new entrants in the relevant market since such exclusivity leads to putting restriction in their business. Further, the said agreement is also likely to foreclose the market on account of such restrictions placed with respect to supply and sale price of the said product. The agreement also does not result in accrual of benefit to the dealers and on the other end it restricts the choice available to the dealers and puts



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them in disadvantageous position forcing them to buy the products of the GAL.

**7.8** DG has also found that there existed a potential threat of termination of dealership on account of any kind of engagement or business with any other competitors in the business of manufacturing and sale of two wheelers. As per the report of DG the Informant and other dealers were not allowed to discontinue the said business of dealership of two wheelers despite no regular supply and replacement of defective two wheelers. During investigation, DG noted that the GAL had not fulfilled its obligation with respect to reimbursement of expenses towards free services of two wheelers incurred by the dealers. The present management has also confirmed that the accounts of such dealers are in the process of settlement. The DG has concluded that said act or conduct of the GAL emanating from the terms and conditions of the dealership agreement resulted in creation of exit barrier to GAL dealers, which is anti-competitive in nature and clearly causing AAEC in the relevant market. Accordingly the DG has concluded that the said conduct of the GAL, which includes the present company - Saradha Reality India Ltd., is therefore found to be in violation of the provisions of section 3(4) of the Act.

**7.9** As regards the allegation of abuse of dominance the DG has observed that the GAL does not have any position of dominance in the relevant market on any of the parameters and factors given in section 19(4) of the Act. DG has noted from the documents placed on record as well as information collected



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from third parties including Indian Automobile Industry Report that the sale of two wheelers by the GAL was minuscule in comparison to Hero Honda, Bajaj, TVS Motors and Suzuki. DG also observed that since the takeover of GAL by Saradha Group of Companies only 611 units of two wheelers have been dispatched by GAL and no production or manufacturing activity is stated to be taking place. Further, even the name of GAL does not exist in the two wheeler manufacturers in India as per the information available with Society of Indian Automobile Manufacturers (SIAM). The DG has observed that GAL does not enjoy a dominant position as alleged since its share is negligible or non-existent in the two-wheeler market. Further, DG has also examined the balance sheet and P & L Account of the GAL vis-à-vis other competitors in the relevant market. DG observed that the total sales of GAL is nowhere in comparison to any of the known manufacturers such as Hero Honda, Bajaj and others. The GAL has a negligible capital which is minuscule in comparison to any of its competitors such as Bajaj Auto Ltd. which has a capital of Rs.4807.22 crores in the financial year 2010-11. Thus, the GAL was not found to be in dominant position in terms of the market share, size & resources, dependence of consumers etc. After taking into account all these factors the DG has concluded that in the present matter, there is no case of violation of provisions of section 4 of the Act.

8. The Commission considered the investigation report of the DG on 04.04.12 and decided to send a copy of the investigation report to the parties for filing their replies/objections and also directed the Opposite Parties to file Profit & Loss Account and Balance Sheet of their enterprises for last three financial



years. The Commission also directed the Informant as well as the Opposite Party to appear for oral hearing, if they so desire, either personally or through their authorized representative on 09.05.2012.

9. On 09.05.2012, the Commission considered the matter. Despite sufficient service none of the parties filed their replies/objections to DG report nor did they appear for hearing. Although Mr. Punit Jain, Advocate filed a memo of appearance on behalf of Opposite Party No. 2 however, he did not appear before the Commission. Under these circumstances the Commission decided to proceed further on the basis of the material on record.

**10. Reply/Objection of the Informant to the DG report:** - No reply has been received by the Commission from the Informant.

**11. Reply/Objection of the Opposite Parties to the DG report:** - No reply has been received by the Commission from the Opposite Parties.

### Decision of the Commission

12. On careful examination of the information, DG report, and other materials available on record, the Commission observes that the following issues arise for determination in the present matter:





Issue 1:-Whether the alleged clauses in the dealership agreement/Letter of Intent amongst the dealers and GAL are anticompetitive in violation of the provisions of section 3(4) read with section 3(1) of the Act?

Issue 2:- Whether the GAL is enjoying any dominant position in the relevant market and if so, whether it is abusing its dominance in violation of provisions of Section 4 of the Act?

### Determination of Issue No. 1

12.1 The Informant has stated that the Lol contains exclusive supply agreement, refusal to deal as well as exclusive distribution agreement, which causes an appreciable adverse effect on competition in the relevant market in India and therefore, falls foul of section 3(4) of the Act.

12.2 The DG after examining the terms and conditions contained in clause 3 of Lol and statement of the GAL, came to the conclusion that the said agreement entered between GAL and its dealers was in the nature of "exclusive distribution agreement" in terms of clause(c) of section 3(4) of the Act. As per the findings of DG such an agreement resulted in creation of entry and exit barriers to new and incumbent entrants respectively, was likely to foreclose the market, restricted the choice available to the dealers and consequently causes an appreciable adverse effect on competition(AAEC) in India.



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**12.3** The Commission has noted that although the alleged Lol was issued on 09.02.2008 but as the alleged Lol was acted upon even after May 20, 2009 i.e. even after the enforcement of provisions of Section 3 & Section 4 of the Act, the Commission is empowered to enquire into the merits of the case.

**12.4** In order to determine whether any agreement is in contravention of section 3(4) read with section 3(1) of the Act, the following five essential ingredients of section 3(4) have to be satisfied:

- a. There must exist an agreement amongst enterprises or persons,
- b. The parties to such agreement must be at different stages or levels of production chain, in respect of production, supply, distribution, storage, sale or price of, or trade in goods or provision of services,
- c. The agreeing parties must be in different markets,
- d. The agreement should be of the nature as illustrated in clauses (a) to (e) of sub-section 4 of section 3 of the Act,
- e. The agreement should cause or should be likely to cause AAEC.

**12.5** Considering the definition of agreement as provided in section 2(b) of the Act there is no doubt that Lol is an agreement between GAL and its dealers. Furthermore, GAL is engaged in the activity of production and marketing two wheelers while its dealers are engaged in sale of two wheelers manufactured by GAL and also providing after sales services. Therefore, GAL and its dealers are at different stages of production chain and are in different markets. Further, lynchpin of the findings of the DG report is Clause 3 of the Lol (annexed with DG report) which is in following terms:



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*"You shall not either directly or through a sister concern deal in or accept any other two wheeler agency or dealership except with the specific written approval of the company."*

A bare perusal of the contents of this clause clearly shows that this exclusivity clause does in fact restrict the dealers from acquiring the dealership of any other two wheeler manufacturers or otherwise dealing with their products. Therefore, in the instant case, the first four essential ingredients of section 3(4) are present.

**12.6** The Commission has to determine in such scenario as to whether any AAEC is arising in terms of section 19(3) of the Act. This is the fifth essential ingredient of any agreement which is under scrutiny for contravention of section 3(4).

**12.7** While ascertaining AAEC in case of any agreement that falls under section 3(4), the possibility of AAEC has to be examined at both levels of production and supply chain in both separate markets where the agreeing parties operate. Hence, in this case it has to be examined whether the Lol causes or is likely to cause AAEC in the market of manufacture of two wheelers and in the market in which dealers of GAL are operating or in both.

**12.8** Section 19(3) lists factors that have to be considered by the Commission while determining AAEC. These are:

- (a) creation of barriers to new entrants in the market;
- (b) driving existing competitors out of the market;



(c) foreclosure of competition by hindering entry into the market;

(d) accrual of benefits to consumers;

(e) improvements in production or distribution of goods or provision of services;

(f) promotion of technical, scientific and economic development by means of production or distribution of goods or provision of services.

**12.9** The existence of first three factors would normally indicate AAEC while the absence would normally indicate no AAEC. The presence of the remaining three factors would normally indicate no AAEC as they are in nature of efficiency justifications. The absence of the last three factors alone can neither determine AAEC nor establish efficiency justifications. In most cases, therefore, it is more prudent to examine all the above factors together to arrive at a net impact on competition.

**12.10** Normally the competition in the different level of production- supply chain may possibly be adversely effected when both entities to the agreement posses some market power in their respective spheres of market. This is probably the reason that in EU vertical agreements are not given much of a thought unless both parties possess at least 30 percent market share in respective markets.





**12.11** In the present case both the parties to the agreement have insignificant presence in the market in which they are operating and are fringe players and therefore, by virtue of any sort of agreement none of them is capable of causing any AAEC in any of the markets.

**12.12** If we examine that whether because of the impugned agreement the market of two wheelers has been adversely impacted the answer will be obvious no because with barely around 50 dealers across the country and less than one percent share in terms of volume of sale the GAL can hardly be said to be in a position to create entry barriers for potential manufacturers or foreclose the competition in the market or drive out the existing competitors. The Commission further observes that GAL is a new and small two wheelers manufacturer compared to other established players in the market and is facing host of teething problems like maintaining regular supply of spares, failing to provide training to the staff of dealers and grappling with financial crunch and management riddles etc. GAL has been taken over by new management of Saradha Group and has not yet been able to stabilise its operations.

**12.13** In the light of the aforesaid discussion the Commission is not inclined to agree with the findings of DG that the agreement between GAL and its dealers causes or is likely to cause AAEC in the market of two wheelers in India. On the basis of above analysis the Commission comes to the conclusion that even though the Clause 3 of the Lol is a restrictive clause but



since the agreement does not cause AAEC there is no violation of provisions of section 3(4) of the Act. Hence, Issue No. 1 is decided accordingly.

## **Determination of Issue No. 2**

**12.14** The Commission is in agreement with the definition of the relevant market as mentioned by the DG i.e. "manufacturing/marketing of two-wheelers in the capacity of 100CC to 150CC in the territory of India"

**12.15** As far as dominant position of the GAL in the relevant market is concerned the DG has given the finding that GAL is not dominant in the relevant market. In this regard the Commission observes that the market share of the GAL is insignificant and there are many bigger players in India. From the material available on record the sale of two wheelers in India for the period April, 2010 to September 2010, is as follows- Hero Honda – 25.55 Lakhs, Bajaj – 11.98 Lakhs, TVS – 5.08 Lakhs, Suzuki – 1.21 Lakhs and Others (including GAL) 50 thousand. The Commission also observes that since the takeover of GAL by Saradha Group of Companies in November 2010 till date only 611 units of two wheelers have been dispatched by GAL and no production or manufacturing activity is stated to be currently taking place. Further, the Commission also takes note of the fact that the name of GAL does not figure in the list of two wheeler manufacturers in India as per the information available with Society of Indian Automobile Manufacture (SIAM). Further, it is also apparent from the record that the GAL has a negligible capital which is minuscule in comparison to any of its competitors such as Bajaj Auto Ltd. which has a capital of Rs.4807.22 crores in the financial year 2010-11. Taking into account the facts and circumstances of the case the Commission is in agreement with the findings of the DG that GAL is



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not enjoying the position of dominance in the relevant market on any of the parameters and factors given in section 19(4) of the Act. The Commission does not find GAL to be in a dominant position in terms of the market share, market structure, size & resources, dependence of consumers etc. Thus, when the GAL is not in a dominant position in the relevant market the question of abuse of its dominance does not arise. Therefore, the Commission concludes that in the present matter, no case of violation of provisions of section 4 of the Act is made out.

13. On the basis of above discussion, the Commission comes to the conclusion that there is no violation of provisions of either section 3 or section 4 of the Act in the present matter.

14. In view of the above findings the matter relating to the present information is disposed of accordingly and the proceedings are closed forthwith.

15. Secretary is directed to inform the parties accordingly.

Sd/-  
Member (G)

Sd/-  
Member (AG)

Sd/-  
Member (R)

Sd/-  
Member (T)

Sd/-  
Chairperson

Sd/-  
Member (GG)

Sd/-  
Member (D)

Certified True Copy

