



**COMPETITION COMMISSION OF INDIA**

**Case No. 55 of 2017**

**In Re:**

**M/s Counfreedise  
through its Partner Mr. Sidharth M.  
#14, 2<sup>nd</sup> Floor, New Timber Yard Layout,  
Mysore Road, Bapuji Nagar,  
Bengaluru-560026, Karanataka.**

**Informant**

**And**

**Timex Group India Limited  
B-37, Tower B, 1<sup>st</sup> Floor, Sector-1  
Noida-201301, Uttar Pradesh.**

**Opposite Party**

**CORAM**

**Mr. Sudhir Mital  
Chairperson**

**Mr. Augustine Peter  
Member**

**Mr. U. C. Nahta  
Member**

**Mr. Justice G. P. Mittal  
Member**

**Appearances:**

***For the Informant:*** Ms. Anupam Sanghi, Advocate  
Mr. Shantanu Malik, Advocate  
Ms. Nanki Arora, Advocate  
Mr. Kunal Patel, Advocate

***For Opposite Party:*** Mr. K.K. Sharma, Senior Advocate  
Mr. Suwarn Rajan, Advocate  
Mr. Akshay Srivastava, Advocate



*Mr. Sanchay Mehrotra, Advocate*

*Mr. Vipul Sharma, Authorised Representative*

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

1. M/s Counfreedise (hereinafter, the '**Informant**') has filed the present information under Section 19(1)(a) of the Competition Act, 2002 (hereinafter, the '**Act**') against Timex Group India Limited (hereinafter, the '**OP**'), alleging contravention of the provisions of Sections 3 and 4 of the Act.
2. The Informant, a Partnership Firm, is engaged in the business of purchasing lifestyle products such as belts, wallets, sunglasses, fashionable jewellerys, wrist watches, etc. either directly from the concerned company or through their authorised distributors and thereafter, selling the same products online. Apart from selling on e-commerce platforms such as Flipkart, Paytm Mall, the Informant is a registered reseller on Amazon and sells under the trade name '**BUYMORE**'. OP is one such company whose products the Informant sells online.
3. The OP is the Indian subsidiary of the Timex Group Inc. USA. It is engaged in the designing, manufacturing and marketing of innovative timepieces such as wrist watches, table clocks, wall clocks and jewellerys globally. It is stated that the OP has been operating in India for more than twenty years and is one of the largest manufacturers in the organised watch sector in India.
4. Further, it is stated that the OP is enjoying a significant/dominant position in the Indian market in designing, manufacturing and marketing innovative timepieces. The Informant has submitted that the wrist watch market in India can be classified into three broad categories based on price: (i) mass price segment, which is lower than Rupees One Thousand, (ii) mid-segment, priced between Rupees One Thousand to Rupees Ten Thousand and (iii) premium segment, priced above Rupees Ten Thousand. The mid-segment contributes around 37-38% to the wristwatch industry. Also, reliance is placed by the Informant on a report by India Brand Equity



Foundation, wherein it is shown that the OP owns 19% percent market share in the organised watch sector. Hence, the Informant alleges dominance of the OP in the organised watch sector.

5. Further, the Informant has alleged that the OP is indulging in the following anti-competitive conduct/practices:

5.1 The Informant used to sell the OP's wrist watches on e-commerce platforms, for which, the OP initially, not only supplied goods to the Informant but also appointed an exclusive regional supplier for the Informant to provide prompt sale/after-sale services such as quick deliveries, replacing defective boxes *etc.* Later, to prevent the Informant's practice of selling the OP's products at significant discounts and in order to promote sale by brick and mortar stores, the OP instructed the Informant to control discounts *i.e.* not to sell the wrist watches of the OP below a particular level of discount. The Informant has enclosed an email thread dated 12<sup>th</sup> February, 2016, substantiating its claim. Based on the said email thread, the Informant has alleged that the OP is indulging in Resale Price Maintenance (hereinafter, the '**RPM**') with its distributors in contravention of Section 3(4)(e) of the Act.

5.2 In spite of bringing to the notice of the OP *vide* email dated 17<sup>th</sup> August, 2017, that other players in e-commerce market like Cloudbtail India Private Limited (hereinafter, the '**Cloudbtail**') and XL Retail Private Limited (hereinafter, the '**XL Retail**') are selling the products of the OP at huge discounts, the OP did not take any coercive action against such entities. Hence, the OP is discriminating the Informant *vis-a-vis* other e-commerce players. Such actions of the OP are aimed at keeping the prices of the products artificially high, limit the market for distribution of the products of the OP and share the market or source of production in violation of Section 3(3)(a), 3(3)(b) and 3(3)(c) of the Act.



- 5.3 Further, the OP instructed its retailers/service centres against providing after-sale services to the wrist watches being sold by the Informant. As a result thereof, service centres across the country are refusing to honour the warranty on the pretext that the Informant is not an authorised dealer, despite the fact that the Informant has obtained wrist watches from the OP through proper channels only. It is averred that the said conduct of the OP is resulting in a total deprivation of consumer service in contravention of Section 3(4)(d) of the Act. Reliance is placed on the order dated 25<sup>th</sup> August, 2014, passed in Case No. 03 of 2011 titled *Shamsher Kataria Vs. Honda Siel Cars India Ltd. & Ors.*, wherein the Commission directed the contravening parties not to impose a blanket condition that warranties would be cancelled if the consumers avail services of any independent repairer; such condition can be limited only to the extent that any damage has been caused because of faulty repair work outside their authorised network and the circumstances clearly justify such action.
- 5.4 The OP has even filed a frivolous suit against the Informant alleging infringement of its trademark stating that the Informant is engaged in manufacturing of counterfeit wrist watches of the OP and obtained an *ex parte ad-interim* injunction order dated 22<sup>nd</sup> February, 2017, in the same, restraining the Informant from using the OP's trademark.
6. In view of the foregoing, the Informant has alleged that the OP has abused its dominant position and the agreements entered into between the OP and its dealers/distributors are having appreciable adverse effect on competition in contravention of Sections 4 and 3 of the Act, respectively.
7. The Commission considered the information in its ordinary meeting held on 24<sup>th</sup> October, 2017, and decided to seek additional information from the parties, such as purchase and sale of OP's as well as other company's wrist watches in terms of value and volume by the Informant for the last three financial years *i.e.* 2014-15, 2015-16 and 2016-17; and products sold, in terms of value and volume by the OP to the Informant either directly or through authorised seller(s) for last three financial



years *i.e.* 2014-15, 2015-16 and 2016-17. Further, the Commission decided to have a preliminary conference with the parties on 3<sup>rd</sup> January, 2018.

8. Response to the above were received from the Informant and the OP on 26<sup>th</sup> December, 2017 and 23<sup>rd</sup> January, 2018, respectively. The OP also filed written submissions on the allegations of the Informant on 13<sup>th</sup> February, 2018. Thereafter, the preliminary conference was rescheduled to 15<sup>th</sup> February, 2018.

9. Through its written submissions, the OP has submitted as under:

9.1 The OP does not agree with the market segmentation of the Informant. Further, the relevant market comprises of both online and offline markets for wrist watches from organised players and the same is flooded with numerous brands like Fast track, Casio, Fossil, Curren, Esstart, Sonata, Adidas *etc.* Therefore, the consumers have a wide range of options available to choose from. In terms of annual sales, the OP fares way below many companies like Titan, Swatch, Fossil and Casio in the organised watch sector and thus, it is not dominant in the relevant market.

9.2 Since past couple of years, the OP has been receiving many consumer complaints for getting defective/fake wrist watches, majority of which were sold by online sellers. Examinations carried out by the OP to check the veracity of the impugned goods revealed that the Informant was selling the OP's counterfeit wrist watches and accordingly, the OP discontinued its business with the Informant. Thereafter, the OP filed a suit for permanent injunction against the Informant along with an application for *ex-parte ad interim* injunction, for restraining the Informant from using the OP's trademark. The Court of Additional District Judge, New Delhi was pleased to grant the *ad interim* order dated on 22<sup>nd</sup> February, 2017 in the matter.

9.3 The OP honours service warranties only for genuine wrist watches and its refusal to honour service warranties is only on account of non-production of



requisite documents or when counterfeit wrist watches are brought for service to its service centres. To substantiate this, the OP placed on record an invoice dated 17<sup>th</sup> July, 2017, to show that the OP honoured the service warranty for a watch sold by the Informant in 2016. Further, the consumer emails referred to by the Informant were exchanged between *www.amazon.in* and the Informant alone and the same were never sent to the OP. Moreover, the Informant continued purchasing wrist watches from the OP/authorised agents even till February 2017 *i.e.* after allegedly receiving emails from the customers of non-honouring of the service warranty by the OP.

- 9.4 The OP has never asked the Informant to control discounts or to sell wrist watches at a particular price level. The email dated 12<sup>th</sup> February, 2016, put forth by the Informant as a proof of RPM, was innocuous in nature as the consequence(s) of not following it or falling in line with it were not mentioned therein. Moreover, the Informant continued to procure products from the OP and its authorised distributors even after receiving the alleged email; and this email did not affect the mutual business between the OP and Informant at all.
- 9.5 The Informant itself has stated that entities like XL Retail and Cloudtail are selling the OP's products at higher discounts, which confirms the fact that the OP is not maintaining a minimum operating price in respect of its products.
- 9.6 The primary intention of the Informant is to arm-twist, harass and browbeat the OP and to counter the civil suit filed by the OP against the Informant. The Informant is engaged in forum shopping and raising false pleas against the OP.
10. The Commission had a preliminary conference with the parties on 15<sup>th</sup> February, 2018, and heard their respective learned counsel at length. Based on the averments of the Informant and the OP, the Commission directed the OP to submit information, *inter alia*, pertaining to its relationship with Cloudtail and XL Retail, volume of sales made to the Informant by its authorised distributors, details of actions initiated by the OP against other entities believed to be involved in



manufacture and/or sale of its counterfeit products, and details of the re-sellers/distributors to whom the OP supplies its products directly.

11. Pursuant to the hearing, the Informant also submitted a synopsis of its arguments on 20<sup>th</sup> February, 2018. The OP, after seeking extension of time, filed the requisite information on 01<sup>st</sup> March, 2018, 09<sup>th</sup> March, 2018 and 02<sup>nd</sup> April, 2018.

12. The Commission has perused all the material available on record. Considering the oral and written submissions of the parties and taking into account all other material available on record, the Commission observes as under:

12.1 The gist of allegations of the Informant is that the OP stopped doing business with it on account of non-compliance of RPM *diktat* of the OP and the OP is said to be discriminating against the Informant *vis-a-vis* other online retailers like Cloudtail, XL Retail *etc.* Moreover, the OP has allegedly failed to provide after-sale services to the customers who purchased the wrist watches of the OP from the Informant through online platform. Through such conduct, the OP is alleged to have contravened Section 3(3), 3(4) and Section 4 of the Act.

12.2 Before examining the allegations pertaining to Section 3 of the Act, the Commission deems it fit to first deal with the allegations under Section 4 of the Act. The first step in examination of the allegation of abuse of dominance is to delineate a relevant market.

12.3 The Commission observes that the OP is a manufacturer of wrist watches. According to the Informant, wrist watch market has three segments based on price: (a) mass-price segment in which mainly unorganised players operate; (b) mid-segment in which organised players like Titan, Citizen and the OP are key players; and (c) premium segment in which international players like Rolex, Tagheuer, Rado *etc.* mainly operate. However, from the information available in the public domain, the Commission observes that players like Titan, Citizen as well as the OP have presence in almost all the three market segments.



Further, price is not the sole factor pertinent for determination of relevant market and factors like interchangeability or substitutability of products, characteristics of the products and intended use also find relevance. The Commission, however, sees merit in the distinction between branded and unbranded wrist watches, as consumers looking for durability, quality, established network for sales, after-sales and warranty services tend to prefer branded wrist watches over unbranded ones. In the instant case, the OP is a known wrist watch manufacturer operating in the organised sector. Therefore, the Commission delineates the relevant market as “*Market for manufacture and sale of wrist watches in the organised watch industry*”. The Commission further observes that while it may be possible to segment the relevant market, the same is not a requirement in the instant matter given the presence of the OP and its prominent competitors in all the three segments. Resultantly, competitive assessment will not change materially in any of the plausible market definitions.

12.4 Also, the conditions of competition are distinctly homogenous across India. Thus, the relevant geographic market may be delineated as India. Accordingly, the relevant market in the present matter may be delineated as “*Market for manufacture and sale of wrist watches in the organised watch industry in India*”.

12.5 Next, the Commission proceeds to analyse the alleged dominance of the OP in the above delineated relevant market. Based on the information available in the public domain, the Commission observes that apart from OP, Titan, Citizen, Seiko, Fossil, Swatch, Casio *etc.* are some of the major players present in the relevant market. As per the website of Titan, it commands over 60% share in the organised watch market. Further, the prices of Titan wrist watches are in the range of INR 460/- to INR 1,84,300/-, which suggests that Titan is a formidable player having significant presence in all the three price segments. Given the presence of such a major player like Titan in the relevant market along with other reputed foreign brands, there seems to be enough competitive





constraints upon the OP in the relevant market. Thus, the OP does not appear to be a dominant player in the relevant market. In the absence of dominance, no case of contravention of Section 4 of the Act is made out.

12.6 Even though the Commission has concluded that the OP is not dominant in the relevant market, yet the Commission proceeds to examine the allegations of the Informant pertaining to abusive conduct by the OP. The Informant has alleged that the OP has instituted false litigation against the Informant. The Commission takes cognizance of the contentions of the OP that it is facing the menace of counterfeit products, especially on account of online retailers. After conducting its internal verification, the OP initiated legal action against such sellers, including the Informant, to restrain them from manufacturing and/or selling counterfeit products. The Commission notes that before proceeding against the Informant, the OP has brought similar actions against other entities also namely, Vardhman Times, Dhaka Associates and Deal Kart Private Limited, wherein, *ex-parte ad-interim* injunction orders had been obtained. Further, the OP initiated legal proceedings against an entity namely, Arizona and an individual namely, Md. Naseem as well, in February, 2017 and November, 2017, respectively, *i.e.* around/after the same time as against the Informant, for alleged counterfeiting. As a result of these, hundreds and thousands of counterfeit items were seized. This brings forth the fact that counterfeit actions have been initiated by the OP not only against the Informant but also against other persons suspected to be engaged in manufacture and sale of counterfeit products. The Commission observes that the holder of an Intellectual Property has the right to protect it, and therefore, reasonable actions and restrictions imposed in this regard cannot be found at fault under the competition law. Thus, the Commission does not find substance in the allegation of the Informant that the OP has initiated sham litigation against the Informant on account of not abiding by RPM and/or discount policy of the OP.

12.7 Next, the Commission proceeds to examine the allegations pertaining to violation of Section 3(4) of the Act. With regard to the allegation of RPM,



the Commission observes that the Informant has relied on an email thread dated 12<sup>th</sup> February, 2016, wherein, one official of the OP asked the other official that “*Can you ask this guy to control discount pls?*” In response to this, the latter had asked the Informant “*Kindly control since this matter has gone to MD level*”. The Commission notes that the OP has stated that no consequent coercive action was taken by the OP subsequent to the said email. This is evident from the fact that the OP admittedly continued to sell products to the Informant, directly as well as through its authorised agents, till May 2016 and February 2017, respectively. Thus, mere mention of the term ‘*control discount*’ in a single isolated email to a single seller, without any adverse consequence to the other online sellers including the Informant, is not sufficient to infer any anti-competitive conduct on the part of the OP. The Informant has further alleged that the incentive of the OP for indulging in RPM and insisting on controlling discounts is to promote sales by brick and mortar stores. The Commission notes that for RPM to be effective in the form of discount control, it has to be imposed on all the online retailers and not just the Informant. The Informant has itself stated that the OP has not taken any action against entities like Cloudtail and XL Retail for offering even more discounts on OP’s product on the online platforms. This also negates the contention of the Informant that the OP was indulging in RPM. Further, any agreement in the nature of RPM, in order to be termed as anti-competitive, has to meet the test of causing an appreciable adverse effect on competition (hereinafter, the ‘AAEC’). The Commission notes that even if a manufacturer controls the prices of its products in the market, such conduct would not result into an AAEC unless such a manufacturer holds significant market power. The Commission observes that in the instant case, the OP is just one of the many players in the wrist watch market in the organised sector and players like Titan *etc.* are way ahead of the OP. Moreover, the Informant is only one of the intermediaries of the OP in the online space, and online sales account for less than one-seventh of the total sales of the OP. The Commission notes that the Informant has failed to place on record any evidence to establish that the OP enforced RPM across the distribution



channel so as to be able to cause an AAEC in the relevant market. Therefore, the Commission does not find any merit in the allegations of the Informant that the OP has contravened the provisions of Section 3(4)(e) of the Act.

12.8 In support of the alleged refusal by the OP to honour warranty in respect of the wrist watches sold by the Informant, the Informant has put forth emails received from the consumers who have reported defects/non-functioning of wrist watches within the warranty period and non-honouring of warranty by the authorised service centers of the OP, on the pretext of the Informant being an unauthorised seller. The Commission observes that a watch sold by the Informant in October 2016, was serviced by the OP in July 2017. Further, the Commission notes that such emails of the consumers, contending non-honour of warranty by the authorised service centres of the OP, were exchanged between Amazon and the Informant only, and were not copied to the OP or any of its service centre. Moreover, as discussed in the earlier paras, the OP suspected the Informant of indulging in counterfeiting of its products and any refusal to deal on this account cannot be termed as anti-competitive. The Commission agrees with the submission of the OP that its mandate is to service genuine watches only and it cannot offer warranty or after-sale services for a counterfeit product or a product without a document/invoice as proof of it being an original product. In Case No. 17 of 2014 titled *Mr. Ashish Ahuja Vs. Snapdeal.com & Others*, the Commission, while passing an order under Section 26(2) on 19<sup>th</sup> May, 2014, held as under:

*“in a quality-driven market, the incumbents have the right to deny after-sale and warranty services in order to discourage sale of products emanating from unknown/ unverified/ unauthorized source to protect the brand image, goodwill and reputation. Such conduct can only be considered as part of normal business practice and cannot be termed as anti-competitive. “*



In light of the above, the Commission does not find merit in the contention of the Informant that the OP has refused to deal with the customers of the Informant in contravention of Section 3(4) (d) of the Act.

12.9 With regard to the contention of the Informant that it is a key player and refusal to deal by the OP with the Informant will cause AAEC in the relevant market, the Commission observes that the sales by the OP to the Informant is not significant compared to the total sales of the OP. In addition, the revenue derived by the Informant from the sale of watches of the OP is also not significant to infer that the Informant is dependent on the OP. The Informant sells enough watches of other brands such as Titan, Swatch, Fossil, Fastrack, Zoop, Orbit, Q&Q, Guess, Fogg, Gesture *etc.* Thereafter, the allegations under Section 3(4) of the Act are examined on the basis of rule of reason approach, and the Commission do not find that there is AAEC as a result of the OP's denial to deal with the Informant, more so when the OP is apprehensive of dilution of its brand as a result of counterfeits being sold in the online market.

12.10 Lastly, the Commission also analysed the Informant's allegations under Section 3(3) of the Act. The Commission notes that anti-competitive agreements referred to in Section 3(3) of the Act pertain to enterprises engaged in identical or similar trade of goods or provision of services *i.e.* horizontal agreements. In the instant case, the alleged conduct of the OP of not taking coercive action against other players in e-commerce market, who were selling products of the OP at huge discounts while allegedly restricting the discounts given by the Informant does not indicate any agreement at horizontal level. Consequently, the allegations against the OP cannot be examined under Section 3(3) of the Act.



13. In light of the above analysis, the Commission finds that no *prima facie* case of contravention of the provisions of either Section 3 or Section 4 of the Act is made out against the OP in the instant matter. Accordingly, the matter is ordered to be closed forthwith in terms of the provisions contained in Section 26(2) of the Act.
14. The Secretary is directed to communicate to the parties, accordingly.

**Sd/-**  
**(Sudhir Mital)**  
**Chairperson**

**Sd/-**  
**(Augustine Peter)**  
**Member**

**Sd/-**  
**(U. C. Nahta)**  
**Member**

**Sd/-**  
**(Justice G. P. Mittal)**  
**Member**

**New Delhi**  
**Date: 14/08/2018**