



COMPETITION COMMISSION OF INDIA

Case No. 03 of 2020

In Re:

**Accessories World Car Audio Private Limited
12/9B, Tilak Nagar
Delhi- 110018**

Informant

And

**Sony India Private Limited
A-18, Mohan Co-operative Industrial Estate
Mathura Road
Delhi-110044**

Opposite Party No. 1

**Sony Corporation, Japan
1-7-1, Konan Minato-ku
Tokyo- 108-0075
Japan**

Opposite Party No. 2

CORAM

**Mr. Ashok Kumar Gupta
Chairperson**

**Ms. Sangeeta Verma
Member**

**Mr. Bhagwant Singh Bishnoi
Member**

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

1. The present Information has been filed by Mr. Neeraj Arora on behalf of Accessories World Car Audio Private Limited ('the Informant') under Section 19(1) (a) of the Competition Act, 2002 ('the Act') against Sony India Private Limited ('Opposite Party No. 1' / 'OP-1') and Sony Corporation, Japan ('Opposite Party No. 2' / 'OP-2') (collectively referred to as 'the OPs') alleging *inter alia* contravention of the provisions of Section 3 and 4 of the Act.



2. It is stated that the Informant is a distributor of Sony car audio products and is engaged in the business of sale and marketing of car audio and related accessories. OP-1 is a private limited company incorporated in India and has footprints across all major towns and cities in India through a distribution network comprising of over 20,000 dealers and distributors; 300 exclusive outlets and 25 branch locations. OP-2 is holding company of OP-1 incorporated under laws of Japan.
3. It is stated that the Informant operated in the car audio products market in Delhi and dealt with several brands including Pioneer, Blaupunkt, Kenwood, JVC *etc.* Further in 2005, the Informant was offered dealership of car audio products of OP-1. Subsequently, *vide* letter dated 28.08.2006, the Informant was appointed as the distributor of OPs car audio products for the territories of South, East, and Central Delhi.
4. It has been averred that prior to entering into distributorship agreement, the Informant was specifically asked to surrender sale of other brands and deal exclusively with Ops' car audio products. The Informant has alleged that such condition was specifically made applicable to it only, while the other distributors had no such restrictions and the same came to the notice of the Informant at later stage. The Informant also alleged that a condition as to 'not to deal with competing brands' was implemented in 2012 that caused immense losses to the Informant and that finally led to ouster of the Informant from relevant market.
5. Further, the Informant has alleged that around 2013, OP-1 in collusion with OP-2 started engaging in abusive practices by imposing unfair/ discriminatory conditions on similarly placed distributors in the car audio products segment by allowing all other distributors in the market to deal with products of its competitors, except the Informant. The Informant also averred that OPs in collusion charged different prices (higher price from the Informant) for similarly placed distributors in the car audio products segment. Moreover, OPs also imposed discriminatory targets for



similarly placed distributors by mandating 42% increase in target for the financial year 2009-2010 in comparison to other distributors.

6. Further, as per the Informant, arbitrary condition of territorial restriction/ territorial exclusivity was imposed only on it and that led remaining distributors to cause market infiltration in territories assigned to the Informant, without having to suffer any penal consequences at the hand of OPs. Thus, the Informant has alleged that such terms and conditions fall foul of the ethos of the provisions of the Act and also showed that the OPs wanted its ouster from the market.
7. The Informant has claimed that any violation of such terms and conditions was followed by steps such as denial of incentives, denial of billing and finally termination of distribution agreement. Additionally, the Informant has also alleged that OP-1 fixed the selling prices for the dealers (retaining distributor mark-up and incentive).
8. The Informant also stated that considering the fact as to dominance enjoyed by the OPs in the market for car audio products, there was a special responsibility on the OPs not to abuse their dominant position, which it wholly failed to discharge in violation of the provisions of the Act.
9. The Informant has also alleged that OP-1 was carrying on illegal and unfair trade practices in collusion with its various shell companies that operated as illegal distributors and were used to infiltrate in the market without any territorial restrictions and the same caused huge financial loss to the Informant and completely eroded/ swept the territories assigned to it. Further, the Informant alleged that OP-1 in connivance with Maruti Suzuki Ltd. (India's biggest buyer of Sony car audios) and M/s Bharti Electronics (another distributor) actively dealt with these shell companies to do cross territory sales against the Informant. Thus, as per the Informant, OP-1 entered into agreements (through verbal commitments) with illegal dealers, which ensured that sales of the Informant drop drastically and



subsequently it was forced to either operate in losses or exit the market. Moreover, such an arrangement helped OP-1/ OPs in indulging in dummy sales, routing money in connivance with the shell companies/ distributors, uplifting the sales targets, turnover and net profit.

10. Furthermore, it is stated that these shell companies owned by family members / associates of one Mr. Rajiv Aggarwal (Proprietor of M/s Bharti Electronics) used to operate as grey distributors of OP-1. As per the Informant, the relevant government authorities had found several companies associated with M/s Bharti Electronics to be indulging in business malpractices including evasion of taxes using shell companies. Such glaring impropriety was also brought to the knowledge of OP-1 but with no avail. On the other hand, as per the Informant, OP-1 completely turned hostile and in rage cancelled/ terminated the distributor agreement on 23.06.2015 without assigning any reason.
11. Further, the Informant has delineated the relevant market as '*distribution and sale of car audio products in the aftermarket in South, East and Central Delhi*'. Furthermore, the Informant asserted that OPs as a group is dominant in the aforementioned relevant market.
12. The Informant thereafter alleged that OPs have abused their dominant position in violation of the provisions of Section 4(2)(a)(i) of the Act by allowing all other distributors in the relevant market to deal with products of its competitors, except the Informant. Moreover, the other conditions such as non-assignment of car dealership in its allocated area; charging different prices/ schemes for similarly placed distributors; unjustified target hike for the Informant compared to other distributors; forcing the Informant to surrender the sale of products of other brands and deal exclusively with Sony car audio products *etc.* also amounts to imposition of unfair terms and conditions.



13. The Informant has alleged that OPs have violated the provisions of Section 4(2)(c) of the Act by imposing condition of territorial restriction on it, while leaving other distributors to cause market infiltration in the territory allotted to it and the same amounted to denial of market access by OPs. Furthermore, the practice of indulging in dummy sales; routing money in connivance with shell companies/ distributors; withdrawal of dealership *etc.* were specifically aimed at adopting a course of conduct to exclude the Informant from the relevant market in violation of the provisions of the Act.
14. Similarly, the Informant has also averred violation of the provisions of Section 3(4) read with Section 3(1) of the Act. For the same, the Informant, claims that existence of the distribution agreement between OP-1 and the Informant comes with in the purview of Section 2(b) of the Act. Elaborating further, the Informant claimed that OP-1 in collusion with OP-2 imposed restriction from dealing with competing car audio products and the same amounts to contravention of the provision of Section 3(4)(b) read with Section 3(1) of the Act. On the same lines, the Informant has alleged that fixation of limits on territorial operation and territorial exclusivity as per the distribution agreement amounts to contravention of the provisions of Section 3(4)(c) read with Section 3(1) of the Act. As per the Informant such 'exclusive distribution agreement' leads to foreclosure in the downstream market.
15. It has also been averred that the imposition of the unfair condition in form of 'refusal to deal' with any competing product may be construed as denial of market access in contravention of the provisions of Section 3(4)(d) of the Act.
16. Lastly, as per the Informant when the allegations in regard to provisions of Section 3(4) of the Act are analysed on touchstone of provisions of Section 19(3) of the Act, the same leads to creation of barriers to new entrants in the market, drive existing competitors out of the market besides leading to foreclosure of competition by hindering entry into the market.



17. Based on the aforesaid averments and allegations, the present Information has been filed by the Informant against OPs alleging, *inter alia*, contravention of the provisions of Sections 3 and 4 of the Act.
18. The Commission has considered the Information and the material available on record and observes that the Informant is primarily aggrieved of the fact that OPs imposed alleged unfair terms and conditions in the distributorship agreement and arbitrarily terminated the agreement.
19. At the outset, the Commission notes that the Informant was offered dealership in 2005 and was appointed as distributor by OPs in August 2006. The distributor agreement is stated to be cancelled/ terminated on 23.06.2015. Besides the allegations span a period covering years 2012-13. Thus, the Information appears to have been filed belatedly, yet the Commission has examined the Information within the framework of the Act based on the material made available by the Informant.
20. So far as the allegations pertaining to abuse of dominance are concerned, the Commission notes that the Informant has defined the relevant market by confining the same to 'distribution and sale of car audio products in the aftermarket'. However, the Commission is of the opinion that the market cannot be confined to this level. It is axiomatic that buyers of car can install such accessories even after purchase of car from the open market and as such the market has to be considered as car audio products as a whole. In this market, the Commission notes that though the Informant has not provided any data about the market share of the players or the market structure to support its contention that OPs possess market power in the market. Be that as it may, based on the information available in the public domain, the Commission notes that the market for car audio products is fragmented with the presence of number of players/ competitors. As per the information available in the public domain, there are number of other competing players such as Pioneer Corporation, JBL, JVC, Blaupunkt, Kenwood, Alpine Electronics, Bose Corporation, Blaupunkt GmbH, Clarion, Delphi Automotive, JL Audio, Panasonic



Corporation *etc.* Hence, it does not appear that OPs enjoy a position of strength, which enable them to operate independently of competitive forces prevailing in the distribution and sale of car audio products in India or to affect their competitors or consumers or the market in their favour. Since, OPs do not enjoy dominant position in this market, question of abuse of dominant position within the meaning of the provisions of Section 4 of the Act does not arise.

21. As regard as provisions of Section 3(4) of the Act is concerned, the Commission observes that allegations specifically pertain to the issue of exclusive supply agreement, exclusive distribution agreement, refusal to deal and resale price maintenance.
22. In this regard, the Commission observes that an important and crucial consideration for analysing vertical restraints under the provisions of Section 3(4) of the Act is the requirement of market power. It is also noted that in order to appreciably restrain free competition in the downstream market for distribution of car audio products, seller must have sufficient market power in the upstream market for car audio products. Moreover, vertical restraints are not generally perceived as being anti-competitive when substantial portion of the market is not affected.
23. In view of the above, the Commission observes that the market for car audio products is fragmented with presence of large number of players without any entity enjoying a significant market power. The presence of such players exerts competitive constraints on OPs. Therefore, the purported vertical restraints imposed by OPs are not likely to have any appreciable adverse effect on competition in India.
24. Resultantly, the Commission is of the view that no case is made out against OPs for contravention of the provisions of Sections 3 and 4 of the Act and the Information is ordered to be closed forthwith in terms of the provisions contained in section 26 (2) of the Act.



25. Before concluding, it is noted that the Commission considered the present Information in its meeting held on 26.02.2020, whereupon it decided to pass appropriate order in due course. Subsequently, the Informant moved an application dated 13.03.2020 seeking oral hearing. In this regard, the Commission notes that at the stage of forming *prima facie* opinion, the Commission may call preliminary conference with the parties, if so required. For the reasons already mentioned for closing the matter, the Commission sees no merit in the request and the same is accordingly, rejected.
26. The Secretary is directed to communicate to the Informant, accordingly.

**Sd/-
Ashok Kumar Gupta
(Chairperson)**

**Sd/-
Sangeeta Verma
(Member)**

**Sd/-
Bhagwant Singh Bishnoi
(Member)**

**New Delhi
Date: 11/05/2020**