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**COMPETITION COMMISSION OF INDIA**

**15.6.2010**

**Case No 12/2009**

**Informant** - Mr. O.M. Debara, Hyderabad.

**Opposite Parties:** - 1. Society of Indian Automobiles Manufacturers (SIAM), New Delhi (2). Maruti Suzuki India Ltd., New Delhi (3) Hyundai Motor India, Kanchipuram District, Tamil Nadu (4) Tata Motors Limited, Mumbai (5) General Motors India Pvt. Ltd., Halol-389351, Gujarat (6) Ford India Pvt. Ltd., Chengalpattu-603204 (7) Fiat India Automobiles Ltd., Ranjangaon-412210, Pune (8) Hindustan Motors Limited, Kolkata-700001 (9) Honda Sael Cars India Ltd., Greater Gautam Buddha Nagar, UP-203207 (10) Renault India Pvt. Ltd., Mumbai-400099 (11) Skoda Auto India Private Ltd., Aurangabad-431201 (12) BMW India Pvt. Ltd., Gurgaon (13) Mercedes-Benz India Pvt. Ltd., Pune-410501

**ORDER UNDER SECTION 26(2) OF THE COMPETITION ACT, 2002**

1. The instant information has been filed on 16.11.2009, against the opposite parties under Section 19 (1) (a) of the Competition Act, 2002. It has been stated that all the above mentioned manufacturers/ opposite parties Nos. 2 to 13 are members of Indian Automobile Manufacturers (SIAM) and are leading manufacturers of four-wheelers who sell their product through their extensive dealers network that extend throughout the length and breadth of the country. Besides selling new four-wheelers, the opposite parties No.2 to 13 have entered into the market for the sale and purchase of old/used four-wheelers using various names such as True Value Car, Advantage, Assured, Certified Used, Certified Pre-owned Auto Terrace, Renault Used Cars, JDM Auto (P) Ltd. etc. Many of the aforementioned manufacturers/members of the opposite party no.1 have acquired dominant position as defined under Section 4 of the Act and have through their used car forays extended their market penetration vis-a-vis the various small second hand car dealers in the market.

2. It has been further alleged that the opposite parties no. 2 to 13 by abusing their dominant position are imposing unfair and discriminatory conditions in purchase or sale of cars by offering 'loyalty discount' to those customers of new cars who are willing to sell their old existing car to the car dealer of car manufacturing companies. The opposite parties by introducing loyalty discount scheme have entered into exclusive arrangement with their dealers and thereby not only they are directly or indirectly determining the purchase price of old used car but by indulging into such practices they are denying market access to the second hand car dealers as well as to the consumers. This has also been alleged that this practice amounts to tie-in arrangement whereby the customer in order to avail the loyalty discount at the time of purchase of a new car is lured to sell his old car. The unfair practices adopted by the opposite parties have resulted into wiping out competition and the small players from the market and the consumers have also been denied best prices for their existing old cars. On the basis of above averments, violation of section 3 & 4 of the Competition Act, 2002 has been alleged.

3. The informant has prayed as under:-

- I. To issue notice of enquiry against the members of the opposite party/opposite party.
- II. To direct opposite parties to discontinue abuse of its dominant position.
- III. To direct the opposite parties to discontinue the loyalty bonus scheme.
- IV. To direct the opposite party to submit the agreements between its members and dealers in respect of territorial restrictions.

4. The information was considered by the Commission in its meeting held on 24.11.2009, 2.2.2010, 23.2.2010, 4.3.2010, 25.3.2010, 26.5.2010 and 15.6.2010.

5. During the meeting of the Commission held on 2.2.2010, it was decided to ask the informant to appear before the Commission on 23.2.2010 to explain his case. However, counsel for the informant vide his letter dated 22.2.2010 requested for adjournment of the matter. The request of the counsel for the informant was considered and the Commission acceding to the request of the informant adjourned the case for 4.3.2010 to explain his case.

6. However, counsel for the informant vide his letter dated 3.3.2010 again requested a further period of 60 days or any time thereafter to file additional evidence in support of the case. The request of the counsel to the informant was considered and the Commission noted that though ample opportunity has already been given to the informant, it decided to give a last opportunity to the informant.

7. During the meeting of the Commission held on 25.3.2010, Mr. Gaurav M. Liberhan and R. Sudhinder, counsel for the informant appeared before the Commission and explained the case. After hearing, the informant was asked to furnish some additional information in regard to second hand car market in India viz. its size, growth, characteristics, competition practices, loyalty bonuses, if any, given in that market, etc. The informant was also asked to indicate how the market of second hand cars is affected and which provisions of the Competition Act are violated. The counsel for the informant assured to furnish the required additional information within 6 weeks time. The informant was subsequently also requested through letter dated 31.3.2010 to submit the written submissions covering above aspects within the stipulated time and also indicate his option to appear before the Commission. However, the informant failed to submit the additional information/written submissions.

8. Despite having been given ample opportunity, the Commission, in its meeting on 15.06.2010 noted that the informant has failed to provide any additional information, and decided to consider the case on the basis of the material available on record.

9. The first issue highlighted by the informant is 'loyalty discount' given by the car manufacturer dealers on buying cars of same manufacturer in exchange of old car of the customer. The consumer is entitled to avail this discount only when he is willing to sell his existing old car of the same brand to the very same dealer of the manufacturer only. This loyalty discount scheme is part of the exclusive arrangement between manufacturers and their dealers and directly or indirectly determines the purchase price of old used car and the sale price of new car and is thus violative of section 3(3).

10. At the outset, this assertion may look attractive but on deeper probe it becomes clear that loyalty discount scheme can in no way determine the price of either new car or used old car because it is always open to the customer who is selling his old car to sell his car either directly or through a dealer where it fetches better value for his car and at the same time he can opt to buy a new car manufactured by any car making company. It cannot be said that his choice in this respect is getting limited by the loyalty discount scheme. These kind of promotional schemes are often brought out by the dealers to attract customers and is a common business practice and does not affect the competition adversely.

11. The second contention which has been raised by the informant in the information that by operating loyalty discount schemes, the manufacturers by abusing their dominant position have indulged in practices resulting in denial of

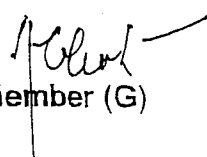
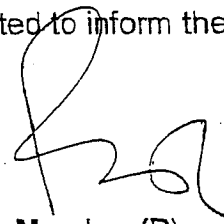
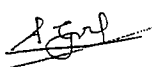


market access to both the second hand car dealers and the consumers also cannot be accepted because no cogent and credible material has been placed on record in support of such contention. How the market access has been denied to the old car dealers or consumers has not been made clear either by the informant. Simply the fact of giving loyalty discount cannot result into denial of alleged market access.

12. The next contention of the informant is that the loyalty discount scheme is another form of tie-in arrangement wherein the customer in order to avail the loyalty discount is forced at the time of purchase of his new car to sell his old existing car also. This contention is nothing but hypothetical and devoid of any merit. The purchase of a new car is free to purchase a car of his choice and it is not the case that the new car will not be sold to any customer unless he necessarily parts away with his old car also. Thus this argument has also no force and is liable to be rejected.

13. The allegation that the opposite parties by formulating and operating such scheme have violated the provisions of section 4(2) (e) as they have used their dominant position in ~~open~~<sup>open</sup> relevant market to enter into, or protect, their other relevant market is also not sustainable. In fact, entry of manufacturing companies into used car market would promote competition in this segment because a consumer who wants to dispose of his old existing car is getting access to increase<sup>d</sup> number of dealers where he can find best value for his car.

14. Therefore, the Commission, after considering the relevant material available on record and the contentions raised by the counsel of the informant, is of the opinion that the informant has not been able to make out a prima-facie case in support of the allegation made in the information. The information filed by the informant and the material as placed before the Commission therefore do not provide basis for forming a prima-facie opinion for referring the matter to the Director General to conduct investigation. The matter is, therefore, liable to be closed at this stage forthwith.

15. The matter is, therefore, closed under Section 26 (2) of the Competition Act. Secretary is directed to inform the informant accordingly.

  
 Member (G)
   
 Member (P)
   
 Member (AG)
   
 Member (T)
   
 Chairperson