



COMPETITION COMMISSION OF INDIA

(Case No. 17 of 2014)

In Re:

Mr. Ashish Ahuja
Address: Ambitious Marketing,
#01-04, 78, Janpath,
Connaught Place, New Delhi-01

Informant

And

- 1. Snapdeal.com through Mr. Kunal Bahl, CEO** **Opposite Party No. 1**
- 2. SanDisk Corporation, Gurgaon through**
Mr. Rajesh Gupta, Country Manager **Opposite Party No. 2**

CORAM

Mr. Ashok Chawla
Chairperson

Mr. Anurag Goel
Member

Mr. M. L. Tayal
Member

Mr. Sudhir Mital
Member

Present: For Informant- Mr. Naresh Kaushik, Advocate with Mr. Ashish Ahuja, Informant

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

1. The present information has been filed under section 19(1)(a) of the Competition Act, 2002 (**'the Act'**) by Mr. Ashish Ahuja (**'the Informant'**) against Snapdeal.com through Mr. Kunal Bahl, CEO (**'the Opposite Party No. 1'**/ Snapdeal.com) and SanDisk Corporation through Mr. Rajesh Gupta, Country Manager, Gurgaon ('hereinafter referred to as **Opposite Party No.**



2/ SanDisk) alleging *inter alia* contravention of the provisions of section 3 and 4 of the Act.

2. Informant is engaged in selling of various products like pen drives, hard disks, laptops etc.
3. Opposite Party No. 1 Snapdeal.com is an online portal (marketplace) wherein different sellers sell their wares by showcasing their products on the portal for which the web portal charges a commission depending upon the product category. It has tie-up with cargo/ logistic companies and they pick up the ordered consignment from the seller's place and deliver it at the buyer's address for a fee and the amount charged is credited to the sellers account depending on the payment cycle.
4. Opposite Party No. 2 is the Indian sales office of SanDisk Corporation, USA. SanDisk Corporation is engaged in the business of manufacture, distribution and sale of non-volatile memory drives or flash drive and storages devices of different capacities, SD cards, micro SD cards, solid state drives etc.
5. The Informant has stated that on 28.11.2013 it entered into an online agreement with Opposite Party No. 1 for sale of goods through their online website portal. Subsequent to the said agreement, the Informant started to sell various products like pen drives, hard disks, laptops etc through the web portal. The Informant has also furnished a list of products sold through the online portal of Opposite Party No. 1.
6. The Informant has stated that Opposite Party No. 1 stopped the sale of Informant's products from 24.01.2014 through its online portal and took off its products. Informant tried to get in touch with Opposite Party No. 1 and after repeated attempts the Informant on 29.01.2014 received a call from Mr. Justine Fernandes, Accounts Manager of Opposite Party No. 1 conveying that a list of M/s SanDisk India authorized online channel partners had been



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received by them and only these authorized partners could sell SanDisk items through its web portal. The Informant has further stated that in reply to its demand seeking the said letter the Accounts Manager informed him that it was confidential.

7. The Informant has stated that subsequently it had written several emails to Opposite Party No. 1 highlighting that the products being sold on the web portal had been obtained from the open market and that the Informant was fully authorized to sell them. As per the information, the Opposite Party No. 1 was informed on 10.02.2014 that it would require a No Objection Certificate (NOC) from SanDisk without which it could not list the Informant's products on its portal.
8. The Informant has averred that Opposite Party No. 1 and Opposite Party No. 2 in agreement with each other are compelling the Informant to become the authorized dealer of Opposite Party No. 2 while there was no such stipulation in the agreement entered into between the Informant and Opposite Party No. 1. Further, the Informant has averred that through this method SanDisk and Opposite Party No. 1 in collusion with each other are trying to stop the Informant from offering competitive pricing which was much below than the other sellers of the same product.
9. The Informant has stated that despite assuring that it would only be selling/ supplying SanDisk India products which are openly available in the market for consumption/ reselling/ whole selling Opposite Party No. 1 still demanded a NOC from SanDisk. As per the Informant, this only implies that it would have to become an authorized dealer of SanDisk to be able to sell through the web portal of Opposite Party No. 1.
10. The Informant has stated that after enquiry it found a letter being circulated by SanDisk Corporation in the market. The relevant portion of the letter is reproduced below



“SanDisk Corporation, USA has a limited list of four authorized bona fide National Distributors via whom all products bearing the trademark and brand “SanDisk” are imported into and sold in India. The company offers its full range of all India after sales and warranty services only for those products bearing the trademark and brand “SanDisk” imported into and sold in India from the said four authorized national distributors... Therefore, please note that all products that are dealt with you must originate from any of the above-named four authorized national distributors and neither you nor your partners or customers are to provide any after sales warranty support, customer services or any other services for products that do not originate in above-named four authorized national distributors as this would be contrary to the business practice of SanDisk Corporation.

Kindly note that any and all products purchased from entities/ agencies not listed in the above-named list of authorized national distributors whether or not such products are genuine products bearing the trademark and brand “SanDisk” and regardless of the source of origin, manufacture or other particulars of such products/ services, are not covered under any after-sales, warranty support, customer service or any other service offered by SanDisk in India.

All third party importers apart from the above-named four authorized national distributors are parallel importers and SanDisk Corporation does not authorize endorse or support parallel importation.”

11. The Informant has averred that by way of the said letter SanDisk is monopolising the market and influencing others to sell the products offered only by its authorized dealers. The Informant has further averred that above letter in strong terms restricts the sale of SanDisk products whether or not they are genuine simply because it is against the policy of SanDisk. Further, though SanDisk has been restricting the market to its authorized sellers alone through the said letter, its products are being sold by more than 13 sellers like M/s Softek Surya India Pvt. Ltd., M/s Storage M. VOI, M/s Highend Gadgets etc.



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It is stated that a comparison of list of sellers of SanDisk products on the Opposite Party No. 1 website with the authorized sellers of SanDisk clearly indicates that Opposite Party No. 1 is allowing numerous sellers who are not authorized dealers of SanDisk to sell through its online portal.

12. The Informant has stated that it had priced its products competitively and was operating at a very slim profit margin. The Informant has alleged that SanDisk holding a dominant position in the electronics market is influencing Opposite Party No. 1 by putting unreasonable and illegal condition to sell its products online as is evident from the letter circulated by it. Thus, as per the Informant, SanDisk is creating a monopoly market whereby it would be able to decide the pricing of products sold online and is forcing the Informant to join it in this unlawful act. Further by entering into an agreement Opposite Party No. 1 and SanDisk are not only hindering the Informant from carrying on its business but also deciding the price being sold online to make it conducive for its authorized dealers. The Informant alleges that the said conduct of SanDisk and Opposite Party No. 1 is in violation of Section 3 of the Act.
13. Based on the above averments and allegations, the Informant has prayed to the Commission, *inter alia*:
 - a. *To order investigation in the matter; and*
 - b. *To direct the Opposite Party No. 1 to allow the Informant to sell through its web portal snapdeal.com, various products purchased through the open market;*
14. The Commission has perused the information, examined all materials on record and heard the counsel appearing for the Informant at length.
15. The Commission is of the view that the relevant product market in the present case is the market for portable small-sized consumer storage devices that includes USB pen drives, SD Memory Cards and Micro SD Cards. Based on factors such as intended use and price, both pen drives and memory cards



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(including both SD cards and Micro SD cards) can be considered as substitutes.

16. The Commission also notes that both offline and online markets differ in terms of discounts and shopping experience and buyers weigh the options available in both markets and decides accordingly. If the price in the online market increase significantly, then the consumer is likely to shift towards the offline market and *vice versa*. Therefore, the Commission is of the view that these two markets are different channels of distribution of the same product and are not two different relevant markets.
17. The relevant geographic market would be India. Based on the above discussion, the relevant market will be *market for portable small-sized consumer storage devices such as USB pen drives, SD Memory Cards and Micro SD Cards in India*.
18. The Commission further observes that in the storage devices market such devices are offered by Transcend, Kingston, HP and others with different capacities indicating that the market is not concentrated. Further, from the information available in public domain, it is observed that in the overall consumer storage flash memory market, in terms of unit shipments in fourth quarter of 2014 SanDisk was the market leader with 35% market share followed by Transcend and Kingston with 11% and 6% respectively. SanDisk was also reported to be the top vendor across all the 3 categories i.e. micro SD cards, SD cards and flash drives. Therefore, SanDisk appears to be a market leader in the relevant market. SanDisk is also a market mover in terms of patented technologies, wide range of products and good brand image in the relevant market.
19. The Commission observes that the insistence by SanDisk that the storage devices sold through the online portals should be bought from its authorised distributors by itself cannot be considered as abusive as it is within its rights to



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protect the sanctity of its distribution channel. In a quality-driven market, brand image and goodwill are important concerns and it appears a prudent business policy that sale of products emanating from unknown/ unverified/ unauthorised sources are not encouraged/allowed.

20. The Commission further observes that, *vide* its circular, SanDisk had only clarified that the full range of all India after sales and warranty services offered by it is limited to those products brought from its authorized national distributors. The conduct of SanDisk in issuing such circular can only be considered as part of normal business practice and cannot be termed as abuse of dominance.
21. As far as Sanpdeal.com is concerned, it is not engaged in the purchase or sale of storage devices, rather it owns and manages a web portal that enables those sellers who stock storage devices to sell such devices through its web portal for a commission. Here, the Commission observes that in the e-commerce market in India competitors like FlipKart, Amazon, eBay, ShopClues, Yebhi, jungle.com, rediff.com, indiatimes.com etc. are also operating and the e-commerce market thrives on special discounts and deals. Considering these facts SnapDeal.com *prima facie* cannot be termed as a dominant player.
22. The Commission further observes that to substantiate its claim regarding the continuance of the sale of SanDisk products by other resellers, no material has been provided by the Informant to show that it is not being sourced from the authorised dealers.
23. In the facts of the case, the conduct of SanDisk can not be considered to be in violation of the provisions of Section 4 of the Act.
24. The Commission is further of the view that the conduct of SanDisk in restricting the market to its authorised sellers alone in terms of the said



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circular, as alleged by the Informant, *prima facie* does not appears to be in violation of Section 3 of the Act.

25. In view of the above discussion, the Commission is of the opinion that no case of contravention of the provisions of the Act is made out against the Opposite Parties and the information is ordered to be closed forthwith in terms of the provisions contained in Section 26(2) of the Act.

26. The Secretary is directed to inform the concerned accordingly.

Sd/-

(Ashok Chawla)
Chairperson

Sd/-

(Anurag Goel)
Member

Sd/-

(M. L. Tayal)
Member

Sd/-

(Sudhir Mital)
Member

New Delhi
Date: 19/05/2014