



COMPETITION COMMISSION OF INDIA

Case No. 92 of 2016

In re:

**Dr. Ravi Bhushan Sharma
2H/26, Gandhi Nagar,
Kankarbagh, Badarpur,
Patna, Bihar - 800026**

Informant

And

**Toyota Kirloskar Motor Pvt. Ltd.
10th Floor, Canberra Tower,
U. B. City, No.24,
Vittal Mallya Road,
Bengaluru, Karnataka - 560001**

Opposite Party

CORAM

**Mr. S. L. Bunker
Member**

**Mr. Sudhir Mital
Member**

**Mr. Augustine Peter
Member**



Mr. U. C. Nahta

Member

Justice G. P. Mittal

Member

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

1. Dr. Ravi Bhushan Sharma (**‘Informant’**) has filed this information under Section 19(1)(a) of the Competition Act, 2002 (the **‘Act’**) against Toyota Kirloskar Motor Pvt. Ltd. (**‘OP’**) alleging contravention of the provisions of Section 4 of the Act.
2. As per the information, the Informant had bought a Toyota Fortuner 4x4 MT from an authorised dealer and service centre of OP in Patna, Bihar *i.e.* Budha Toyota on 20.05.2015. It is averred that since the date of purchase of the said vehicle, the Informant has been facing several problems relating to the services of Budha Toyota. It is stated that at the time of taking delivery of the said vehicle, the Informant was told by the representative of Budha Toyota that the vehicle has 10 litres of fuel and the same is sufficient to travel for at least a 100 kms; however, the vehicle ran out of fuel only after 15 kms of driving. The Informant has alleged that he was cheated by Budha Toyota firstly in this regard. The Informant has also averred about the bad engine performance/ fuel consumption performance of the said vehicle *vis-a-vis* the claim of the OP.
3. Secondly, as per the Informant, the pre-delivery inspection (PDI) of the said vehicle was not done properly by Budha Toyota. In this regard, it is averred that at the time of delivery, the clock of the vehicle was not set to show proper time and air pressure of the wheels of the said vehicle was not checked because of which it was giving a rough ride. As per the Informant, the personnel of



Budha Toyota are either not well trained to do proper PDI of the vehicle or they deliberately neglected to provide proper PDI services to the Informant. In this regard, the Informant had written an email to the OP on 23.05.2015, but the OP had not provided satisfactory reply to him. It is also averred that the OP had also not provided reply to his query regarding the instructions for PDI to be carried out on the said vehicle.

4. Next, the Informant has stated that on 22.05.2015, the said vehicle met with an accident and it was taken to Budha Toyota for repairing. It is averred that the Informant had faced a lot of problems to get the vehicle repaired due to unavailability of spare parts such as 'Alloy Wheels' for the said vehicle at the said service centre of OP. Further, the Informant has alleged that the spare parts of the said vehicle are also not available in the Indian market as OP is their sole importer and supplier in the Indian market. This, according to the Informant, is in utter violation of competition law. It is averred that due to the dominant position of OP, the Informant is deprived of the services of OP's authorised dealer and service centre and the same is causing inconvenience, mental harassment and agony to the Informant.
5. It is stated that the Informant has communicated several times with OP regarding the above said problem, but he has not received any reply from the OP. Subsequently, the Informant had served the OP with a legal notice on 25.08.2015 alleging that the OP is indulging in monopolistic trade practices, cheating the consumers by giving false assurance regarding the mileage of the vehicles, and not providing proper PDI services. But the Informant had not received any reply from the OP in response to the said legal notice as well.
6. Aggrieved by the above detailed conduct of OP, the Informant has filed the instant information and prayed the Commission to take appropriate action against the OP in terms of the provisions of the Act.



7. The Commission has perused the information and the materials available on record.
8. From the facts of the matter as narrated above, it is observed that the Informant had purchased a Fortuner 4x4 MT belonging to sports utility vehicle (SUV) category from an authorised dealer of Toyota Kirloskar Motor Pvt. Ltd. namely, Budha Toyota. Allegedly, since the purchase of the said vehicle, the Informant has been facing several problems including deficiency in PDI services by Budha Toyota, unavailability of spare parts for the said model in the Indian market *etc.* The Informant has alleged that the above said conduct of OP is abusive in terms of Section 4 of the Act.
9. To examine the matter in terms of Section 4 of the Act, the Commission deems it appropriate to first define the relevant market and then assess the dominance of OP in the delineated relevant market, before proceeding to examine the alleged abuse of dominance. The Commission observes that the dispute in question relates to purchase of an SUV *i.e.* Toyota Fortuner 4x4 by the Informant from OP through its authorised dealer *i.e.* Budha Toyota. It is observed that SUV is a generic marketing term used for a vehicle which is similar to a station wagon, but built on a light-truck chassis. It is usually equipped with four-wheel drive for on or off-road ability with some pretension. Some SUVs include the towing capacity of a pickup truck with the passenger carrying space of a minivan or large sedan. It may be noted that the features/ characteristics of an SUV may be different from other passenger cars/ vehicles. Further, in terms of price and consumer preferences, SUV cannot be considered as substitutable with other passenger cars/ vehicles. Thus, SUV forms a separate relevant product market. Accordingly, the relevant product market in this case may be defined as '*the market of sports utility vehicles*'. The relevant geographic market in this case may be taken as '*India*' as the conditions of competition in SUV market are homogeneous throughout India. In view of the relevant product market and the relevant geographic market



defined above, the relevant market in the instant matter may be considered as the '*market of sports utility vehicles in India*'.

10. From the information available in the public domain, the Commission observes that in the above said relevant market, OP is not dominant. It is observed that in the relevant market as delineated above, apart from the OP, there are other manufacturers namely, Mahindra & Mahindra, Hyundai Motor India, Maruti Suzuki, Ford India, Nissan Motor India, Renault India, Volkswagen India *etc.* manufacturing variants of SUVs and exerting competitive constraint upon the OP. Further, presence of such prominent players with comparable size and resources as well as the capability of manufacturing different models of SUVs indicates that there exist choice for the consumers in the relevant market and that they are not fully dependent on the OP. Thus, the Commission is of the view that OP does not possess such market power so as to act independently of competitive forces prevailing in the relevant market or to affect its competitors or consumers in its favour. In the absence of dominance of OP in the relevant market, its conduct need not be examined in terms of the provisions of Section 4 of the Act.
11. Even otherwise, looking at the nature of allegations as enumerated *supra*, the Commission is of the view that the grievances of the Informant essentially pertain to deficiency in PDI services by Budha Toyota, an authorised dealer and service centre of OP in Patna and there is no competition issue involved in the matter. Further, the dispute in question between the Informant and OP appears to be purely a consumer issue for which the Informant may approach the appropriate forum.
12. Based on the above analysis, the Commission is of the view that no case of contravention of the provisions of Section 4 of the Act is made out against OP



in the instant matter. Therefore, the matter is closed under the provisions of Section 26(2) of the Act.

13. The Secretary is directed to inform the Informant accordingly.

Sd/-
(S. L. Bunker)
Member

Sd/-
(Sudhir Mital)
Member

Sd/-
(Augustine Peter)
Member

Sd/-
(U. C. Nahta)
Member

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

New Delhi
Dated: 06.12.2016