



**COMPETITION COMMISSION OF INDIA**

**Case No. 35 of 2017**

**In Re:**

**Saturn Vehicles Private Limited  
Through its Director, Sandeep Puri, GKP Hyundai,  
Sandeep Motors, Gobind Bagh,  
Rajpura Road, Patiala, Punjab – 140401**

**Informant**

**And**

**Hyundai Motor India Limited  
Plot No. H-1, Spicot Industrial Park,  
Irrungattukottai, NH 4, Sriperumpudur Taluk,  
Kanchipuram District, Tamil Nadu – 602105**

**Opposite Party**

**CORAM**

**Mr. Devender Kumar Sikri  
Chairperson**

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

**Mr. Sudhir Mital  
Member**

**Mr. Augustine Peter  
Member**

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

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



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## ORDER

1. The present information has been filed by the Informant under Section 19 (1) (a) of the Competition Act, 2002 ('the Act') against Hyundai Motor India Limited ('the OP') alleging contravention of the provisions of Section 3 (4) of the Act.
2. In the information, the Informant has averred as follows:
  - 2.1 The Informant is engaged in the business of authorised dealership for the sale of cars and ancillary services. The OP is a manufacturer/ OEM (Original Equipment Manufacturer) of cars in India.
  - 2.2 The Informant entered into a dealership agreement with the OP on 20.08.2014 for a period of 3 years from the date of execution of the agreement. The dealership agreement was however, terminated by the OP after giving 30 days' notice dated 24.05.2017 on ground of shortcomings in the Informant's service such as poor performance in sales, service issues, inadequate provision of test drive cars *etc.* This, according to the Informant was claimed by the OP to have adversely affected its brand image.
  - 2.3 As per the Informant, the OP itself was to be blamed for such alleged shortcomings. It is stated that the OP imposes several vertical restraints upon its dealers which are in contravention of the provisions of the Act. The OP acts as the hub around which all its dealers revolve in the same direction like spokes attached to the hub in a wheel. The marketing policies designed by the OP as the hub have to be compulsorily followed by all its authorised dealers acting as spokes and any dealer deviating from a policy becomes a misfit in the scheme of marketing so designed by the OP and becomes liable to be terminated as the OP's dealer.



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2.4 In particular, the Informant alleges the following anti-competitive behaviour of the OP:

- a. Refusal to Deal – Clause 5.iii of the dealership agreement entered into between the Informant and the OP states that “*The Dealer shall not invest in any new or existing business not relating to Hyundai dealership*”. Apart from the same, at the time of entering into the dealership agreement, the Informant had to end its dealership of Fiat as per the demand of the OP as the OP made it clear to the Informant that it does not allow its dealers to run dealerships of other car manufacturers.
- b. Zero Credit Policy – Dealers are required to make advance payments and even deposit blank and undated cheques with the local and zonal sales offices of the OP and no credit is extended to them for purchasing cars from the OP.
- c. Inventory Funding – Dealers are forced to arrange for overdraft and loans from banks to be able to make advance payments for purchase of vehicles, spare parts and accessories at the time of placing orders upon the OP and not at the time when products are delivered to them.
- d. Setting Unrealistic Targets – OP sets unrealistic targets for the dealers leading to bulk purchase of cars from the OP. In spite of the request of the Informant to scale down the targets in 2015, the OP deliberately increased the targets in 2016. The Informant has been told that this leads to dealers resorting to unfair means such as booking/ retail of cars in fictitious names and raising false/ fabricates/ fake invoices for sale of services by adopting the practice of ‘billed but not delivered’ and entering the same in Global Dealer Management Software of the OP.



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- e. Multiple Layers of Incentives – The OP offers multiple layers of incentives to dealers on attainment of unrealistic targets which promotes unhealthy competition and unfair means in the market.
- f. Imposition of VAT on Cash Discount – Till March, 2016, the OP used to reimburse to the dealers full amount of cash discount given by them to the buyers, but from April, 2016, the OP started deducting VAT on such amount.
- g. Credit Notes of Subsidy of Capitalisation – The OP denied to issue credit notes of subsidy of capitalisation of test drive cars employed by the Informant thereby causing loss.
- h. Withdrawal of Scheme of Incentives – The OP unilaterally withdrew the scheme of incentives for disposal of unsold cars given by it with retrospective effect.
- i. Resale Price Maintenance – The OP issues consumer schemes specifying the discounts on each of the car models for each month which the dealers can give to the customers. Authorised dealers are required to mandatorily provide the same discount only. The OP strictly enforces this discount policy and dealers are forbidden to give more discounts than what are prescribed by the OP. Any discount given by the dealers more than the prescribed discount constitutes a violation which is then visited with penalties. Further, 3 blank cheques are required to be deposited by each dealer with the OP voluntarily for imposition of penalty upon themselves in case any of them breaches the “market discipline”. This clearly shows that the OP permeates Resale Price Maintenance by backdoor through its pseudonym “*punjabmarketdiscipline*”.



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- j. Tie-in Arrangement – The OP supplies costly and unpopular models of cars to dealers against orders placed for popular models and also makes supply of popular and fast selling models conditional upon purchase of unpopular models by the dealers.

2.5 The Informant has defined the relevant market in which adverse effect on competition is being caused by the above-mentioned alleged acts of the OP as “*market for sale of small-compact passenger cars in Patiala and surrounding areas*”.

2.6 Further, the Informant has stated that the OP is the second largest car maker in India, after Maruti Suzuki and in the said relevant market, the OP has 30% market share.

2.7 Finally, after analysing the various factors stated under Section 19 (3) of the Act to establish adverse effect on competition in the said relevant market, based on the aforesaid averments and allegations, the Informant alleges contravention of the provisions of Section 3 (4) of the Act by the OP.

3. The Commission has perused the information and the material placed on record by the Informant therewith. It is observed that the Informant has essentially and substantially raised three allegations against the OP which are stated to be in contravention of the provisions of Section 3 (4) of the Act apart from complaining about several other non-substantive acts of the OP. The first allegation relates to Clause 5 (iii) of the Dealership Agreement entered into between the Informant and the OP as per which a dealer is enjoined upon not to invest in any new or existing business not relating to Hyundai dealership which as per the Informant amounts to ‘Refusal to Deal’. Secondly, the Informant alleges ‘Resale Price Maintenance’ being indulged in by the OP alleging that the OP has in place a discount policy as per which it specifies the maximum



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discounts on each model of car which the dealers can give to customers and dealers are penalised if they give more discounts than prescribed amounts. And thirdly, the Informant alleges that the OP by tying costly and unpopular models of cars with popular models of cars to be purchased by the dealers, indulges into 'Tie-in-Arrangement'.

4. The Commission notes that all these allegations have been examined by the Commission in the case titled *FX Enterprise Solutions India Pvt. Ltd. v. Hyundai Motor India Limited*, MANU/CO/0041/2017. Regarding Refusal to Deal, the Commission in that order has observed that Clause 5 (iii) of the Dealership Agreement does not mandate exclusivity but only requires prior permission of the OP in order for dealers to operate competing dealerships. Clause 5 (iii) has not restricted, in form or in practice, any dealer in any manner from operating other OEM's dealerships. Hence, Clause 5 (iii) does not impose Exclusive Supply Obligation in contravention of Section 3 (4) (b) or Refusal to Deal in contravention of Section 3 (4) (d) read with Section 3 (1) of the Act.
5. Further, in respect of Resale Price Maintenance, the Commission has observed that Clause 8 of the Dealership Agreements provides that the OP shall, from time to time, advise the dealer margin on its products and the maximum selling price defined in the Standard Provisions enclosed to the agreement shall be inclusive of such margin. The margin may be revised at the sole discretion of the OP taking into consideration the market situation, competition, dealers' viability, *etc.* The OP has admitted to maintaining such Discount Control Mechanism. Through this scheme, the OP monitors that the maximum permissible discount level is adhered to by its dealers. The dealers are not authorised to give discounts which are above the recommended range and different levels of discounts are determined by the OP itself which vary for different models of vehicles. Further, the OP has admitted to appointing a 'mystery shopping agency' that collects, *inter alia*, data on the levels of discounts offered by the OP's different dealers all over the NCR. This agency



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then reports its findings to the OP which in turn shares this information with the dealers in a group email thread. Pursuant to the findings of the agency, various types of penalties are levied on the dealers to prevent them from providing any further discounts to the customers. An agreement that has as its direct or indirect object the establishment of a fixed or minimum resale price level, may restrict competition. Once Resale Price Maintenance is enforced, it leads to reduced intra-brand competition and overall higher prices for consumers. Based on the above, the Commission was of the opinion that the OP has contravened the provisions of Section 3 (4) (e) read with Section 3 (1) of the Act. Observing such, the Commission in *FX Enterprise Solutions India Pvt. Ltd. v. Hyundai Motor India Limited*, Cases No. 36 and 82 of 2014 decided on 14.06.2017 issued a cease and desist order against the OP in respect of such infringing conduct of indulging in Resale Price Maintenance besides imposing monetary penalty upon it.

6. Lastly, in regards to Tie-in-Arrangement, though in the earlier informations, the allegation of tying of unpopular and costly models with popular models when purchased by dealers was made, the Director General ('DG') did not find the said contention having substance and hence, the Commission, being in agreement with the conclusion of the DG on this count did not record any findings on this allegation.
7. In the instant case, substantially these three are the main allegations, and as observed above, since all of these have been addressed by the Commission on the basis of earlier informations, the Commission is of the view that, no further deliberation upon them is required as the allegations have been well dealt with in the aforesaid decision of the Commission.
8. It may be noted that the object and purpose of Act is to prevent practices having adverse effect on competition, to promote and sustain competition in markets, to protect the interests of consumers and to ensure freedom of trade carried on by



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other participants in markets, in India, and for matters connected therewith or incidental thereto. The Competition Commission is a market regulator and does not decide *lis* between parties but rather takes note of an anti-competitive conduct which may be brought to its notice by any person or enterprise by way of filing an information. The Commission passes various orders under Section 27 of the Act including directing the enterprise or person in contravention of the provisions of Sections 3 or 4 of the Act to discontinue such behaviour and/ or impose such monetary penalty upon it not exceeding the specified limit in the section. Such an order was also passed against the OP. The OP has even preferred an appeal against the same before the National Company Law Appellate Tribunal ('NCLAT'). The said order will attain finality subject to the right of appeal and whatever order is passed by the NCLAT and the Hon'ble Supreme Court of India. The OP has to abide by the order once it becomes final.

9. Since the Commission has already dealt with the allegations in respect of certain conducts of the OP, it is not expected to do the same again and again and deal with successive informations filed for the same conduct against the same enterprise by a separate order, as the Commission deals with anti-competitive conduct and abuse of dominance in the market.
10. The Informant has also made some other peripheral allegations such as Zero Credit Policy, Inventory Funding, Setting Unrealistic Targets, Multiple Layers of Incentives, Imposition of VAT on Cash Discount, Credit Notes of Subsidy of Capitalisation and Withdrawal of Scheme of Incentives; however, since these issues have no bearing upon competition in the market, the Commission does not find any *prima facie* case for contravention of Section 3 of the Act and does not deem it expedient to go in detail into them.
11. The Informant has also moved an application under Section 33 of the Act seeking interim relief by praying that the termination notice dated 24.05.2017 sent by the OP to it be not acted upon during the pendency of the present case.





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For the reasons stated above, since the Commission is not inclined to take cognizance of the information; the application filed under Section 33 of the Act too cannot be entertained. However, this shall be without prejudice to the individual remedy to which the Informant may be entitled under common law.

12. As a result, the case is closed. The Secretary is directed to communicate to the Informant, accordingly.

**Sd/-**  
**(Devender Kumar Sikri)**  
**Chairperson**

**Sd/-**  
**(S. L. Bunker)**  
**Member**

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

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

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

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

**Place:** New Delhi

**Date:** 03/10/2017