



COMPETITION COMMISSION OF INDIA
Case No. 38 of 2019

In Re:

**M/s Venkateswara Agencies,
Through, Shri Vattikuti Venkata Srinivas, Proprietor.
Office at: 152/1, V.S.N Towers, Ballipadu Road, Attili,
West Godavari District, Andhra Pradesh-534134**

Informant

And

**Kerala Agro Machinery Corporation Ltd.
Represented by its Managing Director,
Athani, Ernakulam District, Kerala-683885.**

KAMCO

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 instant case has been filed by M/s Venkateswara Agencies (**‘Informant’**) under Section 19(1)(a) of the Competition Act, 2002 (**‘Act’**) against Kerala Agro Machinery Corporation Limited (**‘KAMCO’/ ‘OP’**) alleging contravention of the provisions of Section 4 of the Act.
2. As stated in the information, the Informant is running a sole proprietorship by the name of M/s Venkateswara Agencies (earlier known as Rohini Agencies) dealing with agricultural machineries, based in West Godavari District of Andhra Pradesh. The Informant has been the authorised dealer of KAMCO from the year 2006, for which dealership agreement dated 28.09.2006 was entered into between Informant and KAMCO. The scope of the agreement included supplying the products of KAMCO to



the customers in West Godavari, East Godavari, Krishna, Srikakulam and Guntur Districts of the state of Andhra Pradesh.

3. KAMCO was established in the year 1973 for manufacture of agricultural machinery, specifically Power Tillers and Diesel Engines. Subsequently, KAMCO became a separate Government of Kerala undertaking in 1986 and expanded its business into manufacturing of many other agricultural machineries.
4. It has been averred that a dealership agreement was entered into between the Informant and KAMCO on 28.09.2006, whereby the Informant was to sell products such as power tillers, power reapers and power stone cutters and agri-garden tiller manufactured by KAMCO in West Godavari District, Andhra Pradesh. It was further averred that the initial term of agreement was for a period of one year and was to end on 27.09.2007. This dealership agreement continued till 2018, as per the authorization given by KAMCO in the form of letters issued from time to time. Further, as submitted by Informant, a communication dated 19.09.2017, was issued by KAMCO to the Vice Chairman & Managing Director of Andhra Pradesh State Agro Industries Development Corporation Limited, wherein it was mentioned that the Informant is an authorized dealer for West Godavari, Krishna and Guntur Districts of the state of Andhra Pradesh.
5. As stated by the Informant, it supplied the products of KAMCO to the customers located in the districts of West Godavari, East Godavari, Krishna, Srikakulam, Vijayanagaram and Guntur Districts *etc.* It was submitted that the Informant built a foundation for the brand KAMCO in the aforesaid markets by spending considerable amount of money in advertising in daily newspapers and popular publications, and even on local television. Further, the Informant stated that it used personal contacts with farmers in the region for sale of KAMCO's products.
6. It was alleged that KAMCO opted to authorize dealerships to other dealers for Guntur, Vijayawada and Srikakulam, in spite of the fact that Informant continue to hold the authorised dealership. Further, Informant alleged that KAMCO arbitrarily stopped issuing new stocks to Informant.



7. In this regard, Informant raised concerns against the issuance of dealerships *vide* its letter dated 02.05.2017. In response, on 21.06.2018, KAMCO issued a legal demand notice to Informant stating that as per the statement of accounts of the transactions, an amount of Rs. 68,50,312/- is due to be paid by the Informant to the said company.
8. It is averred that in year 2016-2017, the Informant obtained 180 demand drafts from the farmers for supplying paddy reapers and the same was intimated to KAMCO so that the stock could be sent to the Informant in a time-bound manner. It is further averred that the representatives of KAMCO *viz.* Shri T.K. Arun Kumar (Marketing M.D), and Shri Nizar Ahmed, employee, directed the Informant to send those demand drafts for sending machinery. The Informant alleged that even though 8 demand drafts were promptly sent to KAMCO, stocks were not supplied to Informant. Therefore, Informant had to approach unauthorized dealers to purchase the necessary machinery by paying excessive amounts and delivered same to those farmers from whom the Informant had received demand drafts.
9. The Informant alleged that it suffered a loss of Rs. 5,00,00,000/- (Five Crore Rupees) approximately when KAMCO failed to send machinery to the Informant on the said account. Further, on 20.11.2018, the Informant issued a legal notice to KAMCO demanding KAMCO to pay it Rs. 4,31,49,688 (Rupees Four Crore Thirty One Lakhs and Forty Nine Thousand and Six Hundred Eighty Eight Only) deducting the notice claim amount of KAMCO *i.e.*, Rs. 68,50,312/- from the said sum of Rs. 5 crores.
10. Subsequently, Informant filed O.S. (I.A.) No. 1593/2019 before the Court of the Learned District Judge, Ernakulam seeking a decree directing KAMCO to pay Rs. 5 crores towards the loss, damages and compensation suffered by the Informant on account of breach of contract at the instance of KAMCO by delivering dealerships to others and on account of non-supply of the products to the Informant.
11. It has been averred that a private complaint was also filed by Informant before Hon'ble Addl. Judicial Class Magistrate Court at Tanuku on 25.03.2019 against T.K. Arun



Kumar and Nizar Ahmed, representatives of KAMCO under Section 448, 306 and 420 of Indian Penal Code.

12. It was further alleged that on 19.12.2018, the Informant attempted suicide due to stress and constant threatening at the instance of the employees of KAMCO viz. Shri T.K. Arun Kumar and Shri Nizar Ahmed. He had also sold his properties due to such monetary losses.
13. Based on the above averments and allegations, the present Information has been filed by the Informant against KAMCO alleging contravention of the provisions of Section 4 of the Act. The Informant has prayed before the Commission to declare the acts of KAMCO to be void and in contravention of the provisions of Section 4 of the Act. The Informant has also prayed that penalty be imposed on KAMCO and further KAMCO be directed to cancel the dealerships provided to parties other than the Informant in the state of Andhra Pradesh.
14. The Commission considered the matter on 14.11.2019, and directed KAMCO to provide its response on the information filed by the Informant besides certain other information/clarification with respect to its market share and dealership agreement, along with relevant documents in support. In response to the direction of the Commission, KAMCO submitted its response on 01.01.2020.
15. The Commission considered the response of KAMCO on 16.01.2020 and noted that said company has, *inter alia*, provided information related to price of product, its competitors and market share along with copy of dealership agreements signed with the Informant. However, KAMCO had not submitted its response with regard to allegation levelled by Informant regarding violation of dealership agreement. Accordingly, the Commission *vide* its order dated 16.01.2020, directed KAMCO to file its response with regard to the certain allegations levelled by the Informant by 14.02.2020. Subsequently, as sought by KAMCO, the Commission *vide* its order dated 25.02.2020, granted extension of additional 15 days to file further response as directed *vide* order dated 16.01.2020 of the Commission.



16. Pursuant to said order of the Commission, KAMCO submitted its response against the allegations made by the Informant along with certain documents *vide* its letter dated 28.02.2020.
17. As submitted by KAMCO, the market share of its products in India and in State of Andhra Pradesh for previous 5 years is as follows:

Table 1: Market Share of KAMCO: Power Tiler and Reaper (Products)

S.No.	Market Share (in %)		2015-16	2016-17	2017-18	2018-19	2019-20*
1.	Pan India	Power Tiller	32.50%	27.68%	24.58%	24.00%	12.60%
		Reaper	46.5%	58.10%	65.83%	76.43%	36.80%
2.	For Andhra Pradesh	Power Tiller	-	-	-	-	-
		Reaper	46.20%	69.17%	80.58%	74.00%	53.00%

*2019-20 sale as on November 2019.

18. Further, KAMCO has provided a copy of latest dealership agreements dated 23.04.2015 entered with the Informant. KAMCO has also submitted copy of agreements signed with other dealers.
19. As sought by the Commission, Managing Director of KAMCO, *vide* its letter dated 28.02.2020, made submissions against the allegations levelled by the Informant. With respect to the allegation of the Informant that KAMCO appointed other authorised dealers in Guntur, Vijayawada and Srikakulam districts in violation of the dealership agreement between KAMCO and Informant, KAMCO stated that the Informant was not appointed as exclusive dealer for the State of Andhra Pradesh, KAMCO had reserved the right to appoint other dealers for the product in the territory as and when it deems necessary in the interest of the sales of the products. It was stated that Clause 7(a)(ii) of the agreement reserved the right to appoint other dealers for the product in the territory.



20. With regard to the allegation that KAMCO stopped issuing new stocks to the Informant in an arbitrary manner and did not supply the required machinery to Informant even though demand draft for the same were sent promptly by the Informant, KAMCO submitted that transactions between the Informant and KAMCO Ltd. had ensued from the period 2006-2007 and the latest agreement was entered into between the Informant and KAMCO on 23.04.2015, which was extended till 31.03.2018. It was further averred that as on 01.04.2016, an amount of Rs.1,78,53,947/- was payable by the Informant to KAMCO towards supply of machineries and spare parts. KAMCO continued to supply machineries to the Informant on credit in the hope that the Informant will clear its dues but as on date, an amount of Rs. 68,50,312/- is outstanding, to be paid by the Informant to KAMCO.
21. KAMCO submitted that towards the said amount, the Informant had issued 07 cheques drawn on State Bank of Hyderabad, in favour of M/s KAMCO Ltd. However, the said cheques were returned dishonoured. Further, KAMCO filed complaints under the Negotiable Instruments Act, 1881 before the Hon'ble Judicial Magistrate (First Class) Court, Angamaly, Ernakulam District and these complaints are pending consideration before the Hon'ble Court. It is alleged that the present information is filed only as a counter case to the said complaints filed by KAMCO against the Informant.
22. KAMCO also denied the allegation that the Informant has obtained 180 demand drafts from the farmers for supply of reapers and stated that no such information was given by the Informant to KAMCO. KAMCO has further stated that towards the orders placed by the Informant in the month of September, 2016, KAMCO supplied machineries and spare parts in the month of November and also in the month of December, 2016. It is stated that further in the month of June, 2017, supply of machineries were made by KAMCO to the Informant. KAMCO denied the allegation in the information that even though 08 demand drafts were sent by the Informant, stocks were not supplied by KAMCO and stated that same is not correct.



23. KAMCO submitted that the averment made in the information that the Informant had to purchase the machinery from unauthorized dealers by paying excessive amounts and deliver the same to the farmers is incorrect and hence denied. The further statement that the Informant had suffered huge losses on the said account is also incorrect and hence denied.
24. The Commission has perused the information filed by Informant as well as the information/documents filed by KAMCO in the matter.
25. The Commission at the outset observed that though the dealership agreement between Informant and KAMCO was first signed on 28.09.2006 (prior to commencement of the Act), such agreement appears to be continuing till 31.03.2018. The allegations made by the Informant are two fold. Firstly, that KAMCO opted to give authorized dealerships to other dealers for Guntur, Vijayawada and Srikakulam, in-spite of the fact that Informant continues to hold the authorised dealership. In regard to this allegation, upon perusal of the information and additional submissions made by KAMCO, the Commission is of the view that no competition concern is involved in the appointing of new dealers in the areas where the Informant has dealership. This has also been made explicit by KAMCO in its dealership agreement under clause 7(a)(ii) that new dealers may be appointed as and when it deems necessary in the interest of the sales of the products. Clause 7(a)(ii) of the dealership agreement is reproduced below:

“An adequate and properly trained staff and workshop facilities for satisfactory sale and after-sale-services of the product as required by the Manufacturer and to the Manufacturer’s sole and entire satisfaction as advised from time to time. The Manufacturer reserves the right to appoint its dealers for the Product in the Territory as and when it deems necessary in the interest of the sales of the Products”.

26. In fact appointment of more dealers in an area would tend to improve intra-brand competition and ensure wider choice to consumers unless it is shown that an exclusive agreement has certain pro-competitive effects.



27. Secondly, it has been alleged that KAMCO stopped issuing new stock of products to the Informant in an arbitrary manner as a result of which the Informant incurred debt in order to buy new stock from other unauthorised dealers in the market at high rate. However, after examining the information and additional information, the Commission notes that KAMCO had made supply of machineries and spare parts in the month of November & December, 2016 and KAMCO has denied that the Informant had suffered huge loss due to non-supply of new stock.
28. The Commission, based on information in Table 1, notes that as per the response filed by KAMCO, it deals primarily in power tiller and power reapers of which it has a sizeable market share in Andhra Pradesh as well as in the whole of India. The Commission also notes that though KAMCO is based in Kerala, its products are supplied throughout India and there is no evidence that it supplies exclusively in Andhra Pradesh, so as to confine the assessment of relevant market within the territory of the said state. Moreover, in the facts that no abusive conduct has been established against KAMCO, in any manner, a precise definition of relevant market and assessment of dominance may not be required in the present case.
29. The Commission observes that in the instant matter there is neither any exclusionary abuse nor it *prima facie* appears to be a case of such conduct as the agreement between the Informant and KAMCO expressly mentions that new dealers may be appointed in the interest of sales of products. Further, the Commission observes that the impugned agreement, is for a short period of one year and that too could be terminated by either party by giving 90 days' notice, and therefore, could not be said to have resulted in denial of market access to the competitors. Therefore, the said clause of the agreement cannot be said to raise any anti-competitive concern in the present case. Further, based on facts and evidence on record, it does not appear that KAMCO has indulged in any abusive conduct, so as to warrant any investigation into the same.



30. In view of the foregoing, the Commission is of the opinion that there exists no prima facie case and the information filed is closed herewith under Section 26(2) of the Act.

31. The Secretary is directed to communicate the order to the parties, accordingly.

Sd/-
(Ashok Kumar Gupta)
Chairperson

Sd/-
(Sangeeta Verma)
Member

Sd/-
(Bhagwant Singh Bishnoi)
Member

New Delhi
Date: 05.05.2020