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Fair Competition
For Greater Good

COMPETITION COMMISSION OF INDIA

Case No. 61 of 2014

In Re:

M/s Jasper Infotech Private Limited (Snapdeal)

246, Okhla Phase III, New Delhi

Informant

And

M/s Kaff Appliances (India) Pvt. Ltd.

Malibu Arcade, Sohna Road, Gurgaon

Opposite Party

CORAM

Mr. Ashok Chawla

Chairperson

Mr. S. L. Bunker

Member

Mr. Sudhir Mital

Member

Mr. Augustine Peter

Member

Mr. U. C. Nahta

Member

Present: Advocates Mr. Manas Kumar Chaudhuri, Mr. Sagardeep Singh, and Ms. Aditi Gopalakrishnan; Mr. Ashish Chandra (General Counsel); and Mr. Shine Joy (Assistant Manager) on behalf of the Informant.



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Order under section 26(1) of the Competition Act, 2002

The present information has been filed by M/s Jasper Infotech Private Limited (hereinafter, the '**Informant**') under section 19(1) (a) of the Competition Act, 2002 (hereinafter, the '**Act**') against M/s Kaff Appliances (India) Pvt. Ltd (hereinafter, the '**Opposite Party**') alleging contravention of the provisions of sections 3 of the Act.

2. The Informant is a company that owns and operates the online marketplace website www.snapdeal.com (hereinafter, '**Snapdeal**') which provides a medium for buyers and sellers/third party sellers to sell various products in 4000 towns and cities in India. It has a wide assortment of products from thousands of international, national and regional brands across diverse categories like mobile telephones, laptops, cameras, appliances, apparel, watches, home and kitchen, automotive, health, *etc.* The Opposite Party is stated to be a company engaged in manufacturing and selling of a wide variety of kitchen appliances such as electric chimneys, kitchen hobs, induction cookers, air purifiers, dishwashers, refrigerators, microwave, ovens and other apparatus for lighting, heating, *etc.* in the brand name 'Kaff'.
3. Allegedly, aggrieved by the displaying of the Opposite Party's products on the Informant's online web portal at a discounted price, the Opposite Party displayed a 'Caution Notice' on its website stating that the products sold by the Informant in 'KAFF' brand name are counterfeit and not authorised by it. It was also stated in the 'Caution Notice' that the Informant is deceiving the public with bad intention to trade on the Opposite Party's goodwill and infringing the trademarks owned by the Opposite Party as well as under cutting the authorized prices of the Opposite Party. Further, the Opposite Party, through the said 'Caution Notice', informed the public that it will not honour warranties of the products in its brand name sold through the platform of the Informant and any purchase made from such website shall be at the risk and cost of the consumers.



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4. The Opposite Party also served a legal notice to the Informant in this regard. In response, the Informant replied that it does not directly or indirectly sell any products on its website as it is merely an online market place. The sellers directly raise invoices to the final customers for the ordered products and bear all commercial risks. As per the Informant, the warranty on the products sold through its website is provided either by the manufacturing companies or by the sellers and its role is limited to a facilitator between the actual seller and the buyer.
5. Then, the Informant served a legal notice stating the Opposite Party to withdraw the 'Caution Notice' from its website as it was in violation of the provisions of the Act. In response, the Opposite Party denied any violation of the provisions of the Act and replied that it never permitted any online sale of its products and has not authorized its dealers to do so. The Opposite Party stated that the Informant neglected to disclose the source of procuring the products and the name of the vendors supplying the alleged counterfeit/defective products sold through its web portal.
6. It has been alleged that the main grievance of the Opposite Party stemmed from the discounted price at which Informant was selling its products. In this regard, the Informant enclosed an email dated 04.02.14 received from one Mr. Mohit Seth, an official of the Opposite Party wherein Mr. Mohit Seth warning the Informant if MOP (Market Operating Price) of the Opposite Party's products is not maintained then the company will not allow you to sell its products either by authorised or unauthorised dealers or distributors. The Informant submitted that through the said email the Opposite Party was imposing a price restriction on the Informant to make sales at a prescribed minimum price that amounts to resale price maintenance agreement in violation of section 3(4) (e) of the Act.
7. The Informant has alleged that it is apparent from the said e-mail that the Opposite Party is aggrieved with the issue that the Informant has sold the products of the Opposite Party below the prescribed price. It is also stated that



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the Opposite Party in its legal notice sent to the Informant claimed that *‘the goods manufactured by our client are sold at their exclusive chain of authorized retail outlets and at the listed prices only and any discounted schemes introduced and launched in the market is with the prior approval of our client – KAFF APPLIANCES (INDIA) PVT. LTD’*. Thus, as per the Informant, it is clear that the Opposite Party has networks of agreements with its dealers for enforcing minimum price. It is alleged that if dealers want to continue to sell the products of the Opposite Party on Informant’s web portal, they have to sale the products at the prices specified by the Opposite Party. The Informant submitted that such practices cause harm to consumers as well as to competition as retailers, both physical and online, are required to adhere to the price dictated by the Opposite Party.

8. The Informant has submitted that by threatening not to honour warranties on products sold on the online markets/websites, the Opposite Party is effectively cutting off supplies to distributors who are aiming to sell through online channel. The Informant also submitted that where a dealer is selling genuine non-counterfeit products online, not honouring warranties for products sold by these dealers would mean that an entire medium of sale/channel of distribution is being discriminated against and this would wipe out the emerging e-commerce industry in India.
9. Drawing analogy from the Commission’s order dated 25.08.2014 in *Shamsher Kataria Vs. Honda Siel Cars India Ltd. & Ors*, Case no. 03/2011, whereby the Opposite Parties in that case were directed *“not to impose a blanket condition that warranties would be cancelled if the consumer avails of services of any independent repairer. While necessary safeguards may be put in place from safety and liability point of view, OPs may cancel the warranty only to the extent that damage has been caused because of faulty repair work outside their authorized network and circumstances clearly justify such action”*; the Informant stated that the Opposite Party is imposing blanket ban on providing after sales warranties to customers who buy products from the sellers, may or may not be the authorised sellers, through online channels without any



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justification for the same. It submitted that said conduct of the Opposite Party is resulting in a total deprivation of consumer choice in violative of section 3(4) (d) of the Act. Highlighting various factors under section 19(3) of the Act, the Informant stated that the conduct of the Opposite Party and the agreements entered into between the Opposite Party and its dealers/distributors are having appreciable adverse effect on competition.

10. It has been also alleged that the Opposite Party's action in discriminating the online sale channel is a 'hub and spoke' arrangement between the Opposite Party and the retail outlets. The said arrangement is to keep the price of the product artificially high, limit the market for distribution of the products of the Opposite Party and share the market or source of production in violation of section 3(3) (a), 3(3) (b) and 3(3) (c) of the Act.

11. Aggrieved by the said alleged anti-competitive conduct of the Opposite Party, the Informant requested the Commission to direct the Director General ('DG') to cause an investigation into the matter. The Informant has also requested the Commission for grant of interim relief directing the Opposite Party to immediately withdraw the 'Caution Notice' from its website and to provide a written confirmation and publish requisite statement on its website to the effect that it will honour warranties for its products sold through the Informant.

12. The Commission has considered the information filed by the Informant and heard the counsels of the Informant at length.

13. It is observed by the Commission that the Opposite Party and its distributors are operating at the different levels of the same production chain and the arrangement/agreement between them is covered under the provisions of section 3 (4) of the Act. The Commission also finds substance in the argument advanced by the Informant wherein it has been contended that the existence of an agreement can be inferred from the conduct considered to be coercive when the level of coercion exerted to impose an apparent unilateral policy, in



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combination with the number of distributors that are actually implementing the unilateral policy of the supplier would, in practice, point to tacit acquiescence by the other party or parties.

14. Now the issue is whether the Opposite Party indulges in any practice that amounts to maintenance of resale price of its products in violation of section 3(4) (e) of the Act. In this regard, content of the email dated 04.02.2014 sent by one Mr. Mohit Seth, an official of the Opposite Party, to the Informant is notable. The verbatim of the said mail is as follow:

“Dear Naren,

It has been observed that the KAFF prices on your website are below MOP list. Product like base 60 and NF604SS are below dealer landing. This is to remind you that if the MOP is not maintained properly company will not allow you to sell our products either by authorised or unauthorised dealers or distributors. Kindly update your pricing within 24 hrs.

Regards

Mohit Seth”

15. The above email clearly shows that the Opposite Party was aggrieved by the fact that the Informant displaying its products at prices below the MOP *i.e.*, the least price determined by a manufacturer/seller at which dealer or retailer can sell the product. Thus, through the said e-mail, the Opposite Party has informed the Informant that sale of its products below the MOP shall not be permitted which shows that the Opposite Party was having a minimum resale price maintenance agreement with its dealers also. Further, in the legal notice to the Informant dated 18.04.2014 the Opposite Party has stated that the goods manufactured by it are sold at its exclusive chain of authorized retail outlets and at the listed prices only and any discounted schemes introduced and



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launched in the market is with the prior approval of the Opposite Party. Thus, the Opposite Party through the said e-mail and legal notice itself admitted that the price at which the Informant was selling its products was 'below the MOP list'. From the above it can be inferred that the Opposite Party was having an arrangement/agreement with its authorized dealers under which the dealers were given the 'MOP price list' for its product. Such an agreement hinders the ability of dealers/distributors to compete on the price of the product. The Commission feels that such prescription of MOP by the Opposite Party to its dealers and insistence to follow MOP pricing regime *prima facie* seems to be in contravention of section 3(4) (e) read with section 3(1) of the Act.

16. On the issue of appreciable adverse effect on competition (AAEC) in the market of '*supply and distribution of kitchen appliances in India*', the Commission is of the view that with a market share of 28% the restrictions imposed by the Opposite Party on its dealers through the above said anti-competitive agreement, *prima facie*, may not only harm the consumers but also are likely to have an adverse effect on competition in India.
17. In view of the foregoing, the Commission is of *prima facie* opinion that the Opposite Party, by resorting to resale price maintenance in respect to kitchen appliances through the above said practices, has indulged in anti-competitive practices in violation of the provisions of section 3(4) (e) read with section 3(1) of the Act.
18. Accordingly, the Commission, under section 26(1) of the Act, directs the Director General (DG) to cause an investigation into the matter and to complete the investigation within a period of 60 days from receipt of this order.
19. It is, however, made clear that nothing stated herein shall tantamount to an expression of final opinion on the merits of the case and the DG shall conduct the investigation without being influenced by any observations made herein.



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20. The Secretary is directed to send a copy of this order alongwith the information and the documents filed therewith to the Office of the DG forthwith.

21. It is ordered accordingly.

Sd/-
(Ashok Chawla)
Chairperson

Sd/-
(S. L. Bunker)
Member

Sd/-
(Sudhir Mital)
Member

Sd/-
(Augustine Peter)
Member

Sd/-
(U. C. Nahta)
Member

New Delhi

Dated: 29.12.2014