



COMPETITION COMMISSION OF INDIA

Case No. 65 of 2016

In Re:

**M/s Rishabraj Logistics Limited,
Through Mr. Rajendra Mansinghka, Company Manager,
Room No. 48-C, 3rd Floor,
P/36 India Exchange Place, Kolkata, West Bengal**

Informant

And

**Orix Auto Infrastructure Services Limited
Plot No. 94, Marol Co-operative Industrial Estate
Andheri Kurla Road,
Andheri (East), Mumbai, Maharashtra**

Opposite Party No. 1

**Ericsson India Global Services Private Limited
4th Floor, Dhaka House,
18/17 W.E.A. Pusa Lane
Karol Bagh, New Delhi**

Opposite Party No. 2

**Capital Connect Taxi Services
586-A, Munarika Village, New Delhi**

Opposite Party No. 3

**Orix Leasing & Financial Services India Limited
Plot No. 94, Marol Co-operative Industrial Estate
Andheri-Kurla Road,
Andheri (East), Mumbai, Maharashtra**

Opposite Party No. 4

**Falta Special Economic Zone
Department of Commerce,
Ministry of Commerce & Industry,
Government of India
2nd, MSO Building (4th Floor),
Nizam Palace, 234/4, AJC Bose Road,
Kolkata, West Bengal**

Opposite Party No. 5



CORAM:

Mr. Devender Kumar Sikri
Chairperson

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. The present information is filed by M/s Rishabraj Logistics Limited through its Company Manager Mr. Rajendra Mansinghka, (hereinafter, the 'Informant') under Section 19(1)(a) of the Competition Act, 2002 (hereinafter, the 'Act') against M/s ORIX Auto Infrastructure Services Limited, (hereinafter, 'OP-1'), M/s Ericsson India Global Services Private Limited (hereinafter, 'OP-2'), M/s Capital Connect Taxi Services (hereinafter, 'OP-3'), M/s ORIX Leasing & Financial Services India Limited (hereinafter, 'OP-4') and M/s Falta Special Economic Zone (hereinafter, 'OP-5') alleging contravention of the provisions of Sections 3 and 4 of the Act.



2. The Informant is a public limited company registered at Kolkata and is engaged in the business of providing passenger transport services by way of certain vehicles alongwith drivers on hire/rental basis. OP-1, a subsidiary of ORIX Corporation, Japan (ORIX), is engaged in the business of car rental services. OP-2 is a wholly owned Swedish subsidiary of Ericsson (Telefonaktiebolaget L. M. Ericsson) engaged in the business of Information Technology (IT) and Information Technology Enabled Services (ITES). It has a unit that operates from the Falta Special Economic Zone/OP-5 in Kolkata. OP-3 is stated to be a proprietary concern, working for the gains of OP-1. OP-4, as per the information available on OP-1's website, is a Non-Banking Financial Company (*i.e.* Loan Company) and is a wholly owned subsidiary of OP-1. OP-5 is stated to be a Special Economic Zone ('SEZ') which is added as a *proforma* party by the Informant. As such, no allegation is made against OP-5 in the information.
3. It is averred that the Informant came in contact with OP-1 during May-June, 2015 for rendering car rental services which OP-1 required for its client company *i.e.* OP-2. The Informant, *vide* email dated 8th October, 2015, proposed to furnish 18 vehicles to OP-1. *Vide* email dated 13th October 2015, OP-1 proposed a 'revenue model' of Rs. 1.05 lacs to Rs. 1.15 lacs for hiring Tata Sumo AC vehicles from the Informant for 30 days, with 24 hours duty along with 2 drivers each and sent a copy of the draft 'Transport Service Agreement' in which the first party was OP-1 and second party was shown as 'Vendor'. Subsequently, *vide* email dated 15th October, 2015, OP-1 proposed a 'revenue sharing model' in the ratio 33% and 67% between OP-1 and the Informant, respectively.



4. Informant has claimed that after receipt of the letter dated 29th December, 2015 regarding the confirmation of vehicle deployment from OP-1, it purchased 10 new vehicles, which were in addition to the 8 vehicles already owned by it. Further, the Informant also provided 19 GPS tracking devices (18 tracking devices for 18 vehicles and 1 extra for emergency) to OP-1. It is stated that the Informant dispatched all the vehicles to OP-1 through its drivers on 6th January, 2016. OP-1 provided training to the Informant's drivers and the first duty was allotted to them on 8th January, 2016.

5. It is alleged that OP-1 had agreed to allocate duty in respect of all the vehicles deployed by the Informant, however, since day one, OP-1 started abusing its dominant position and neglected to offer proper duty to the Informant's drivers, in defiance of the agreed terms. The Informant is stated to have approached the higher authorities of OP-1 also in April, 2016 for an amicable solution. Thereafter, OP-1 sent another Transport Services Agreement on 5th April, 2016, bearing the date of execution as 12th January, 2016 (hereinafter, the '**Agreement**'). The execution date was further changed to 8th January, 2016 when objected by the Informant as the first duty to the Informant's drivers was allotted on this date. It is averred that the said Agreement referred to the Informant as 'Sub-vendor' whereas the earlier draft agreement provided on 13th October, 2015 referred to the service provider as the 'Vendor'. Further, the Agreement mentioned OP-3 as the vendor whom the Informant had allegedly never met.

6. The Informant has alleged that the Agreement contained various anti-competitive clauses, either being restrictive in nature or amounting to abuse of dominant position by OP-1. Some of the clauses, along with the grievance of the Informant with regard to each of them, are illustrated below:



- i) Schedule II, Clause 1 provides that “[t]he Sub Vendor shall provide the services round the clock during the agreement period”. However, the vehicles of the Informant have been allegedly lying idle without being assigned any services.

- ii) Schedule II, Clause 4 that “[i]n case the client mentioned hereinabove makes part payment or delays the payment or does not make payment to ORIX of an amount due to it and which ORIX in turn owes to the vendor and/or sub-vendor pursuant to provision of services by the sub-vendors under this agreement for reasons such as bankruptcy or insolvency or disputes then in that case the sub-vendor agrees as follows:-
 - (a) *The sub-vendor’s claim towards service charges rendered under this agreement shall be restricted to the proportionate part payment amount received/to be received by ORIX and/or vendors from the client;*
 - (b) *The sub-vendor shall not be entitled to claim the service charges if client has not paid or defaulted in payment of its due to ORIX and/or vendors for the reason as mentioned above.”*

The Informant has alleged that OP-1 has made the amount payable to the Informant dependent upon what it receives from OP-2, without providing a copy of its agreement with OP-2 to the Informant. In such a situation, the Informant, being unaware of the amount due to him, is unable to raise invoice/bills under the agreement. This, as per the Informant, is abusive in nature.



- iii) Schedule II, Clause 9 provides that the “*sub-vendor shall not approach ORIX’s clients, either directly or indirectly, for entering into similar agreement with such clients for providing services as mentioned in this Agreement.*” It has been alleged by the Informant that such clause in the agreement is anti-competitive as it is causing an adverse effect on competition.
7. However, despite these clauses, the Informant, having on other option, allegedly signed the back dated Agreement. It is alleged that even after signing the Agreement, OP-1 continued to avail the services of the Informant without paying for them.
8. In the meantime, the Informant lodged a criminal complaint in the local police station. Soon thereafter, on 9th April, 2016, Mr. Supratik Roy, Regional Director of OP-1, issued an instruction not to deploy the vehicles of the Informant from 14th April, 2016 onwards, without citing any deficiency in services. Thereafter, OP-1 agreed to meet the Informant on 3rd May, 2016 for an amicable solution. It is stated that, in the meeting, it was discussed that from then onwards, vehicles of the Informant would be provided full duty and would not be withheld unnecessarily. It was further decided that payment would also be released immediately. After the said meeting, the Informant signed some blank papers for jotting down the minutes of the meeting. However, the minutes of the meeting which were sent to the Informant were totally different from what was discussed and decided in the meeting. The Informant claims that he had immediately responded by an email highlighting this fact to OP-1 on the same day.



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9. The Informant is further aggrieved with OP-1 for transferring Rs. 6,88,667/- to the bank account of the Informant on 4th May, 2016, after deducting service tax, with regard to services rendered for only 5 vehicles out of 18 vehicles. The Informant has alleged that OP-1 has wrongly deducted service tax, which is not applicable in case of 'Rent a Cab' service rendered to an SEZ unit (OP-2) as per the government notification no. 4/2004 dated 31.03.2004.
10. Thereafter, the Informant received a letter dated 16th May, 2016 sent by OP-3, wherein it is stated that "*business has been slow and during the last one month we have not been able to allocate any duty to you. We shall advise you in writing as and when your service in future shall be required.*" The Informant has contended that due to the uncertainty apparent in this letter, the Informant's services are neither fully terminated nor has it been assigned with any work and therefore, the fleet of 18 vehicles are lying idle with and recurring losses and damages on a daily basis.
11. It is submitted that OP-2 has engaged only OP-1 as its service provider, whereas other similar companies like Wipro, TCS, HDFC *etc.* engage more than one vendor. Thus, the agreement between OP-1 and OP-2 is also alleged to be a restrictive agreement which directly or indirectly affects competition in the car rental services in Kolkata and India. Further, the Informant has alleged that in Kolkata, the major market share of the car rental service to the corporate segment is with OP-1 and as such, it enjoys a dominant position.
12. Based on the aforesaid submissions and allegations, the Informant has prayed the Commission, *inter alia*, to direct OP-1 to provide adequate duty to the vehicles of the Informant and amend the transport service agreement; to disclose the agreement signed between OP-1 and OP-2 to the Informant and



to allow and engage the Informant to provide Car Rental service to OP-2 directly, by setting aside the interference of OP-1, *etc.*

13. The Commission has considered the information filed by the Informant. After a careful perusal of the material available on record, the Commission notes that the Informant is aggrieved by the conduct of OP-1 whereby OP-1, while availing transport/car rental services, has misled the Informant through unfair terms and conditions of the Transport Service Agreement. The terms of the Agreement are stated to be restrictive and abusive in nature. It is also alleged that OP-1 has abused its dominant position by not allocating adequate duties to the vehicles deployed by the Informant and has also not paid the bills on time for the services availed. The conduct of OP-1 is thus, alleged to be in contravention of the provisions of Sections 3 and 4 of the Act.

14. At the outset, it is noted that although the Informant has named 5 OPs in the array of parties in the information, the allegations mainly pertain to OP-1. From the information, it is observed that the Informant is engaged in the business of hiring/renting of cars and OP-1 is also engaged in the business of car rental service by hiring the same from third parties such as the Informant, for transportation of employees belonging to its client companies. As per the requirement of its clients, it procures required number of cars on rent from other cab service providers and then puts those cars to the service of its clients. Thus, OP-1 primarily functions as an intermediary between enterprises which provide cars on rent (*i.e.* like the Informant) and the actual users of those cars (*i.e.* like its client OP-2). Based on this, it can be inferred that Informant and OP-1 are engaged in a vertical line of business relating to the rental services of cars. For providing these services, the Agreement was entered into between the Informant and OP-3 wherein they were defined as sub-vendor and vendor, respectively. OP-1's signatures are also present on each and every page of



this Agreement. Some of the clauses of the Agreement are alleged to be restrictive in nature.

15. In this regard, the clauses of the Agreement need to be analysed to ascertain as to whether the allegations of the Informant under Section 3 of the Act are made out. Section 3 of the Act deals with anti-competitive agreements. Section 3(4) of the Act lists out certain vertical agreements which are considered as anti-competitive, only if they have caused or are likely to cause an appreciable adverse effect on competition (AAEC). The agreements falling under Section 3(3) of the Act, on the other hand, are presumed to be having an AAEC.
16. There is a logic into why the horizontal agreements which fall under Section 3(3) of the Act are treated in a different manner from the vertical agreements falling under Section 3(4) of the Act. Vertical agreements are concluded between entities operating at different levels in the production/supply chain who generally produce complementary products or services and are as such not placed in a competitive relationship. Such entities generally enter into numerous commercial agreements/arrangements to safeguard their respective interests. It is the prerogative of parties to negotiate the terms and conditions of such arrangements. Any unnecessary intervention in such commercial arrangement or agreement between parties may affect the smooth functioning of the businesses. For this reason, vertical agreements, in most jurisdictions, are not anti-competitive *per se* and are not presumed to be anti-competitive. They are considered anti-competitive only if they cause an adverse effect on competition in the market. As per the scheme of the Act, any vertical agreement is rendered void, only if it causes or is likely to cause an AAEC in India.



17. In this background, the Commission has examined the clauses of the Agreement entered into between the Informant and OP-1/OP-3. According to the recitals of the Agreement, the Informant was required to provide services to OP-1 and/or OP-2, as the case may be, on a non-exclusive basis. The Commission observes that the Agreement is not exclusive in nature and thus, does not stop the Informant from providing those cars on rent to other procurers. The Informant has mentioned in the information about other companies based in the city of Kolkata, who are availing/procuring similar services from various other service providers. In that case, any restriction imposed *vide* the aforesaid Agreement will only have the effect of governing the relationship of the parties *inter-se*, without restricting them from dealing with other participants in the market.
18. Coming to the specific clauses, the Informant has contended that Schedule II, Clause 9 of the Agreement is restrictive in nature. The said clause states that *“while providing services under this Agreement by the Sub-vendor during the term of this Agreement and for period of 2 years after expiry of terms of this Agreement or any renewals, sub-vendor shall not approach ORIX’s clients, either directly or indirectly, for entering into similar agreement with such clients for providing services as mentioned in this Agreement.”*
19. The Commission notes that the restriction under Schedule II, Clause 9 is operative during the term of the Agreement and for a period of two years after the expiry of the Agreement. Such conditions are analysed on the touch-stone of reasonability and potential anti-competitive effects on the market. The clause referred *supra* is in the nature of a non-compete condition during the subsistence of the agreement and for a period of 2 years thereafter, which is a usual business practice. It appears to be the result of commercial negotiations between the parties. Parties entering into commercial arrangements generally



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agree on certain terms which are binding on them. Unless such terms give rise to AAEC, the Commission does not find it necessary to interfere. It is highly improbable that the said restriction will have any AAEC on the market as OP-1 is one of the players operating in a fragmented market of cars available on rent. With regard to the other clauses of the Agreement (*e.g.* Schedule II Clause 1, Schedule II, Clause 4 *etc.*), highlighted by the Informant, it is observed that they do not raise any competition concern under Section 3 of the Act. Therefore, the Commission is of the view that allegations of the Informant with regard to contravention of Section 3 of the Act are not made out.

20. For the purpose of analysis under Section 4 of the Act, the relevant market, in terms of product and geographic dimension, needs to be delineated. Section 2(r) of the Act defines the relevant market as:

“The market which may be determined by the Commission with reference to the relevant product market or the relevant geographic market or with reference to both the markets.”

21. Thus, the relevant market needs to be delineated in the form of relevant product market and relevant geographic market.
22. In this regard, the Commission notes that the Informant is providing car rental services and OP-1 is procuring these services from the Informant, to provide the same to its clients. Thus, OP-1 is present on both sides of the market for car rental services, *i.e.* on one side as a procurer/aggregator of car rental services (from car rental service providers such as the Informant) and on other side as a provider of car rental services as well (to its clients *e.g.* OP-2). However, since the Informant is aggrieved with OP-1 as a procurer of car



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rental services, the market from the procurement side has been taken into consideration for delineating the relevant product market. The Informant has alleged that OP-1 holds a dominant position in the corporate segment of car rental services. The Commission does not find such a narrow delineation of the relevant product market by further segmentation to be necessary. Most of the car rental service providers, including OP-1, provide services to corporates as well as to other clients. For providing these services, OP-1 procures cars on rent from various services providers like the Informant. There does not seem to be any difference in terms of price, conditions of demand *etc.* between car rental services provided to corporate segment *vis-à-vis* non-corporate segment. The Informant can also offer its cars on rent to non-corporate customers apart from OP-1 and other corporate houses. Thus, for these reasons, the relevant product market in the instant matter would be “*market for procurement of car rental services*”.

23. With regard to the relevant geographic market, it appears that the regulatory architecture differs in each state/city in case of road transport. The Informant operates in the city of Kolkata. While OP-1 has its registered office at Mumbai, it operates in 14 major cities in India including New Delhi, Mumbai, Kolkata and Chennai. However, when it provides services in a particular city, it procures cars on rent from local car rental service providers only, as it is cost effective as well as hassle free. In the instant matter, OP-1 has procured cars on rent from Kolkata based service providers to serve the demand of its local clients. It may not be feasible for OP-1 to procure cars on rent from neighbouring cities to cater to the demand of its clients based in Kolkata. Thus, it appears that the demand for car rental service is primarily met through localised sources (suppliers) and accordingly, the most appropriate delineation of relevant geographic market in the present case would be city of “*Kolkata*”.



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24. On the basis of the aforesaid analysis, the Commission is of the view that the relevant market in the present matter would be “*market for procurement of car rental services in Kolkata*”.
25. In the defined relevant market, there are various intermediaries who procure car rental services for further provisioning of cars on rent. OP-1 is just one procurer amongst other players existing in the relevant market *e.g.* Savaari.com, Sure Taxis, OTL Cabs, Kolkata Cabs, Uber, Ola *etc.*, besides the unorganised segment. Moreover, as mentioned by the Informant itself, in case of corporate lease, there are various corporate houses, offices and companies in Kolkata having presence in OP-5, or otherwise in the city of Kolkata, who hire cars on corporate lease or otherwise procure services of cars on rent. The market is open for all such service providers, and there does not exist any hurdle or regulatory/entry barrier. With the advent of technology and business opportunities, there are also other avenues available in the market such as radio taxi aggregators, making the market more competitive. Further, the Informant is not dependent upon OP-1 alone for operating in the market. It can directly contact any corporate office and negotiate terms for providing services or offer services through other intermediaries. In the absence of evidence to the contrary, in this fragmented market, OP-1 cannot be said to hold a dominant position as a procurer. Thus, the Commission is of the view that OP-1 is not dominant in the relevant market as a procurer. In the absence of dominance, there is no occasion for the Commission to look into the allegations regarding abuse of dominant position.
26. Based on the foregoing analysis, the Commission finds no *prima facie* case of contravention of the provisions of Sections 3 or 4 of the Act against OP-1 in the instant matter. With regard to other Opposite Parties, the material on record, as such, do not indicate



any violation of the provisions of the Act. The matter is, hence, ordered to be closed under the provisions of Section 26(2) of the Act.

27. The Secretary is directed to inform all concerned 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**

**New Delhi
Date: 06.12.2016**