



**COMPETITION COMMISSION OF INDIA**

**Case No. 79 of 2016**

**In Re:**

**Sh. Ravi Beriwal  
Shyam Towers, EN-32, Sector-V,  
Salt Lake, Kolkata**

**Informant**

**And**

**Lexus Motors Ltd.  
41A, A. J. C. Bose Road, Kolkata**

**Opposite Party 1**

**Jaguar Land Rover India Ltd.  
Nanavati Mahalaya, 3<sup>rd</sup> Floor,  
18-Homy Mody Street, Mumbai**

**Opposite Party 2**

**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 has been filed by Sh. Ravi Beriwala (hereinafter, the “**Informant**”) under Section 19 (1)(a) of the Competition Act, 2002 (hereinafter, the “**Act**”) against Lexus Motors Ltd. (hereinafter, “**OP-1**”) and Jaguar Land Rover India Ltd. (hereinafter, “**OP-2**”) alleging contravention of the provisions of Sections 3 and 4 of the Act.
2. As per the information, the Informant is the Director of Shyam Steel Industries Limited (**SSIL**). OP-1 is an authorised dealer of OP-2 engaged in the business of selling cars manufactured by OP-2. OP-2 is a manufacturer of luxury cars including one of its popular brands “Range Rover”.
3. It is averred that *vide* board resolution dated 16<sup>th</sup> June, 2014, SSIL decided to purchase one “Range Rover Evoque Dynamic Car” (hereinafter, the “**Car**”) for personal use of its director, Shri Ravi Beriwala *i.e.* the Informant. The said Car was purchased on 28<sup>th</sup> June, 2014 from OP-1 against total sale consideration of Rs. 62,96,709/- (Sixty Two Lacs Ninety Six Thousand Seven Hundred and Nine Rupees) and an additional amount of Rs. 3,83,863/- (Three Lacs Eighty Three Thousand Eight Hundred and Sixty Three Rupees) was incurred towards its registration charges and other taxes. The Informant desired to have a car with black roof which was not readily available with OP-1. The same had to be imported by OP-1 from the United Kingdom and was delivered to the Informant on 30<sup>th</sup> June, 2014. At the time of delivery, the odometer reading was 16 kms. This said reading was acknowledged and recorded in the delivery acknowledgement note issued by OP-1.
4. It is alleged that soon after the purchase, the Informant noticed many problems and defects in the Car, such as gear problem, pick up, over heating of the gear knob and jerking between gear shift *etc.* After that, the Informant sent the Car to the service



centre of OP-1 for repairs on several occasions. However, the Informant claims that the problems stated above still persist in spite of availing after sale services a number of times.

5. The Informant has claimed that upon enquiry, he also came to know about the damaged and broken air bags in the Car which could have happened only in case of an accident. It is stated by the Informant that the Car had not met with any accident since its purchase on 30<sup>th</sup> June, 2014 by the SSIL and that the Car was in the possession and custody of the Informant only since that date. However, the Informant later found that the Car had met with an accident before its delivery and this fact was substantiated from the service history records of the Car. The service history records contained the following entries under 'Accident Repairs' with the type of work: glass –liftgate-renew, glass - rear door - renew, glass - roof panel – fixed - renew, windshield - renew, bracket - trim panel - LH, A pillar, trim bracket, grommet - moulding D Pillar, clip - A Pillar, body work', and 'roof paint colour change white to black'. It has been stated that at the time of such accident repairs, the odometer reading recorded in the service history records of the Car was 7 kilometres. Further, from the service history records, it was also revealed that the Car had undergone the said repairs at the workshop of OP-1 on 12<sup>th</sup> July, 2014 which is puzzling, as per the Informant, since the Car was in his possession after 30<sup>th</sup> June, 2014 and had not met with any accident and was also not sent to any service center for repairs on 12<sup>th</sup> July, 2014. Hence, the Informant has alleged that the Car met with a major accident prior to its delivery to the Informant by OP-1 and this vital fact was deliberately concealed by both the OPs and that the records of the vehicle were allegedly manipulated and that the OPs had sold a used, accidental and damaged Car to the Informant.
6. The Informant has further referred to the correspondence between the Informant and the OPs on the subject and has stated that the representatives of OP-1 admitted



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during the meeting dated 26<sup>th</sup> April, 2016 about the accident of the Car which took place prior to its sale and delivery to the Informant. It is alleged that *vide* letter dated 8<sup>th</sup> June, 2016, OP-1 admitted about a hair line scratch on the roof of the Car that was re-painted by it to maintain quality as well as standard which reveals the *malafide* intention of the OPs and unfair trade practices indulged into by them.

7. The Informant has alleged that the OPs have projected the said Car as defect/damage free, un-used and brand new but on the contrary the Car which has been sold to the Informant, is old, damaged and a used one. The sale has been made wrongfully by suppressing the material facts which amounts to unfair trade practice on part of the OPs. OPs have even denied to replace the Car with a new one. The matter was also reported to the police by the Informant on 17<sup>th</sup> June, 2016 and a complaint to this effect has also been filed before the State Consumer Dispute Redressal Commission, West Bengal against the OPs under the Consumer Protection Act, 1986.
8. The Informant has alleged abuse of dominance by OP-2 in the luxury car segment being the exclusive manufacturer of high end luxury cars under the brand name 'Jaguar Land Rover'. OP-1 is the exclusive dealer of OP-2 in the eastern region and therefore, is said to be dominant in respect of sale of high end luxury cars of OP-2 which are 100% imported from abroad.
9. In light of above facts and allegations, the Informant has, *inter alia*, prayed the Commission to direct the DG to investigate into the matter and impose a penalty apart from ordering the OPs to replace the defective Car or return back the amount paid alongwith 18% interest.
10. The Commission considered the information in its ordinary meeting held on 13<sup>th</sup> October, 2016. After a thoughtful perusal of the information and material available on record, the Commission observed that the Car was allegedly purchased by SSIL



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for personal use of its Director *i.e.* the Informant. Soon after its purchase, the Informant observed many defects in the Car such as problem with the gear, pick up and other malfunctioning. Subsequently, the Informant found that the Car was not only defective but was also old, damaged and used. The Commission notes that the grievance of the Informant relates to sale of a defective Car and concealment of necessary facts relating to the Car by OP-1 which, according to the Informant, amounts to unfair trade practice.

11. At the outset, the Informant has claimed that the alleged practices were covered under the erstwhile Monopolistic and Restrictive Trade Practices (MRTP) Act, 1969 and therefore, these ought to be covered under the Competition Act, 2002. In this regard, the Commission notes that the allegations pertaining to unfair trade practices are not *per se* covered under the Act. Therefore, the allegations have been examined from the perspective of Section 4 of the Act.
12. For the purpose of Section 4 of the Act, it is imperative to delineate the relevant market as per Section 2(r) of the Act. The next step is to analyse whether the OPs are dominant in that relevant market. Once dominance is established, then the question of examination of allegations relating to abuse of dominance arises.
13. Before analysing the facts and allegations under the provisions of Section 4 of the Act, the Commission notes that OP-1 is the exclusive dealer in the eastern region of India *i.e.* Kolkata and Cuttack of the cars manufactured by OP-2. Though the Informant has alleged contravention against both OPs, the primary grievance of the Informant is against the conduct of OP-1. Thus, the Commission decided to analyse the matter mainly with regard to OP-1.
14. The Informant has alleged that the OPs are abusing their dominance in the market for sale of high end luxury cars. However, the Informant has not explained the term '*high end luxury cars*'. The Commission observes that from consumer point of



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view, there are a number of factors that influence the choice of purchase of a particular type of car such as budget, convenience, accessories, brand name, facilities, features, looks, *etc.* Similarly, on the supply side, the manufacturers also classify cars into various categories taking into account various factors such as demand from different segments of buyers, their disposable income, engine capacity, length of the car, *etc.* The Commission notes that some of the cars are popularly known as luxury cars because of their brand value, comfort, features, looks *etc.* which make them a different class all together. OP-2 manufactures and sells passenger cars with brand names Jaguar and Land Rover. Under the brand name Land Rover, OP-2 manufactures many models including Range Rover, Range Rover Sports, Range Rover Evoque, Discovery, Discovery Sports, *etc.* The price of these vehicles ranges from Rs. 48.91 lacs to Rs. 2.30 crores. Under the Jaguar brand, the price of different vehicles/models range from Rs. 41.1 lacs to Rs. 1.30 crores. The OPs are dealing in the segment of luxury passenger cars only and competing with other luxury car manufacturers/brands like Audi, BMW, Mercedes Benz, Volvo, *etc.* These cars, on the basis of differences in price, features and consumer preferences, can be classified as luxury cars and distinguished from other categories of passenger cars. Therefore, the Commission opines that, in the instant case, the relevant product market would be “*market for manufacture and sale of luxury passenger cars*”.

15. The Commission further observes that one can purchase such cars from anywhere in India. There is no regulatory restriction or barrier for purchase of new cars. The dealers/distributors of cars are available in all major cities including Delhi, Mumbai, Bengaluru, Chennai, Kolkata *etc.* The conditions of competition for manufacture and sale of luxury cars appear to be homogenous throughout the territory of India. Therefore, the relevant geographic market in this case would be “*India*”.



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16. Based on the above, the Commission is of the view that the relevant market in the instant matter would be “*market for manufacture and sale of luxury cars in India*”.
17. Next, the Commission observes that there are many brands of luxury passenger cars which are available in India including Mercedes Benz, Ferrari, BMW, Audi, Porsche Volvo, Mitsubishi, Aston Martin, Maserati *etc.* with a variety of models. Though the market share of each luxury car manufacturer in India is not readily available in the public domain, the presence of a large number of players indicates that the market is competitive. The Informant has submitted that OP-1 is the only dealer of OP-2 in East India, having one showroom in Kolkata and one in Cuttack. However, as per the website of OP-2, there are 22 dealers in India, OP-1 being one of them, who sell cars manufactured by OP-2. The presence of more than one dealer indicates that consumers have option to purchase the same car from any of the dealers of OP-2. Further, other brands such as Audi with 42 dealers in India (2 in East India), Mercedes Benz with 79 dealers in India (5 in East India), BMW with 48 dealers in India (3 in East India), Mitsubishi with 47 dealers in India (5 in East India), *etc.* also deal with similar competitive products in the relevant market. These figures indicate that there exists sufficient intra-brand as well as inter-brand competition in the relevant market.
18. Further, there are no significant barriers for other players to enter the relevant market. Thus, the OPs do not hold a position of strength in the relevant market which enables them to operate independently of competitive forces prevailing in the relevant market or affect their competitors or consumers or the relevant market in their favour. Therefore, the Commission finds that the OPs are not dominant in the relevant market in the instant matter.
19. In the absence of dominance of OPs in the relevant market, the Commission is of the considered view that there is no need to look into the conduct of OPs any further under the Act.



20. Based on the above, the Commission finds no *prima facie* case of contravention of the provisions of Section 4 of the Act against the OPs in the instant matter. The matter is, hence, ordered to be closed under the provisions of Section 26(2) of the Act.
21. 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: 17.01.2017**