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Fair Competition
For Greater Good

COMPETITION COMMISSION OF INDIA

Case No. 82 of 2016

In Re:

**Mr. Debabrat Mishra,
3rd Floor, NK Mehta International House,
Babubhai Chinai Marg 178,
Backbay Reclamation, Mumbai- 400020**

Informant

And

**Daimler Financial Services India Private Limited
RMZ Millennia Business Park,
Campus 3B, Unit 202,
143 Dr. M.G.R. Road, Perungudi,
Chennai -600096**

Opposite Party No. 1

**Mercedes Benz India Private Limited
Through the Managing Director,
E-3, MIDC, Chakan, Phase-III,
Chakan Industrial Area, Kuruli & Nighoje,
Tal: Khed, Pune-410501**

Opposite Party No. 2

**Autohanger,
Auto Hangar (I) Private Limited
Rajan House, Mezzanine Floor,
Appa Saheb Marathe Marg,
Prabhadevi, Mumbai-400025**

Opposite Party No.3

**Mercedes Financial Services
Daimler Financial Services India Private Limited,
RMZ Millennia Business Park,
Campus 3B, Unit 202,
143 Dr. M.G.R. Road,
Perungudi, Chennai-600096**

Opposite Party No. 4



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CORAM

Mr. Devender Kumar Sikri
Chairperson

Mr. S.L. Bunker
Member

Mr. Sudhir Mital
Member

Mr. U.C. Nahta
Member

Justice G.P. Mittal
Member

Order under Section 26(2) of the Competition Act, 2002

1. Mr. Debabrat Mishra (hereinafter, the ‘**Informant**’) has filed the present information under Section 19(1)(a) of the Competition Act, 2002 (hereinafter, the “**Act**”) against Daimler Financial Services India Private Limited (hereinafter, ‘**OP-1**’), Mercedes Benz India Private Limited (hereinafter, ‘**OP-2**’), Autohanger (hereinafter, ‘**OP-3**’) and Mercedes Financial Services (hereinafter, ‘**OP-4**’), (collectively referred to as ‘**OPs**’), alleging contravention of the provisions of Sections 3 and 4 of the Act.
2. As per the information, the Informant is a Director of Ubqool Futuretech Private Limited, which is engaged in the business of providing educational consultancy services. OP-1 is a financing company and provides lease financing services only for the vehicles manufactured by OP-2 and other subsidiary companies of Daimler AG. OP-2 is a manufacturer of vehicles sold under the brand name “Mercedes-Benz”. OP-3 is the exclusive authorized dealer/repairer of vehicles manufactured by OP-2 and OP-4 provides finance exclusively for the vehicles manufactured by OP-2. Daimler AG, Stuttgart, Germany is the parent company of OP-2, OP-3 and OP-4.



3. The Informant has submitted that he wanted to buy a “Mercedes Benz C Class” vehicle. However, citing lack of eligibility, OP-1 declined to provide finance to the Informant. Thereafter, he was contacted by OPs regarding the launch of new GL edition vehicle and with the availability of lease finance option for the same. OP-3, *vide* email dated 24th January, 2012, sent lease quotations for two vehicle model, *viz.*, ML 350 CDI Executive Grand Edition and new GL 350 CDI Executive Grand Edition (hereinafter, “**GL 350**”) to the Informant. Subsequently, OP-4, *vide* email dated 8th February, 2012, provided the lease scheme for GL 350 to the Informant. Accordingly, the Informant entered into a Lease Agreement dated 27th February, 2012, with OP-1, for a term of 3 years for availing the services of a GL 350 model vehicle against a total consideration of Rs.88,97,076/-.

4. It is alleged by the Informant that certain clauses of the aforesaid lease agreement are abusive and they are as follows:
 - a) The lessee is not entitled to make any alteration in the car without the prior consent of the lessor;
 - b) The lessor and its agents are entitled to the repossession of the car on occurrence of any default;
 - c) The lessee must compensate the lessor for any loss the lessor suffers as a result of the car not being maintained in good working condition or the lessee’s failure to comply with the terms of the Agreement;
 - d) The lessee should ensure that all scheduled and non-scheduled maintenance is carried out by the lessee only at the authorized dealer workshops, *etc.*

5. It is averred that despite deficiency in services, the Informant had paid 22 instalments of Rs.2,47,141/- each, out of the total 36 instalments. It is further averred that most of the time, the leased car of the Informant was kept idle in the workshop during repair, which had caused inconvenience to the Informant.



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6. The Informant has alleged that the technological information, diagnostic tools and software programs, which are required to maintain, service and repair the automobiles manufactured by the OPs, are not freely available to the independent repair workshops. Thus, the Informant had no other alternative but send the vehicle to the workshop of the OPs and buy the spare parts from the OPs, thereby indirectly determining the price of repair and maintenance services and also incurring higher repair cost.
7. Accordingly, the Informant has alleged that such conduct of OPs contravenes the provisions of Sections 4(2)(a), 4(2)(b), 4(2)(c) and 4(2)(e) of the Act. It is also alleged that there is a vertical agreement between OP-2 and OP-3, whereby, the Informant was forced to avail the services of OP-3, which has an appreciable adverse effect on competition (AAEC) in India and contravenes the provisions of Sections 3(4) (a) and 3(4) (b) read with Section 3(1) of the Act.
8. To examine the alleged abusive conduct of the OPs under Section 4 of the Act, the Informant has proposed the relevant market as, “*the newly launched hybrid option of long lease financing of luxury cars in India being offered by OPs*”. Since, OP-1 is the exclusive finance provider for the vehicles manufactured by OP-2, the OPs are stated to be dominant in the relevant market.
9. Based on the above allegations, the Informant has, *inter alia*, prayed the Commission that the operation of the aforementioned lease agreement between the Informant and OPs be stayed. The Informant has also sought a cease and desist order against OPs prohibiting them from imposing unfair and discriminatory conditions.
10. The Commission has perused the information and the material available on record. From the facts and circumstances of the case, it appears that the Informant is primarily aggrieved by the terms and conditions of the Lease Agreement dated 27th February, 2012 and abusive practices of OPs. It has also been alleged that OP-2 and OP-3 have entered into a vertical agreement, which



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violates the provisions of Section 3(4) (a) and 3(4) (b) read with Section 3(1) of the Act which is alleged to have caused AAEC in India.

11. Before dealing with the issues/allegations in the present case, the Commission deems it appropriate to discuss the lease financing model of the OPs. OP-2 and OP-3 through OP-1 provide the service of lease/financing for the vehicles manufactured by OP-2 to customers. The leasing option requires the customers to pay a fixed amount monthly as payment for a specified period, such as, 12 months, 24 months or 36 months. The said scheme further provides an option of owing the same car at the end of the lease term.
12. For the purposes of examining the allegations under Section 4 of the Act, the relevant market, in terms of product and geographic dimensions, 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.”*
13. As per Section 2(t) of the Act, relevant product market is a market comprising of all those products which are regarded as substitutable by the consumer in terms of characteristics of the products, their prices and intended use. The Commission observes that the services of a car can be procured through two options: a) either through a lease or b) by buying through ‘outright payment’ or ‘loan’. Lease financing is one of the modes for medium / long term financing wherein the lessee is given the right to use a vehicle against periodic payments. Availing the services of a car through a ‘lease’ is different from buying it through ‘outright payment or loan’. Under the lease option, the ownership right is not vested with the lessee, while in case of outright payment or loan, ownership resides with the buyers. Further, in case of a lease, at the end of the tenure of the lease agreement, the lessee has to return the vehicle back, unless he decides to buy it. It is noted that although the intended use of leasing and buying an automobile is the same, they vary substantially in terms of prices paid



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and other characteristics. Therefore, the Commission is of the view that by virtue of difference in characteristics and prices, both the aforesaid modes cannot be considered as part of the same relevant product market.

14. In the present case, the Informant has purchased a luxury car (GL 350) on lease. In view of this, the Commission opines that the relevant product market would be “*provision of lease financing services for luxury cars*”. With regard to the delineation of the relevant geographic market, it is noted that since, luxury cars on lease can be procured across India and the terms and conditions for availing the lease would be the same, the relevant geographic market would be “*India*”. Accordingly, the relevant market in the instant case would be, “*provision of lease financing services for luxury cars in India*”.
15. The analysis of abuse by any dominant entity under Section 4 of the Act depends upon whether the entity, under examination, is able to operate independently of the market forces in the relevant market. As the Informant is aggrieved with the Lease Agreement entered into with OP-1, dominance qua OP-1 requires an examination. As per the information available in the public domain, apart from OP-1, there are many players in the relevant market offering lease financing services, such as, Arval, ALD Automotive, Magma Auto Lease, SMAS Auto Leasing, Tata Capital, ORIX *etc.* Therefore, it is evident that the Informant had multiple options to approach any of the aforesaid player in the relevant market. Thus, it is improbable that OP-1 could have operated independently of the market forces in the relevant market. Since, OP-1 doesn’t seem to be dominant, the question of alleged abusive conduct by OP-1, within the meaning of the provisions of Section 4 of the Act, does not arise.
16. It is also alleged that OP-2 and OP-3 form a part of a vertical chain and the aforementioned agreement between them has deprived the Informant from availing services of the independent repairers, thereby, violating the provisions of Section 3(4) (a) and 3(4) (b) read with Section 3(1) of the Act. In this regard, it is noted that the stakes of the lessor were higher in the said lease agreement.



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The car, being a luxury car, was highly expensive and the lessee was not the owner of the car. Thus, to safeguard the commercial interest of the lessor, such condition might have been introduced. Therefore, the said condition does not fall foul within the provisions of Section 3(4) of the Act.

17. As regards Section 3(3) of the Act, it may be noted that OPs are not engaged in the provisions of identical / similar activities. Therefore, OPs cannot be said to have violated the provisions of Section 3(3) of the Act.
18. In view of the above, the Commission is of the view that no case is made out against OPs either under Section 3 or Section 4 of the Act. Thus, the case is ordered to be closed forthwith in terms of the provisions contained in Section 26(2) of the Act.
19. 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/-
(U.C. Nahta)
Member

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

New Delhi
Dated: 02.02.2017