



COMPETITION COMMISSION OF INDIA
Case No. 21 of 2019 and Case No. 16 of 2020

Case No. 21 of 2019

In Re:

Neha Gupta
33-A, Sunder Nagar Market
Sunder Nagar
New Delhi- 110003

Informant

And

Tata Motors Ltd.
Bombay House, 24, Homi Mody Street Fort
Mumbai- 400001

Opposite Party No. 1

Tata Capital Financial Services Limited
11th Floor, Tower A, Peninsula Business Park
Ganpatrao Kadam Marg, Lower Parel
Mumbai- 400013

Opposite Party No. 2

Tata Motors Finance Ltd.
Think Techno Campus (Lodha)
2nd Floor, Building 'A'
Off Pokhram Road 2
Adjacent to TCS Yantra Park
Thane (West)- 400601

Opposite Party No. 3

WITH

Case No. 16 of 2020

In Re:

Nishant P. Bhutada
M/s. Kanchan Motors
Opposite Tractor House
Mumbai Agra Road
Tigrania Corner, Dwarka
Nashik- 422001

Informant



And

Tata Motors Ltd.
Bombay House, 24, Homi Mody Street Fort
Mumbai- 400001

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Opposite Party No. 3

CORAM:

Ms. Ravneet Kaur
Chairperson

Ms. Sangeeta Verma
Member

Mr. Bhagwant Singh Bishnoi
Member

Appearances:

For Informant in Case Ms. Neha Gupta, In-Person with Mr. Sarim Naved, Ms. Swati Rana, Ms.
No. 21 of 2019 Komal, and Mr. Pranay Kumar, Advocates

For Informant in Case Mr. Nishant Bhutada, In-Person with Mr. Mayank Bagla, Advocate.
No. 16 of 2020



For the Opposite
Party No. 1

Mr. Rajshekhar Rao, Senior Advocate with Mr. Samir Ghandhi, Mr. Gaurav Bansal, Mr. Atish Ghoshal, Mr. Nitin Nair, Ms. Meherunissa Anand, Mr. Shaurya Kumar, Ms. Aditi Bhatt and Ms. Neha Khandelwal Advocates, alongwith Mr. Madhav Uppuluri, General Counsel of OP-1 and Mr. Sharmendra Chaudhry, Deputy General Manager & Regional Head (Law) of OP-1

ORDER

1. The Information under Section 19(1) (a) of the Competition Act, 2002 (**“the Act”**) in Case No. 21 of 2019 was filed by Ms. Neha Gupta (**“Informant No. 1”**) against Tata Motors Limited (**“TML/OP-1”**), Tata Capital Financial Services Limited (**“Tata Capital/OP-2”**) and Tata Motors Finance Limited (**“Tata Motors Finance/OP-3”**) alleging contravention of provisions of Section 3 and Section 4 of the Act.
2. Subsequently, Information in Case No. 16 of 2020, containing similar allegations, was filed by Mr. Nishant P Bhutada, Proprietor of M/s Kanchan Motors (**“Informant No. 2”**) under Section 19(1)(a) of the Act against TML, Tata Capital, and Tata Motors Finance alleging contravention of provisions of Section 3 and Section 4 of the Act.

About the Opposite Parties (OPs)

3. TML (OP-1) is a subsidiary of Tata Sons and is *inter alia* engaged in the business of designing, developing and manufacturing among others, commercial vehicles (CVs) and spare parts and providing value-added services such as Annual Maintenance Contract (AMC), refurbished, pre-owned vehicle business (Tata OK), loyalty programs relating to sales & services of vehicles, retail channel finance & insurance, hire purchase, loan financing, leasing or any other financing business of own or subsidiaries/ associates/ affiliates.
4. Tata Capital (OP-2) is a non-banking financial company (NBFC) and is focused on providing a broad suite of financial products like motor finance, personal loans, home loans, consumer durable loans, etc.



5. Tata Motors Finance (OP-3) is stated to be engaged in the business of financing the entire range of Tata Motors commercial and passenger vehicles.

Facts as stated in the Information in Case No. 21 of 2019

6. Parents of Informant No. 1 had established Varanasi Auto Sales Pvt Ltd (“VASPL”) which was appointed as an authorised dealer of TML to sell commercial vehicles (“CVs”), spare parts and accessories, provide after-sales services and value-added services in the districts of Varanasi, Gazipur, Balia, Chandauli, and Sant Ravidas Nagar in the eastern part of State of Uttar Pradesh. The last renewed dealership agreement between VASPL and TML was signed on 11.10.2011 for a period of five years, which stood terminated w.e.f. 24.08.2017.
7. Informant No. 1 alleged that TML is a dominant entity in the commercial vehicles segment in the State of Northern India, especially Uttar Pradesh and is engaging in anti-competitive conduct with its authorised dealers. Particularly, it was alleged that TML coerced its authorised dealers to order vehicles according to its whims and fancies (by compelling the dealers to copy-paste the list of vehicles provided by TML itself on the dealer's letterhead, and sending them back to TML), which is in violation of Section 3(4) and Section 4 of the Act. The Information also purported to highlight certain alleged onerous provisions of the agreement dated 11.10.2011 executed with TML which *inter alia* restricted the dealers from starting, acquiring, or indulging in any new business even if it is not related to the automobile industry. Lastly, it was alleged that the dealers are confined to a territory specified in the dealership agreement and are not allowed to operate outside such territories.
8. The Informant stated that every authorised dealer of TML is obligated to raise finance/ loan from banks and/ or NBFCs such as Tata Capital and Tata Motors Finance. Tata Capital and Tata Motors Finance sanctioned finance facility in a discretionary manner mainly relying upon the number of vehicles Tata Motors authorised its dealers to off-take for sale. Furthermore, the channel finance facility loan limit extended by Tata Capital and Tata Motors Finance to an authorised dealer was increased or decreased as per the targets set by Tata Motors rather than considering the financial strength of that authorised dealer or market demand. Further, Tata Capital and Tata Motors Finance were also able to earn illegal income



from the authorised dealers by imposing high-interest rate, penal interest, other illegal charges, and adjustments on the channel finance loan facility extended by them.

Facts as stated in the Information in Case No. 16 of 2020

9. Kanchan Motors was an authorised dealer of TML/OP-1 in the Small Commercial Vehicles (SCV) [Cargo and Passenger range] category and also for the passenger/utility vehicles category including their spare parts, accessories, after-sales services, and value-added service in the district of Nashik, Maharashtra. It was *inter alia* averred that Opposite Parties by abusing their dominant position, sanctioned or restricted the finance facility depending upon the number and model of vehicles that TML wished the authorised dealer to off-take rather than considering the financial credibility of the dealer. The Information also impugned the same clauses (as in Case No. 21 of 2019) in the agreement dated 10.02.2017 executed between the Informant and TML. It was further alleged that the OPs engaged themselves in tie-in arrangement by coercing the dealer to order the SCV or passenger/utility vehicle according to the list provided by TML via e-mail and later asking the dealer to paste the contents of the attachment without any changes on the dealer's letterhead and sending back the scanned copy of such list. It was further alleged that discount on vehicles was contingent only if the off-take of SCV or passenger/utility vehicle was more or equal in number against the sales made by the dealer in a particular month.
10. The Commission in its ordinary meeting held on 10.10.2019 noted that the Information in Case 21 of 2019 has been filed by Ms. Neha Gupta, Advocate in her capacity raising purported disputes/ conduct arising out of the Dealership Agreement executed between Tata Motors and VASPL, which stood terminated w.e.f. 24.08.2017. Moreover, it was observed that VASPL had neither authorised the Informant to file the Information nor had it approached the Commission on its own. Thus, in view of the aforesaid the Commission considered it appropriate to call VASPL and OPs for a preliminary conference on 21.09.2020. Having heard the learned counsel(s) for these Parties, the Commission directed the VASPL to file an affidavit with an advance copy to the OPs, detailing the arguments made during the preliminary conference. Thereupon, the OPs were directed to file their respective affidavits in response to the affidavit to be filed by the Informant/ VASPL. Accordingly, the Informant/ VASPL filed its affidavit on 05.03.2020 and Tata Motors and



Tata Capital filed their affidavits in response to the affidavit filed by the Informant/ VASPL on 05.06.2020 and Tata Motors Finance filed the same on 08.06.2020.

Directions to the Director General

11. After considering the information, replies of OPs, and other material on record, the Commission *vide* its common order dated 04.05.2021 directed the Director General (“DG”) to cause an investigation into the dealership agreements and conduct of TML/OP-1 for violation of Section 4(2) (a) (i), Section 4(2) (c), Section 4(2) (d) and Section 3(4) (c) of the Act. The Commission, while forming the *prima facie* opinion, decided to confine the investigation with respect to the clauses of the dealership agreements and conducts in respect of commercial vehicles, executed between the authorised dealers and Tata Motors Ltd (“TML”) only. It was made clear that the Commission is not examining the conduct of Tata Capital and Tata Motors Finance or the agreements executed by them with the dealers for channel financing as they do not command any significant market power in the verticals in which they operate.
12. During the pendency of the investigation, the Informant in Case No. 16 of 2020 moved an application dated 28.06.2021 seeking review and recall of the order dated 04.05.2021 passed by the Commission under the provisions of Section 26(1) of the Act. The Informant in the application averred that certain new material facts or evidence have purportedly come to the knowledge of the Informant, which the Informant was unable to procure and produce before the Commission at the time of passing of the impugned order that there exists a mistake and an error committed by the Commission which is apparent on the face of the record and lastly, it was also averred that there exists a misconception and misinterpretation of the factual scenario of the case as well as in respect of the interpretation of the statute. The said application was dismissed by the Commission *vide* order dated 13.07.2021 stating that such application is not maintainable and is thoroughly misconceived.
13. Thereafter, this Informant preferred an application seeking interim reliefs under Section 33 of the Act against OP-1 alleging that OP-1 has illegally and unlawfully blocked the access code in September 2020, which was required by it to conduct business with OP-1, in terms of the dealership agreement dated 10.02.2017. The said application was rejected by the

Commission *vide* order dated 21.12.2021. Subsequently, the Informant approached the Hon'ble National Company Law Appellate Tribunal (NCLAT) under Section 53B of the Competition Act, 2002 against the order dated 21.12.2021 passed by the Commission rejecting interim relief application. The Hon'ble Tribunal *vide* judgment dated 26.07.2022 disposed of the appeal of the Informant and directed the Commission to take all steps so that a final decision in the matter is taken expeditiously preferably within a period of three months.

Investigation by the Director General (DG)

14. The DG submitted its investigation report on 02.09.2022. In order to investigate the allegations the DG issued probe letters to the OPs directing them to submit their reply to the allegations, and the Informants were directed to furnish additional information and supporting evidences to substantiate their allegations. Further, information was also obtained from Third Parties *viz* various other dealers of TML.
15. Based on the analysis of various factors mentioned in the Act, the DG delineated the relevant market as *the market for the manufacture and sale of commercial vehicles in India*. The DG found that commercial vehicles are separate from other categories of vehicles such as passenger or utility vehicles on factors such as speed, mileage, appearance, engine capacity, usage, etc., and that the conditions of demand and supply for commercial vehicles do not differ from one region to another and are fairly homogenous throughout India.
16. The DG also found TML to be dominant in the relevant market. The DG found that the Tata Motors Group in its annual report for the year 2020-21 has mentioned itself as one of the leading global automobile manufacturers with a diversified portfolio of commercial, passenger and luxury vehicles. The DG, on analysis of the data available on the website of CRISIL, concluded that the three major original equipment manufacturers (OEMs) of India's Commercial Vehicle Industry are TML, Mahindra & Mahindra and Ashok Leyland together accounting for ~ 86% of sales in fiscal 2022. It was found that during FY 2017 to FY 2022, TML's market share had ranged from 42-45% followed by Mahindra & Mahindra at ~25% and Ashok Leyland at ~16%. It was further noted that TML is one of India's largest fully integrated automobile companies with a product mix comprising CVs, passenger cars



and utility vehicles. Its plants are located in Pune, Jamshedpur, Pantnagar, Sanand, Dharwad, and Lucknow. Further, the company has adopted technologies from various collaborators and formed several partnerships with international players, and has also increased its revenue share from international operations through acquisitions.

17. The DG thereafter proceeded to investigate the allegations against TML under Section 4 and Section 3(4) of the Act.
18. The DG found TML to be in contravention of Section 4(2)(a)(i) and Section 4(2)(d) of the Act in coercing its dealers to off-take certain categories and number of vehicles and manipulating the demand of vehicles raised by the dealers. It was also observed that the dealers were not only directed to meet the target but also warned by TML that non-compliance will sour the relationship. It was concluded that putting such a restrictive obligation by TML on its authorised dealers amounted to an abuse of dominant position in the relevant market. The DG relied on email exchanges between TML and VASPL dated 20.10.2014, 23.06.2015, 25.06.2015, 29.08.2015, 31.08.2015 and 30.04.2016 to arrive at the aforesaid finding.
19. As regards the allegation that TML, by way of inserting a clause in its dealership agreements, restricts the dealers from starting or acquiring, or indulging in any new business (of product or services), it was found by the DG that concerned clause did not impose a blanket restriction on the dealers from starting/acquiring/indulging in new business and merely requires an NOC from TML before commencing any new business. Further, there was nothing on record to show that TML had refused to grant the NOC to any of the dealers. Various dealers of TML in their replies to the DG had also submitted that they have never been denied any such permission by TML. TML also submitted that it does not unreasonably withhold its consent as long as a dealer has the financial ability to sustain different businesses and operates these businesses out of separate premises. Accordingly, the DG found no contravention of Section 4(2)(a)(i) or Section 4(2)(c) as regards the alleged clause. However, the DG recommended that the said clause may be removed from the agreements as such a clause may be anti-competitive, though it has not been implemented yet.

20. As regards the allegation that TML imposed territorial restrictions on its authorised dealers, the DG found that TML has enforced the allocated territory clause and restricted the dealers to their corresponding territories. The DG perused e-mail exchanges between TML and its authorised dealers wherein TML *inter alia* highlighted infringement of the territory clause sought to impose penalties and sought a response from a dealer operating outside the allocated territory. It was also found that TML forced its dealers to refund the bookings of customers not belonging to their designated territory. The DG concluded that this conduct is likely to cause appreciable adverse effect on competition regarding sale of commercial vehicles in India and consequently, there is a contravention of provisions of Section 3(4) (c) of the Act by TML.
21. Accordingly, the DG found TML to be in violation of Section 4(2)(a)(i), Section 4(2)(d), and Section 3(4)(c) of the Act.
22. The Commission considered the investigation report of the DG in its ordinary meeting held on 06.09.2022 and *vide* its order of even date, directed to forward an electronic copy thereof to the parties *i.e.*, the Informant(s) and Tata Motors Limited ('the Opposite Party No. 1'/ OP-1), for filing their respective objections/ suggestions, if any to the investigation report submitted by the DG.

Objections/Comments to the Investigation Report by the Informants

23. Informant No.1 submitted that the DG has failed to include certain documents provided to it during the investigation which ought to be included in the investigation report as it is vital to the findings of the DG. Informant No. 1 also filed an application under Section 26(5) of the Act seeking further investigation regarding restrictive covenants barring dealers from entering any other business without the express permission of the TML. As per Informant No.1 Investigation Report found no violation because the Complainant could not produce proof of asking for such permission and that such permission had been denied. Investigation ought to include queries from Tata Motors and other dealers as to how often such permissions have been asked for and how often such permissions have been granted.



24. Informant No.2 submitted its comments to the Investigation Report on 05.10.2022. The Informant No.2 at the outset, agreed with the findings of the DG report, but also raised certain issues, which according to him were inadvertently missed by the office of the Director General during the Investigation. It has been submitted that while considering the issue of territory allocation, the DG has failed to consider multiple instances submitted *vide* additional information dated 28.10.2021 which *inter alia* includes communications dated 02.03.2012, 05.11.2015, 21.09.2013, 29.06.2016, and 20.09.2017 from TML restricting it from operating outside the allocated territory. Further, it has been submitted that the DG failed to consider the practice adopted by TML which was unfair and removed competition which *inter alia* included distribution of false/misleading information capable of harming the business interests of a competitor.
25. Further, it has been submitted that TATA Motors framed guidelines and gave instructions to its dealers to not offer discounts without its permission over certain pre-decided levels. Additionally, Mystery Shopping Agencies (MSAs) were appointed by TATA Motors to check whether such instructions were followed. TATA Motors even imposed a penalty to the tune of Rs. 1 Lac on its dealers for each case/sale, for violation and recovery as well as utilisation of the penalty amounts. Informant No. 2 alleged that TATA Motors indulges in the practice of Resale Price Maintenance (RPM) through the implementation of its Discount Control Policy on its dealers across India which led to an Appreciable Adverse Effect on Competition within India. It lowered inter-brand and intra-brand competition and led to products not being offered to the consumers at the best prices and such conduct is in contravention of Section 3(4) (e) of the Act.
26. Further, it has been alleged that TML mandates its dealers to purchase third-party products which are to be purchased from a particular vendor at a particular price and a penalty is imposed for non-compliance. Informant No. 2 has relied on communication from TML to its dealers to corroborate this allegation and has alleged that the conduct amounts to a tie-in arrangement in contravention of Section 3(4) (a) of the Act.



Objections/Comments to the Investigation Report by TML

27. TML submitted its objections to the Investigation Report on 14.11.2022. TML at the outset, has submitted that the investigation report is not based on a holistic evaluation of the evidence presented to the DG and is purely based on certain email evidence presented by the Informant without seeking any explanations of the same from TML. It has also been averred that the DG has completely ignored the deposition statements of the TML personnel and other dealers of TML and has not provided any reasons as to why it did not rely upon or dispute these depositions. TML further stated that the statements of 7 out of the 8 dealers examined by the DG were not even mentioned in the investigation report and the DG has carried the investigation with a pre-determined mind ignoring the exculpatory evidence.
28. It has been submitted that both the Informants were long-standing dealers of TML and the dealership agreements were renewed/amended from time to time without any allegations of anti-competitive conduct against TML. VASPL has served as an authorised dealer of TML's full range of commercial vehicles for four decades i.e. from 1977 to 2017 and Kanchan Motors has been associated with TML from 2001 to 2021. No such allegations were raised during all these years and it is only on termination/non-renewal of the dealership agreements (due to non-performance and financial discipline) that they approached the Commission.
29. Thereafter, TML sought to provide an explanation for the termination of the respective dealership agreements with VASPL and Kanchan Motors. It has been submitted that VASPL was facing a severe working capital issue due to its investments in other business ventures which impacted its ability to operate the TML dealership which caused TML severe commercial losses in the territories assigned to VASPL i.e. Varanasi, Gazipur, Balia, Chandauli and Sant Ravidas Nagar in Uttar Pradesh. TML's market share in the VASPL territory dropped to 56% in FY 16 from 61% in FY 14 and its market share in M&HCV dropped from 94% to 60%. It has been further submitted that the reduction in working capital led to VASPL off-taking only 44 vehicles in FY17 and retailing only 78 vehicles as compared to 1497 and 2591 off-takes and 1535 and 2685 retails of Commercial Auto Sales and Puneet Automobiles (other dealers of TML) respectively. Further, TML stated that VASPL had begun to engage in a questionable practice of accepting booking amounts from customers to fund the off-take of vehicles from TML which exposed the unsuspecting



customers to grave financial risk if VASPL was not able to deliver the vehicle. It has been submitted that VASPL's financial performance deteriorated over time as could be ascertained from its turnover of approximately INR 112 Crores in FY 2012-13 to INR 8 Crores in FY 2016-17 and its negative paid-up capital from December 2015 to March 2017.

30. TML further submitted that VASPL has filed the information only after failing to persuade the National Company Law Appellate Tribunal (“NCLT”) Allahabad to grant a stay on the notice of termination dated 24.08.2017 issued by TML due to its consistent non-performance and financial indiscipline. It has been submitted that the information is malicious, disguised and is a counterblast attempt to resolve contractual issues that VASPL has against the termination of its dealership.
31. As regards Kanchan Motors, it has been submitted that its dealership was practically non-operational since September 2017 as it had defaulted in repayment of its outstanding debt to the State Bank of India subsequent to which a ‘stop-supply’ notice was issued to TML. As a result of the same, the off-take and retails of Kanchan Motors have been nil since 2017-18 and it had merely engaged in after-sale services. It has been submitted that the dealership agreements of Kanchan Motors with Nissan Motors, Honda and Hyundai have also been terminated due to financial mismanagement and bad debt. It has also been submitted TML has initiated arbitration proceedings against Kanchan Motors for recovery of INR 70, 03,999.90/- along with 18% interest and the information is filed by Kanchan Motors with a *mala fide* intent to avoid having to pay outstanding dues to TML and reverse the valid termination of the dealership agreement.
32. As regards the issue of dominance, TML has submitted that the DG has incorrectly found that TML enjoys a dominant position in the relevant market without carrying out an assessment under Section 19(4) of the Act. It has been contended that the DG has without any basis or reasoning referred to ‘vertical integration’ and ‘dependence of dealers’ to state that it is quite evident that TML enjoys a dominant position. It has been submitted that the market share of TML has been declining over the years from 57% in 2012-13 to 42% in 2019-20 and this coupled with the increase in the market share of TML's competitors demonstrates that TML is not a dominant player in the relevant market. It has been stated

that the commercial vehicle segment is a dynamic and highly competitive market where brands continue to compete with each other on price as well as non-price factors and TML faces constraints from other players such as Mahindra & Mahindra, Force, and Ashok Leyland. It was further submitted that TML is dependent on its dealers as its authorised dealers' network is its only route to the market. Further, it has been submitted that TML's relationship with its dealers is non-exclusive as it is common in commercial vehicle dealerships for dealers to quit the dealership of one manufacturer and acquire the dealership of a competitor. TML also submitted that Kanchan Motors was operating 6 automobile dealerships including those of TVS, Hyundai, Honda etc. apart from TML and VASPL had acquired the dealership of Mahindra Trucking and Buses following its termination at TML. Accordingly, it has been submitted that the consistently declining market share of TML, competitive constraints posed by its competitors, non-exclusive nature of the relation between TML and its dealers dispute any alleged dominance in the relevant market.

33. As regards the finding of the DG regarding TML coercing its dealers to off-take certain category and number of vehicles, TML has submitted that it does not impose stocking requirement on its dealers in any way i.e. directly or indirectly, and only recommends off-take quantities depending on the demand projections in any particular area. TML has further stated that the DG has not assessed a single instance of the alleged copy-paste requirements in its investigation report and the emails provided by the Informants and assessed by the DG on this issue pertain specifically to off-take requirements and are completely unrelated to copy-paste.
34. TML has alleged that the emails relied upon in the Investigation Report are without sufficient background or context and the DG has not carried out any subsequent verification or analysis of those emails. TML further submitted that there have been multiple instances where its dealers have failed to meet the recommended targets and none of the dealers apart from VASPL (through an out-of-context mail) has alleged before the DG that the targets are mandatory. TML then proceeded to provide the contextual background of the emails relied upon in the Investigation Report *inter alia* stating that TML had provided funding/credit limit to VASPL due to its precarious financial position to offtake vehicles from TML and

sell those to the customers and the alleged letters are Risk & Responsibility letters for administrative purposes.

35. TML objected to the recommendation of the DG to remove the restrictive clause in its dealership agreements which prevents its authorised dealers from engaging in any new business without first receiving a NOC from TML. It has been submitted that the DG is right in finding that the mere mentioning of such a clause in the dealership agreements does not constitute an unfair condition under Section 4(2) (a) (i) or a denial of market access under Section 4(2) (c) considering there has been no instance where TML has refused to give the NOC. However, disputing the recommendation of the DG, TML submitted that such a clause is objectively justified as it allows TML to be assured whether the particular dealer is maintaining sound financial health to undertake other business activities without affecting the dealership. It has been submitted that operating an authorised dealership requires significant investments in terms of maintaining the adequate dealership infrastructure, trained manpower, stock of products, etc. and the OEMs must ensure that the dealer has the financial wherewithal to undertake other business activities without affecting the financial health of the dealership.
36. TML has contended the finding of the DG that it restricts its dealers from selling outside designated territories in contravention of Section 3(4) of the Act. It has been submitted that TML only prevents active sales (approaching the customers) outside the allocated territory and does not prohibit the dealers from engaging in passive sales (responding to customers). Active sales involve the seller actively approaching the customer in any way as the first step, while passive sales involve the customers reaching out to the sellers inquiring about sales in the first instance. Further, it was submitted that TML's restriction on active sales outside the allocated territory is necessitated by commercial needs. It has been submitted that TML's restriction on active sales incentivizes dealers to make investments in developing the dealership business in the allocated territory and prevents other dealers from free-riding on such investments. Further, it has been submitted that such restriction is compliant with the European Commission's Guidelines on Vertical Restraints. Further, TML submitted that in the absence of such a clause, the dealers would not be protected from free-riding by dealers from other territories, and would thus not be incentivized to make investments in developing

their dealership business; inter-brand competition amongst dealers within a particular territory would be affected, as such a clause enables an authorized dealer to be better positioned to effectively compete with dealers appointed by other manufacturers within the same territory and also, there could be an artificial scarcity of both supply and demand in certain territories, for example, a dealer in a smaller district could solicit customers and accept bookings from larger districts while falling short of stock to supply to customers in the smaller district.

37. It was further submitted that TML has never penalized its dealers even where they engaged in active sales outside their allocated territory and has eventually in 2016 removed the provision for penalizing the dealers for active sales from its dealership agreements. It has been submitted that post-2016, TML has allowed active sales outside the allocated territory on obtaining TML's prior consent, which shall not be withheld unreasonably.
38. TML submitted that the DG, while considering the allegation of territorial allocation, has not carried out an assessment under Section 19(3) of the Act and TML restricting active sales outside the allocated territory does not result in an appreciable adverse effect on competition.
39. Subsequently, the matter was listed for final hearing on 02.08.2023. The hearing commenced with the learned senior counsel representing OP-1 making oral submissions. Thereafter, learned counsel(s) appearing on behalf of Informant(s) made their respective submissions. Having heard the learned counsel(s) for the parties, the Commission decided to pass an appropriate order in due course and directed the parties may to file short written submissions, if so desired, within 10 days.
40. It has been *inter alia* submitted by Informant No. 1 in its written submissions that VASPL was one of the best performing dealers of TML and its non-performance was only on account of non-supply of the desired/demanded vehicles. It has been stated that TML dictated the model and number of vehicles to be purchased and imposed on it slow-selling and non-selling vehicles which impacted VASPL's sales. Further, it has been submitted that TML asked for back dated stock lists from its dealers to cover TML's back tract as



TML indulged in tie in arrangements with regards to imposition of stock on dealer i.e. imposition of a slow moving vehicle with a fast moving vehicle. It has also been submitted that TML restricted sales outside territory irrespective of it being active or passive.

41. Informant No. 2 in its written submissions has averred that TML cannot raise the fact of contractual dispute with Kanchan Motors as a ground of defence in the present proceedings as the same has been dealt with by the Commission in its order dated 04.05.2021, which was not challenged by TML. Informant No.2 has further submitted that TML has addressed emails to Kanchan Motors as well other dealers repeatedly and consistently requesting them to issue back dated letters in respect of off take of vehicles. Lastly, it has been submitted that the territorial restriction imposed by TML was not in respect of any active sale but was a generic restriction for sale outside the allocated territory which has been corroborated by the two Informants in the present case and another dealer i.e. Puneet Automobiles before the DG.
42. TML in its written submissions has *inter alia* averred that both VASPL and Kanchan Motors were two long-standing dealers who did not perform to the levels required of them because of their own severe financial issues due to which TML was constrained not to renew their dealerships. It has been submitted that the entire case is simply a belated attempt to resolve what is clearly a contractual dispute with no bearing on the market. It has been submitted that apart from the Informants no TML dealer has corroborated the Informant submissions nor has any customer raised any anti-competitive concerns against TML. Therefore, there is no question that TML's conduct has caused any AAEC in the market 'for manufacture and sale of commercial vehicles in India'. TML has submitted that the DG has not provided any instance or relied upon any evidence of other TML dealers being compelled to offtake vehicles apart from the email evidence supplied by the Informants. TML stated that it has neither the incentive nor the intention to create financial distress in its own dealership network since such conduct would result in dealers leaving TML's dealership network. It has been averred that the Informants have not provided any evidence which conclusively demonstrates that they were restricted from making passive sales outside their territory and restrictions on active sales outside the allocated territory did not cause any AAEC under the factors listed under Section 19(3) of the Act. As per

TML, such restrictions lead to benefits to customers (who may buy or service their vehicles in dealerships across territories); lead to improvements in production and distribution of TML goods and services across India; and economic development. In addition, TML's restriction on active sales outside allocated territories does not create barriers to entry, as dealers are free to open new dealerships in desired territories, subject to TML's assessment of demand. The requirement does not drive existing competitors out of the market and the restriction does not lead to the foreclosure of competition, as dealers are permitted to engage in passive sales outside their allocated territories. TML has submitted that the DG has arrived at the findings of violation by TML only based on the submissions of the Informants and has not considered the submissions of its other dealers.

Analysis

43. The Commission has examined all the material available on record including the Information filed by the Informants, the Investigation Report of the DG, objections/suggestions to the Investigation Report filed by the parties, oral submissions made by their respective counsels on 02.08.2023 and written submissions filed thereof.
44. The allegations in the matter are with regard to the contravention of provisions of Section 4 and Section 3(4) of the Act by TML. For examining allegations pertaining to Section 4 of the Act, the delineation of the relevant market is essential to first ascertain dominance and thereafter analyse the alleged conduct of TML in the relevant market.
45. The DG has delineated the relevant market as “*the market for manufacture and sale of commercial vehicles in India*”. For arriving at this market definition, the DG has observed that commercial vehicles are not substitutable with passenger or utility vehicles and therefore form a separate market. Further, the DG has noted that the conditions of competition are homogeneous throughout India.
46. As per Section 2(r) of the Act, 'relevant market' means the market which may be determined by the Commission with reference to the relevant product market or the relevant geographic market or both. Further, the term 'relevant product market' has been defined in Section 2(t) of the Act as a market comprising all those products or services which are regarded as

interchangeable or substitutable by the consumer by reason of their characteristics, prices, or intended use. The term 'relevant geographic market' has been defined in Section 2(s) of the Act to mean a market comprising the area in which the conditions of competition for the supply of goods or provision of services or demand of goods or services are distinctly homogenous and can be distinguished from the conditions prevailing in the neighbouring areas.

47. For determining whether a market constitutes a 'relevant market' for the purposes of the Act, the Commission is required to have due regard to the 'relevant geographic market' and the 'relevant product market' by virtue of the provisions contained in Section 19(5) of the Act. To determine the 'relevant geographic market', the Commission in terms of the factors contained in Section 19(6) of the Act, is to have due regard to all or any of the following factors viz., regulatory trade barriers, local specification requirements, national procurement policies, adequate distribution facilities, transport costs, language, consumer preferences, need for secure or regular supplies or rapid after-sales services, characteristics of goods or nature of services and costs associated with switching supply or demand to other areas. Further, to determine the 'relevant product market', the Commission in terms of the factors contained in Section 19(7) of the Act, is to have due regard to all or any of the following factors viz., physical characteristics or end-use of goods or the nature of the services, price of goods or service, consumer preferences, exclusion of in-house production, the existence of specialized producers, classification of industrial products, costs associated with switching supply or demand to other goods or services and categories of customers.

48. In light of the aforesaid statutory landscape, the Commission proceeds to determine the relevant market in the instant case.

49. The Commission notes that the allegations in the present matter pertain to conduct arising out of dealership agreements executed between TML and its authorised dealers for the supply of commercial vehicles. It cannot be denied that commercial vehicles are distinct from other categories of vehicles such as passenger or utility vehicles. Passenger vehicles serve the purpose of transporting passengers, while commercial vehicles are used for carrying and transporting goods. Both vehicles serve a distinct purpose and their physical

characteristics differ to cater to such variance. Further, a passenger car may generally have a maximum seat capacity of 8 whereas a commercial vehicle may have a seat capacity of more than 15. Also, commercial vehicles are subject to additional regulations and safety standards than passenger vehicles.

50. Further, commercial vehicles are generally larger and heavier than passenger vehicles and include trucks, mini trucks, delivery vans, etc. Passenger vehicles on the other hand are smaller in size and include cars, minivans and other similar vehicles.
51. Commercial vehicles often have larger engine capacities to handle the demands of carrying heavy loads and for long-distance transportation. Engine capacities for commercial vehicles can range from around 2,500 cc for smaller delivery vans to over 15,000 cc for heavy-duty trucks used in long-haul transport. Passenger vehicles, which include cars and minivans, typically have a wide range of engine capacities to cater to different market segments. Smaller cars and compact SUVs may have engines with capacities as low as 1000 cc to 2000 cc while mid-size and larger vehicles may have engines ranging from 2000 cc to 3500 cc. The Commission also notes that automobile manufacturers, including TML mention and treat the commercial vehicles business as a distinct category from other segments such as passenger vehicles as is evident from their annual reports.
52. Thus, in terms of Section 19(7) the Commission agrees with the DG that commercial vehicles are different from other segments such as passenger and utility vehicles and concurs with the delineation of the relevant product market as the "*market for manufacture and sale of commercial vehicles.*" Further, the Commission, in terms of Section 19(6), also notes that the conditions of demand and supply for commercial vehicles do not differ from one region to another and are fairly homogeneous throughout India and accordingly the relevant geographic market may be taken as "*India*". Accordingly, the relevant market may be defined as the "*market for manufacture and sale of commercial vehicles in India.*". Even TML in its submissions has agreed to DG's delineation of the relevant market.

53. Before examining the allegations on merits, it is apposite to note that provisions of Section 4 of the Act are only attracted when the entity under scrutiny holds a dominant position in the relevant market. The Explanation to Section 4 explains dominant position as a position of strength enjoyed by the enterprise in the relevant market which enables it to operate independently of competitive forces prevailing in the relevant market or affect its competitors, or consumers or the relevant market in its favour.
54. As per the CRISIL report (enclosed with the investigation report), the Commission notes that TML has held the highest market share in the relevant market from FY 2017 to FY 2022. TML's market share has ranged from 42-45% in these years whereas the second highest market share of Mahindra ranged from 25-28% in the same period.
55. The Commission also notes that the three major original equipment manufacturers (OEMs) players of India's Commercial Vehicle industry are TML, Mahindra & Mahindra and Ashok Leyland - together accounting for ~86% of sales in fiscal 2022 of which TML is the largest player.
56. TML's Annual Report for 2017-18¹ states that it sold over 3, 99,821 commercial vehicles in the domestic market representing a growth of 23.3% over fiscal 2017. Further, the report has claimed that the market share of TML in the commercial vehicle industry was 45.1% in fiscal 2018 and is the market leader in the commercial vehicles segment. The relevant extract is reproduced hereunder:

TATA MOTORS

Tata Motors Limited (TML) is India's market leader in CV and among the top four in the PV market.

CV

45.1%

CV market share compared to 44.4% in FY17

Highest volume in 5 years

¹<https://www.tatamotors.com/wp-content/uploads/2018/07/12115930/Annual-Report-2017-2018.pdf>

57. Moreover, TML's Annual Report for 2018-19 also claims itself as the leader in India's commercial vehicle market with a market share of 45.1% and sales of 4,68,788 vehicles in FY 2018-19. Relevant extracts of TML's Annual Report for 2018-19 are reproduced hereinbelow:

'...TML is the leader in India's CV market with a market share of 45.1% and sales of 4,68,788 vehicles in FY 2018-19 and further notes that it has gained market share in the Medium and Heavy Commercial Vehicle (MHCV), Intermediate Light Commercial Vehicle (ILCV) and Small Commercial Vehicle (SCV) segments...'

58. Accordingly, the Commission is satisfied that TML held dominant position in the relevant market for manufacture and sale of commercial vehicles in India from FY 2017 to FY 2022.

59. Since the dominance of TML is established in the market for manufacture and sale of commercial vehicles in India, the Commission proceeds to analyse the conduct of TML in respect of the allegations made against it in the Information(s).

60. Based on the averments contained in the information and the order dated 31.05.2018 passed by the Commission under Section 26(1) of the Act, the DG has identified three allegations for determination. The issues and corresponding analysis of the Commission thereon are as under:

Allegation I: That Tata Motors coerced its dealers to order vehicles according to its whims and fancies by compelling the dealers to copy-paste the list of vehicles provided by Tata Motors on the dealer's letterhead and send back the same to Tata Motors. It is alleged that the same to be an unfair imposition besides being in the nature of a supplementary obligation imposed upon the dealers and is in contravention of the provisions of Section 4(2)(a)(i) and 4(2)(d) of the Act.

61. The Informant(s) have alleged that Tata Motors coerced its dealers to order vehicles according to its own whims and fancies by compelling the dealers to copy-paste the list of

vehicles provided by Tata Motors on dealer's letter head and sending back the same to Tata Motors. In this regard, the DG has found TML to be in contravention of provisions of Section 4(2)(a)(i) and Section 4(2)(d) of the Act. The Commission notes that the DG has relied on certain email exchanges between TML and VASPL to arrive at this finding. On perusal of the said email exchanges at first, it may appear that there may have been instances which indicate that TML has been insisting VASPL to off-take particular category and number of vehicles.

62. TML has vehemently denied this allegation and submitted that it asks its dealers to provide a list of vehicles on their letterhead only for administrative convenience (i.e. the Sarbanes Oxley Act Compliance Requirements/ "SOX requirements") and record keeping purpose. As per TML, dealers place orders at different times in a month over various mediums including emails, phone calls, and even in-person meetings with TML's sales team. On multiple occasions, a dealer also cancels or modifies the orders placed by it. The multiple channels of placing the order, subsequent modifications and cancellations exercise require that a reconciliation exercise is carried out immediately following the month in which orders are placed by the dealer. Accordingly, to ensure the reconciliation and paper record for audit purposes, TML carries out a reconciliation exercise immediately following the month in which orders are placed by the dealer. Specifically, TML after prior consultation with the dealer sends statements consolidating the purchase plan as well as the orders already placed by the dealers from time to time in the previous month. Given that the content of the letter is already agreed upon, dealers are requested to not make any changes.
63. TML further submitted that the reliance by the DG on email exchanges between TML and VASPL dated 20.10.2014, 23.06.2015, 25.06.2015, 29.08.2015, 31.08.2015, and 30.04.2016 is entirely misplaced and does not demonstrate any forced offtake requirements of vehicles. On the contrary, TML submitted that emails relied upon by the DG demonstrate that VASPL had severe financial issues, due to which it was unable to fulfil customer orders and TML had provided financial assistance to VAPSL on multiple occasions despite not being in the business of financing.

64. TML has also argued that the process of stocking vehicles can only be initiated by the dealers as dealers looking to procure commercial vehicles from TML make a projection based on their own market forecasts. Based on this projection, the dealers input their demanded vehicles into TML's order management systems. This process starts three months before the date of billing. Thereafter, manufacturing at TML's plants is initiated based on these orders indented by the dealers. Hence TML's responsibility kicks in only at the manufacturing stage after the dealers have already input their orders into TML's systems, therefore it does not impose stocking requirements on its dealers in any way, directly or indirectly.

65. Furthermore, the Commission observes the fact that the DG has only relied on communications of TML with the VASPL and no other dealer. Accordingly, the Commission proceeds to note the submissions of other dealers (annexed with the investigation report) regarding the relevant allegation.

- a. RL Automobiles Pvt Ltd in its reply has submitted that *'Tata Motors has never dictated to the Company the number, variant, and model of commercial vehicles that it desires to sell.'*
- b. According to Sterling Motors, *'Tata Motors has never dictated to the Company the number, variant, and model of commercial vehicles that it desires to sell. Sterling Motors can order vehicles based on its requirement.'*
- c. On being enquired whether Tata Motors have dictated the number, variant, and model of the vehicle it desires to sell Bhandari Automobiles Pvt Ltd while denying has stated that the same is decided based on the market demand.
- d. Similarly, Pasco Motors LLP, Ashok Auto Sales Ltd and Ujwal Automotives Pvt Ltd have submitted that TML does not dictate the number, variant, and model of commercial vehicles which it desires to sell to dealers.

66. TML has submitted that it only recommends off-take quantities depending on demand projections in a particular area so as to enable a dealer to maintain a reasonable inventory. It has been further submitted that there have been multiple instances where dealers have not met the recommended targets for which no penalty has been levied by TML. On the contrary, TML offers target-based incentives to its dealers above and beyond the dealer margins for off-taking certain quantities of vehicles. The Commission notes that this submission is duly corroborated by the submission of Kamal Motors Prop. Reliable Automotive Private Limited, the relevant portion whereof is reproduced hereunder:

"No, Tata Motors is not dictating the number, variant, and model of commercial vehicles. We [are] directly purchasing vehicles as per the customer requirement, market demand and availability. A monthly scheme letter [is] provided by Tata Motors for achieving Target by dealers. Monthly Scheme Letter is only for additional incentives provided to dealers by Tata Motors and meeting the target is not mandatory."

67. Further, when enquired about whether TML compels the dealers to copy-paste the list of vehicles provided by it on the dealer's letterhead:

- a. RL Automobiles Pvt Ltd has submitted that *there have been no such instances where Tata Motors has directed the Company to copy-paste the list of vehicles provided by them on the Company's letterhead and send it back to Tata Motors.*
- b. Ujwal Automotives Pvt Ltd has stated that *'Tata Motors does not direct its dealers to copy paste the list of vehicles provided by them on dealers' letterhead and sending back same to Tata Motors.'*
- c. Sterling Motors, PASCO Motors LLP and Bhandari Automobiles Pvt Ltd also have submitted that TML does not ask its dealers to copy-paste the list of vehicles on their letterheads and send it back to TML.

68. In view of the foregoing discussion, it appears that the emails relied upon by the Informants in support of the relevant allegation were in fact sent by TML for administrative and audit purposes and were in the form of risk and responsibility letters. The said emails were to consolidate and reconcile the orders placed by VASPL in the respective previous months, as pointed out by TML. In this regard, the submission of Ashok Auto Sales Pvt Ltd is relevant:

“In the beginning of each month, all dealers have to submit the list of vehicles being purchased from Tata on dealers letterhead and send it to Tata Motors. This letter is called Risk and Responsibility Letter. ”

Further, when asked whether TML directs its dealers to copy-paste the list of vehicles on its letterhead, Kamal Motors also submitted that TML does it only by providing the Risk and Responsibility letter if required.

69. The Commission also notes that TML during the hearing emphasised that VASPL was in fact repeatedly asking TML for funding/credit to offtake vehicles due to its precarious financial condition which ultimately led to the termination of the dealership agreement. On perusal of the termination letter dated 24.08.2017 issued by TML the Commission notes that it had *inter alia* highlighted the shortage of funds, negative paid-up capital, inability to maintain adequate stock, loss of retails, etc. as reasons for termination of VASPL's dealership. Further, the Commission cannot ignore the fact that VASPL has been an authorised dealer of TML for over 40 years and no such allegation was raised during this period. It is only upon the termination of the dealership by TML that such allegations have been leveled against TML.

70. Similarly, Kanchan Motors has been a dealer of TML since 2001 and the last renewed agreement was executed on 10.02.2017 during which time no allegations were levelled against TML. TML has explained that it decided not to renew the dealership agreement due to the financial indiscipline exhibited by Kanchan Motors *inter alia* in defaulting in repayment of its outstanding debt to State Bank of India (SBI) which prompted SBI to issue a stop supply notice to TML in September 2017 subsequent to which the dealership was

effectively non-operational. It has been further submitted by TML that it has only terminated 12 dealers (due to consistent non-performance) in the past decade which amounts to only 4% of the strength of its current dealership network.

71. In view of the above, the Commission is unable to agree with the finding of the DG that TML coerced its dealers to offtake vehicles as per its demands. The findings of the DG are not corroborated by the material available on record, as noted *supra*. Resultantly, there is no case against TML to hold a violation of the provisions of Section 4(2)(a)(i) or Section 4(2)(d) of the Act.

Allegation II: That the dealership agreement provides that the dealer shall not start or acquire or indulge in any new business (of product or services) even if it is not related to the automobile industry. It is alleged that the clause is unduly restrictive and imposing unfair condition upon the dealers besides resulting in a denial of market access to the dealers to other markets in contravention of the provisions of Section 4(2)(a)(i) and 4(2)(c) of the Act, respectively.

72. The DG, on consideration of the clause and the reply of TML, observed that the clause does not impose a blanket restriction on the dealers from starting/acquiring/indulging in new business and merely requires a NOC from TML before commencing any new business. Accordingly, the DG did not find TML to be in violation of Section 4(2)(a)(i) and Section 4(2)(c) of the Act.

73. The clause under scrutiny is hereunder:

“The dealer shall not start, acquire or indulge in any new business (of product or services) even if it is not related to the automobile industry either under the same company as the TATA motors dealership business or otherwise without seeking a formal 'No objection certificate' (NOC) of the company.”

74. The Commission notes that the relevant clause requires a dealer to first acquire an NOC/permission from TML before it starts, acquires or indulges in a new business.



However, there is nothing on record to show that TML has ever refused permission to any of its dealers from starting, acquiring, or indulging in a new business. Further, the Commission notes that TML has submitted that it merely reserves the right to ascertain whether its dealer has the financial capacity to undertake other business activities without affecting the financial health of the dealership and has never withheld such permission.

75. As per the VASPL, the DG has found no violation only on the grounds that the Informant could not produce a proof of asking for such permission and such permission being denied. In this regard, it may be noted that during the investigation, third-party dealers in their various replies have submitted that they have never been denied any such permission by TML. As per the DG report, both Informants are also engaged in other lines of business apart from the TML dealership.

76. The Commission notes from the submissions of the dealers that RL Automobiles Pvt Ltd had 4 other businesses, Puneet Automobiles had 7 other businesses and Ashok Auto Sales Ltd had 3 other businesses along with the dealership arrangement with TML. This substantiates the fact that TML has not denied permission to its dealers from engaging in other businesses. Further, VASPL in its submissions before the DG itself declared that it is engaged in other businesses. In addition, the Commission also notes the submissions of the dealers of TML in this regard:

- a. Sterling Motors has submitted that *‘Tata Motors has not restricted Sterling Motors from carrying out any other business.’*
- b. Bhandari Automobiles Pvt Ltd has stated that *‘we have not been stopped by TML for carrying out any business.’*
- c. Kamal Motors has submitted that *‘Tata Motors has never stopped us for carrying out other business.’*
- d. Ujwal Automotives Pvt Ltd has stated that *‘Tata Motors Ltd has never stopped us from carrying out other businesses.’*

- e. RL Automobiles Pvt Ltd has submitted that '*Tata Motors has never stopped the Company from carrying out businesses.*'

77. In light of the above, the Commission agrees with the finding of the DG that the mere mentioning of a clause requiring dealers to seek a NOC from TML prior to starting a new business in the absence of anything on record to show that such NOC has been withheld is not in itself in contravention of provisions of Section 4(2)(a)(i) or Section 4(2)(c) of the Act.

Allegation III: That the dealership agreement provides that the dealers shall not sell the vehicles outside the district/territory allocated in the dealership agreement which is in the nature of an 'exclusive distribution agreement' as mentioned under the provisions of Section 3(4) (c) of the Act.

78. The DG found that TML has enforced the allocated territory clause and restricted the dealers to their corresponding territories both actively as well as passively. Further, it was found that TML forced its dealers to refund the bookings of customers not belonging to their designated territory. The DG concluded that this conduct is likely to cause appreciable adverse effect on competition in regard to the sale of commercial vehicles in India and consequently, there is a contravention of provisions of Section 3(4) (c) of the Act by TML. The DG has relied on emails sent by TML to its dealers *inter alia* highlighting infringement of the territory allocation, warning dealers to not sell outside their designated territory seeking a response from a dealer selling outside the allocated territory, etc.

79. At the outset, it is necessary to reproduce the territorial clause(s) in the dealership agreements executed by TML with VASPL and Kanchan Motors respectively.

Clause 5 of VASPL's dealership agreement dated 11.10.2011 is as follows:

"The dealer shall not, either directly or indirectly and either alone or in conjunction with the others, promote the sale of or sell any of the products, spare parts, accessories, and value-added services to any person or party

outside the Territory, nor shall the dealers sell the same to any person or party within the Territory if the products, spare parts, accessories, and Value Added Services intended to be sold outside the Territory.”

Clause 3 (c) and (d) of the dealership agreement dated 10.02.2017 between Kanchan Motors and TML is as under:

“the dealer shall not export any of the Products outside the territory without TML’s prior written approval, provided that such approval shall not be unreasonably withheld.”

“the dealer shall not actively solicit business for, market or promote the Product not seek customers, establish any branch or maintain distribution facilities for the Product outside the Territory without TML’s prior written approval, provide that such approval shall not be unreasonably withheld.”

80. The Commission notes that TML in its submissions has stated that it only prohibits active sales outside the designated territory and there is no restriction on passive sales. Active sales involve the seller actively approaching the customer while passive sales involve the customers reaching out to the sellers inquiring about sales. TML has submitted that it allows customers from anywhere in India to purchase vehicles from any dealer. As per TML, the DG has incorrectly concluded that dealers have been directed to restrict to their corresponding territories and not to sell any vehicle outside their designated territory both actively as well as passively. The Commission notes that this submission by TML is corroborated by the submission of TML’s other authorised dealers:

- a. Bhandari Automobiles Pvt Ltd has submitted that ‘*dealers are not restricted from selling outside the allocated territory as long as the customer approaches the dealer themselves.*’
- b. As per Kamal Motors, ‘*dealers are allowed to engage in passive sales outside the region.*’

c. Ashok Auto Sales Pvt Ltd has stated that the ‘dealer can make sales when the customer approaches the dealer directly.’

d. Pertinently, Ujwal Automotives Pvt Ltd has submitted the following:

“A person from particular region/district/State can buy the commercial vehicle of Tata Motors Ltd from the authorised dealer of any particular region/district/State.”

“It is necessary for dealer to sell vehicles in the territory allocated by Tata Motors. However, dealers can make sales to customers outside the allocated territory who approach the dealer directly.”

81. TML has further submitted it has never penalized any of its authorised dealers even when they engaged in active sales outside the designated territory. Instead, dealership agreements executed post-2016 have in fact, allowed dealers to engage in active sales outside the allocated territory with the consent of TML (which should not be unreasonably withheld). The Commission notes that the amended territory clause is evident from Clause 3(c) and Clause 3(d) of the dealership agreement dated 10.02.2017 with Kanchan Motors as mentioned hereinabove. It is further noted that when enquired if any penalty has been imposed on them for breaching the territory clause, dealers including RL Automobiles Pvt Ltd, Bhandari Automobile Pvt Ltd, Kamal Motors and Ashok Auto Sales Pvt Ltd have denied the same.

82. The Commission notes that evidence relied upon by the DG in arriving at a finding of contravention of Section 3(4)(c) neither proves that TML prohibits passive sales nor that TML has imposed any penalty on its authorised dealers for actively selling outside their allocated territory. All the emails relied upon by the DG only reveal that TML has been condemning its dealers for engaging in active sales outside the allocated territory. Although, one of the authorised dealers viz. Puneet Automobiles had submitted that TML had imposed



huge penalty on its dealers in default of territory restrictions, there is nothing on record to substantiate the same.

83. The Commission further notes the submissions of TML that it imposed restrictions on active sales outside the designated territory to *inter alia* ensure that dealers do not free-ride another dealer's marketing and investments, incentivizing dealers to invest in the dealership, enhance intra-brand competition, etc. In this regard, the Commission observes that while arriving at a finding of contravention of Section 3 (4) of the Act, it is imperative to carry out an assessment of the factors mentioned under Section 19(3) thereof to determine whether the alleged vertical restraint results in or likely to result in an appreciable adverse effect on competition or not. In the absence of any factual basis or foundational evidence in this regard brought out by the DG, the Commission is unable to return a finding of appreciable adverse effect on competition arising out of the impugned conduct.
84. Accordingly, there is not sufficient material on record for the Commission to arrive at a finding that TML enforced its territory clause leading to an appreciable adverse effect on competition in violation of Section 3(4)(c) of the Act.
85. It is seen that VASPL has also moved an application dated 16.11.2022 under the provisions of Sections 26(5) and 26 (8) of the Act for further inquiry by the Commission as regards Issue No. 2 hereinabove primarily on the ground that the DG ought to have asked TML how many times it had granted permission to the dealers to carry on other businesses. In view of the above-detailed discussion which *inter alia* clearly reveals that the authorised dealers of TML (including the Informants) were carrying on other businesses without any objection from TML, no further or other directions are required to be passed in this regard. Resultantly, the application stands disposed of.
86. It is made clear that no confidentiality claim shall be available in so far as the information/ data that might have been used/ referred to in this order in terms of the provisions contained in Section 57 of the Act for the purposes of the Act.



ORDER

87. In view of the above discussion, no case of contravention of the provisions of Sections 3 and 4 of the Act is made out against OP-1 and the matter is directed to be closed forthwith.

88. The Secretary is directed to communicate to the parties, accordingly.

**Sd/-
(Ravneet Kaur)
Chairperson**

**Sd/-
(Sangeeta Verma)
Member**

**Sd/-
(Bhagwant Singh Bishnoi)
Member**

New Delhi

Date: 23/08/2023