

(2024) 07 CCI CK 0002

Competition Commission Of India

Case No: Case No. 4 Of 2024

Balbir Singh Nagpal

APPELLANT

Vs

Toyota Kirloskar Motors Private
Limited & Other

RESPONDENT

Date of Decision: July 12, 2024

Acts Referred:

- Competition Act, 2002 - Section 3, 3(4), 4, 4(2)(a), 4(2)(a)(ii), 4(2)(c), 19(1), 26(1), 26(2), 33

Hon'ble Judges: Ravneet Kaur, Chairperson; Anil Agrawal, Member; Sweta Kakkad, Member, Deepak Anurag, Member

Bench: Full Bench

Judgement

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

1. The present Information has been filed by Shri Balbir Singh Nagpal ("Informant") under Section 19(1) of the Competition Act, 2002 ("Act") alleging contravention of provisions of Sections 3 and 4 of the Act by Toyota Kirloskar Motors Pvt. Ltd. ("OP-1") and Uttam Toyota ("OP-2") (collectively referred as "Opposite Parties/ OPs").
2. OP-1 is the Indian arm of Toyota Motor Corporation, which as per the Informant, is the largest automobile manufacturer having approximately 11.5% of the total market share in the global automobile industry. OP-2 is an authorized dealer of OP-1 having showroom in Gautam Buddh Nagar District of Uttar Pradesh.
3. As per the Information, the Informant booked a car i.e., "Innova Hycross Hybrid ZX(O)" ("Car") on 25.11.2022 with OP-2. It is stated that OP-2 had assured the Informant that the booked car would be delivered to him within two months from the date of booking; however, the same was changed to eight months, when the receipt of the booking was issued to the

Informant. It has been alleged that some customers who booked their car on the same date, or on subsequent dates, received the delivery of their respective car prior to the Informant. It has further been alleged that, resultantly, the booked car which was supposed to be delivered to the Informant as per his booking reference was delivered to someone else.

4. The Informant has submitted that he approached the officials of OP-2 to find out the reason as to why booking of car by customers was being dealt with in an unfair and arbitrary manner, but the officials of OP-2 were unable to provide any plausible explanation for the same. The Informant also asked for the details of the booking and delivery of cars within a period near to his booking date. The above queries are stated to have been evaded by the concerned officials.

5. The Informant also stated that there are Direct Sales Agents ("DSAs"), who act as middlemen in the market and normally work on commission basis. As per the Informant, after substantial waiting time, one such DSA assured guaranteed delivery in few days time for a 'premium' of about Rs. 2.25 lakhs.

6. It has been alleged that OP-2 has adopted practices that are favouring a particular set of consumers and in turn ruining the market sentiment. It is stated that by creating an artificial scarcity, 'Resale Price Maintenance' ("RPM") is being imposed on end customers, thus having an 'appreciable adverse effect on competition' ("AAEC") in violation of Section 3(4) of the Act.

7. It is further stated that the booked car was delivered to the Informant on 05.04.2023. However, since the issues highlighted required a deeper insight, the Informant again raised these issues by way of legal notice dated 14.04.2023 to the Opposite Parties.

8. OP-1, in its response dated 24.04.2023, reiterated that despite waiting period of 30-32 weeks, the Informant was delivered car on 05.04.2023. OP-1 further stated that the Informant accepted the booking slip with waiting period of 30-32 weeks without any protest and only after 4 months of issuance of the same, the Informant claimed that OP-1 had arbitrarily increased waiting time for the delivery of the car.

9. OP-2, in its response, pointed that the customer (Informant) was made aware about the long waiting period and upon his request, OP-2 assured that it would try its best for early delivery of the vehicle. In the same response, OP-2 alleged that the Informant made fishing and roving enquiry by writing various emails and making visits to the showroom. When the car was delivered on 05.04.2023, OP-2 requested the Informant to withdraw the legal notice but the Informant demanded extended warranty in lieu of the same, which was politely refused by OP-2. On this, the Informant stated that he would pursue legal recourse. OP-2 has denied all the allegations raised through notices dated 27.03.2023 and 14.04.2023 served by the Informant.

10. The Informant claims that the relevant product, in the present matter, is “*strong hybrid passenger vehicles*” and relevant geographic market is “*India*”. It has been stated that OP-1 has a dominant position in the relevant market and is also charging excess prices for the products offered. These prices are charged by first creating a false and artificial scarcity being well aware that the consumers, who have once booked vehicles would be compelled to purchase the said vehicles, even if asked to pay a “*premium*” for early delivery.

11. It has been submitted that apart from the payments under various heads such as handling charges, extended warranty, Annual Maintenance Contract, which raise costs to almost 30% over and above ex-showroom price, OPs in, certain cases, compel buyers to purchase accessories at prices determined by them. This is another way of imposing conditions on the purchase of vehicles and increasing sale price.

12. The Informant has alleged that the conduct of the Opposite Parties i.e., first accepting bookings, then assigning arbitrary/ pick and choose policy for delivery of vehicle and in some cases, demanding premium for early delivery, are in violation of the Section 4(2)(a), 4(2)(c) and Section 3(4) of the Act.

13. In light of the aforesaid facts and circumstances, the Informant has prayed for the following reliefs:

- (a) passing an order under Section 26(1) of the Act and directing the Director General to investigate the present matter;
- (b) directing the Opposite Parties to cease and desist from abuse of dominant position;
- (c) directing the Opposite Parties to provide the information as requested by the Informant with respect to:
 - i. data relating to booking of Innova Hycross Hybrid ZX(O);
 - ii. list of customers who had booked Innova Hycross Hybrid ZX(O) along with their serial numbers of allotments;
 - iii. details of Innova Hycross Hybrid ZX(O) received from Toyota Motors & the details of delivery of said vehicles to the customers in order of their booking sequence;
- (d) imposing penalty on the Opposite Parties for violation of Section 4 of the Act; and
- (e) passing such other order(s), direction(s), relief(s) as deemed fit and proper by the Commission in the facts and circumstances of the case and in the interest of justice.

14. The Informant has also sought interim relief under Section 33 of the Act by way of issuing a direction to the Opposite Parties to provide the aforesaid information/data.

15. The Commission considered the matter in its ordinary meeting held on 05.06.2024 and decided to pass an appropriate order in due course.

16. The Commission has perused the Information, including legal notices served by the Informant upon OP-1 and OP-2 and also their respective replies. The Informant appears to be primarily aggrieved by: (i) arbitrary change in delivery time of the car from two months to eight months; (ii) pick and choose policy in delivery of the car; (iii) unlawful demand of premium by DSAs; (iv) imposition of RPM; and (v) forcing customers to purchase accessories. The Informant has alleged that OP-1 has a dominant position in the relevant market of 'strong hybrid passenger vehicles in the territory of India' and has violated provisions of Sections 4(2)(a)(ii) and 4(2)(c) of the Act.

17. At the outset, the Commission notes that OP-1, in its response dated 06.04.2023 to the Informant's notice dated 27.03.2023, has stated that the Informant was informed about the waiting period of 8 months at the time of booking of the car and that the Informant being keen on taking delivery of the car accepted the said waiting period. OP-1 has also stated that shortage of semi-conductors is beyond the control of the manufacturer and the same is causing delay in automobile industry. Further, OP-1 clarified that OP-2 is not an agent of OP-1 and their relationship is of principal-to-principal basis and that OP-1 has no role in delivery of vehicle to the consumers. The Commission also notes that OP-2 in its response has stated that it does not employ DSAs and it cannot be held responsible for the action of some third party who was asking premium for early delivery of car. It also denied that it has prioritized any other customer over the Informant and alleged that the Informant has abused its position as an advocate by issuing such notices.

18. Based on the allegations and counter-allegations exchanged between the parties, the Commission is of the view that the primary issue in the matter appears to be revolving around the waiting period in delivery of the car booked by the Informant and prices of accessories. The Commission notes that such kind of allegations bear the tone and tenor of inter se dispute between Informant and OP1/ OP2 and does not have market-wide anti-competitive ramifications, in the facts and circumstances of the instant matter. Normally, long waiting period cannot be the subject matter of antitrust scrutiny as they are dependent upon various factors including reasons adduced by the OP1. As regard price, the Commission is of the view that the same is an outcome of demand and supply forces in the market and consumer preferences, among others. In the present case, the Informant has failed to highlight whether such prices have overtone of being 'unfair' or 'discriminatory' in terms of the provisions of the Act. Accordingly, the allegations levelled above do not reveal any anti-competitive concern and consequently, the Commission finds no reason to carry out an analysis of abuse of dominant position by the Opposite Parties.

19. The allegation pertaining to RPM i.e., Section 3(4) of the Act requires the existence of an agreement amongst enterprises or persons at different stages or levels of the production

chain in different markets in respect of production, supply, distribution, storage, sale or price of, or trade in goods or provision of services which causes or is likely to cause AAEC in India. The Commission notes that the Informant has not substantiated his allegation of RPM by way of any evidence to show the existence of any such agreement.

20. In view of the above, no *prima facie* case of contravention of the provisions of Section 3 or 4 of the Act is made out against the Opposite Parties and the Commission directs that the matter be closed forthwith under Section 26(2) of the Act. Consequently, no case for grant of relief(s) as sought under Section 33 of the Act arises.

21. The Secretary is directed to communicate the decision of the Commission to the Informant, accordingly.