**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** **Opposite Party No. 1**

**Tata Capital Financial Services Limited**
**11th Floor, Tower A**
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**Thane (West)- 400601** **Opposite Party No. 3**

**CORAM**

**Mr. Ashok Kumar Gupta**
**Chairperson**

**Ms. Sangeeta Verma**
**Member**

**Mr. Bhagwant Singh Bishnoi**
**Member**

## Order under Section 26(1) of The Competition Act, 2002

1. This common order shall govern the disposal of Informations in Case No. 21 of 2019 and Case No. 16 of 2020 as common issues are involved.

2. Facts, as set out in the Informations, may be briefly

noted. Case No. 21 of 2019

3. The Information has been filed by one Neha Gupta who is stated to be an advocate against Tata Motors Ltd. (**Tata Motors**), Tata Capital Financial Services Limited (**Tata Capital**) and Tata Motors Finance Ltd. (**Tata Motors Finance**) alleging contravention of the provisions of Sections 3 and 4 of the Competition Act, 2002 ('the Act').

4. The parents of the Informant are stated to have started Varanasi Auto Sales Pvt. Ltd. (VASPL) and post-demise of her father in 2002, her brother took over the charge of VASPL. VASPL was appointed as an authorized dealer of Tata Motors to sell commercial vehicles (CVs), spare parts, accessories, 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. For this purpose, the last renewed dealership agreement was signed on 11.10.2011 between VASPL and Tata Motors for a period of five years.

5. **Tata Motors**, a subsidiary of Tata Sons, is engaged *inter alia* in the business of designing, developing, and manufacturing, among others, CVs and chassis for the same, spare parts and providing value added services such as AMC, refurbished, pre-owned vehicle business ('Tata Ok'), loyalty programs relating to sales and service of vehicles, retail channel finance & insurance, hire purchase, loan financing, leasing or any other financing business of own or subsidiaries or associates or affiliates. **Tata Capital** is a non-banking financial company (NBFC)

and is focussed on providing a broad suite of financial products like motor finance, personal loans, home loans, consumer durable loans *etc.* **Tata Motors Finance** is stated to be engaged in the business of financing the entire range of Tata Motors' commercial and passenger vehicles.

6. The Informant has alleged that Tata Motors is a dominant entity in the commercial vehicles segment and enjoys 85% market share in the States of Northern India especially Uttar Pradesh. The Informant has stated that for meeting the business needs, every authorised dealer of Tata Motors is obligated to raise finance/ loan from banks and/ or NBFCs such as Tata Capital and Tata Motors Finance. Further, to sustain and retain the market share, Tata's business model encompasses both manufacturing and financing of CVs. The Informant has averred that such model/ arrangement between the OPs is abusive, anti-competitive and detrimental to the financial health of authorised dealers such as VASPL.

7. The Informant has also alleged that the OPs dictated and restricted the finance facility as per their discretion. The finance facility was extended by Tata Capital and Tata Motors Finance to the authorised dealers as per the direction and desire of Tata Motors. Further, Tata Capital and Tata Motors Finance sanctioned finance facility in a discretionary manner mainly relying upon the number of vehicles Tata Motors authorised its dealer 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.

8. The Informant has further avowed that 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. The Informant has stated that such type of arrangement was detrimental to the financial health of the authorised dealers. Moreover, as per the Informant, such type of cartelisation between the OPs aims to

limit, control the production, distribution, and sale of trade in goods or provision of services. Further, the Informant has also claimed that the absence of rationale in extending loans, increase or decrease in the size of the loan facility, imposition of various charges, stopping the supply of vehicles without any basis, imposition of stock and penalty, abrupt discontinuation of the schemes to benefit a particular authorised dealer *etc.* are manifestation of the cartelization amongst the OPs in violation of the provisions of Section 3(3) of the Act.

9. It has also been averred by the Informant that VASPL only facilitated in providing the details of its customers to Tata Motors Finance for financing their vehicles and earned commission against every successful contract booked and the work in respect of vetting and background check of the customers was the sole responsibility of Tata Motors Finance. Despite the same, if any of the consumer loan instalment was unpaid ('bad/ doubtful debts'), they were arbitrarily imposed on the authorised dealer/ VASPL and adjusted against the channel finance facility loan, which was otherwise extended strictly and solely for the purposes of off-take of vehicles.

10. Further, it has also been stated by the Informant that the practice of Tata Motors to coerce its dealers to order the 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 the Tata Motors), is in violation of the provisions of Section 3(4) and Section 4 of the Act.

11. Lastly, the Informant has alleged that Tata Motors has entered into separate Memorandum of Understanding ('MOU') with Tata Capital and Tata Motors Finance, respectively, under which in case there is an overdue in the channel finance facility loan, Tata Capital and Tata Motors Finance have the discretion to inform Tata Motors to have the supply/ off-take of CVs for sale by an authorized dealer to be suspended/ blocked.

12. Based on the above averments and allegations, the Informant has filed the instant information against Tata entities, as detailed hereinabove.

13. The Commission in its ordinary meeting held on 04.07.2019 considered the Information filed by Ms. Neha Gupta and decided to seek certain information as specified in the order of even date. In pursuance thereto, the Informant submitted its response titled as 'Additional Information' on 22.08.2019. Thereupon, the Commission in its ordinary meeting held on 10.10.2019 noted that the present Information has been filed by Ms. Neha Gupta, Advocate in her own capacity against the OPs alleging, *inter alia,* contravention of the provisions of Section 3 and 4 of the Act. Further, the Commission observed that the Informant essentially raised purported disputes/ conduct arising out of Dealership Agreement executed between Tata Motors and VASPL, which stood terminated w.e.f. 24.08.2017. Moreover, VASPL has neither authorised the Informant to file the instant Information nor has 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 after forwarding the copies of the Information/ Additional Information to VASPL and OPs.

14. Thereafter, on 29.01.2020, the Commission held a preliminary conference with VASPL and the OPs. Having heard the learned counsel(s) for these Parties, the Commission directed the Informant/ VASPL to file an affidavit with an advance copy to the OPs, detailing the arguments made during 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 the 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.

15. The Informant/ VASPL in its affidavit dated 05.03.2020 elaborated its arguments made during the preliminary conference. The Informant/ VASPL submitted that OPs are 'enterprise/ group' within the meaning of Section 2(h) read with Section

5, Explanation (b) thereto, of the Act. Thereafter, the Informant/ VASPL has delineated the relevant market as *'market for manufacture and sale of commercial vehicles in eastern Uttar Pradesh'*.

16. On the issue of dominance, VASPL referred to the data collected from the Office of Regional Transport Office (RTO), Varanasi to show the market share of OPs in year 2015-16 in the district of Varanasi to be on an average 69% in Heavy Commercial Vehicles (HCV); 88% in Medium Commercial Vehicles (MCV); 68% in Light Commercial Vehicles (LCV) and 29% in Bus segment. VASPL has further stated that the Annual Report 2018-19 of Tata Motors declares itself as India's largest original equipment manufacturer (OEM).

17. It was stated that the dominance of OPs is further substantiated by the fact that they have the largest range of commercial vehicles than any other OEMs or its competitors.

18. Adverting to the alleged abusive terms and conduct of OPs, VASPL has alleged that Tata Motors intended to unduly favour its own captive financing companies to the exclusion of others in violation of the provisions of Section 4 of the Act. In this regard, a reference was made to the clause 4(d) of the Agreement dated 11.10.2011 between VASPL and Tata Motors which provides:

> *'…The dealer shall not, without obtaining the prior approval of the Company in writing, permit any financing company, including any financing company of his own for financing the sale of the products and providing after sale services and value added services and / or any other products to be positioned at or to operate from his dealership premises, or from the precincts thereof…'*
>
> (Emphasis supplied)

19. Further, the Informant stated that clause 17(b) of the aforesaid agreement, also tantamounts to violation of the various clauses of the provisions of Section 4 of the Act, as it specifically provides that:

> *'…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) from the company…'*
>
> (Emphasis supplied)

20. Further, VASPL has referred to clauses 26 and 29 of the agreement which relate to 'claims settlement' and 'consumer dispute' that impose unfair conditions in purchase and sale of goods and services by stipulating the following:

> *Clause 26*
>
> *'The company shall notify the Dealer of any dispute and the Dealer shall thereupon either settle such claims, dispute. The dealer shall be solely responsible and liable towards all costs and consequences arising therefrom. In no circumstance shall the Company be liable to the dealer for any claims pertaining to transit claims, insurance claims or third-party claims and the Dealer shall indemnify and hold the Company indemnified in such events.'*
>
> *Clause 29*
>
> *'…In the event of termination, the company shall also be entitled to adjust from the deposit kept by the dealer with the Company in terms hereof and from any amount due to the dealer from the Company the amount equal to the likely liabilities arising out of such (consumer) dispute pending at the time of termination.'*
>
> (Emphasis supplied)

21. VASPL has also alleged that Tata Motors has abused its dominant position by compulsorily deducting the cost of loyalty card; imposition of Annual Maintenance Contract (AMC); imposing a training fee cost on dealers; mandatorily deducting ISO certification charges *etc.* Moreover, as per VASPL, such conduct amounts to contravention of the provisions of Section 3(4) of the Act.

22. On similar lines, it has also been alleged that various clauses of the agreement dated 01.01.2015 between the VASPL and Tata Capital are in contravention of the provisions of Section 4 of the Act that gives unilateral power to Tata Capital to dictate the terms and conditions such as:

i Tata Capital without any prior intimation to the Dealer enhance or reduce the Credit Limit and/ or Internal Credit Limit and the same shall be binding upon the Dealer;

ii And/ or make any changes in the terms and conditions in the loan document without any intimation to the Dealer;

iii The Dealer agrees and confirms that no interest will be payable by Tata Capital on negative balance of the Dealer;

iv TCFSL shall be free to adopt an interpretation which is beneficial to the Interest of Tata Capital, at its sole discretion;

v Tata Capital shall be entitled to intimate the Seller(s) about such default with a request to stop further supply of goods to the Dealer and the Seller(s) shall be entitled to rely upon and act as per the intimation sent by Tata Capital, as aforesaid, without there being a need for such Intimation/ statement to be supported with any proof.

23. VASPL has further stated that the most deprecating feature of the agreement with Tata Motors Finance is the clause that stipulated '*...the Dealer will: satisfy himself, by making a thorough enquiry, of the creditworthiness of customer/s. Further, a) The Dealer will on account of its dealer liability, in case of any default in the payment by the Customer/s, be liable to pay to the Company as detailed below: 1. Where less than 24 EMIS have been paid in a contract- 30% of the loss 2. Where*

*15 between 24 and 35 EMIs have been paid in a contract- 25% of the loss 3. Where more than 35 EMIs have been paid in a contract- 15% of the loss...'*. Further, the clause also obligates that '*…the liabilities of the Dealer hereunder will not be discharged, diminished or affected by: (a) a waiver by the Company of any breach of the provisions this Agreement by the Dealer; (b) the granting of time or indulgence by the Company to the customer/s or the guarantor/s; and (C) the failure of the Company to institute or pursue legal proceedings against the Customer/s and or to take steps for recovery of any dues from the Customer/s…'*. VASPL has submitted that the same tantamounts to violation of the provisions of Section 4 of the Act.

24. Lastly, VASPL alleged that the dealer is confined to a territory specified in the Dealership Agreement and OPs also indulge in resale price maintenance in violation of the provisions of Section 3(4) of the Act.

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25. The present Information has been filed by Nishant P. Bhutada, Proprietor of M/s Kanchan Motors against aforesaid Tata entities alleging contravention of the provisions of Sections 3 and 4 of the Act.

26. The Informant was appointed as an authorised dealer of the Tata Motors's Small Commercial Vehicles (SCV) [Cargo and Passenger range] category and also for passenger/ utility vehicles category including their spare parts, accessories, after sales services, utility vehicles and value-added services in the district of Nashik, Maharashtra. The Informant has also stated that its association with Tata Motors started in the year 2002 when it started SCV (Cargo and Passenger) range of vehicle dealership and the same was a flourishing business till year 2013-14. The Informant has also alleged that OPs had abused their dominant position by compelling it to start the dealership of passenger/ utility vehicle segment of Tata Motors by an agreement dated 28.02.2014.

27. With respect to the allegations in respect of the contravention of the provisions of Section 4 of the Act, the Informant stated that OPs are 'enterprise/ Group' within the meaning of provisions of Section 2(h) read with Explanation (b) to Section 5 of the Act. Further, the Informant has stated that SCV and passenger/ utility vehicles are altogether different from other category of vehicles in terms of characteristics such as speed, mileage, appearance, engine capacity, usage *etc.* Accordingly, the Informant has delineated the relevant market as the '*market for manufacture and sale of small commercial vehicles in District of Nashik'.*

28. On the issue of dominance of the OPs in the relevant market, the Informant has stated that Tata Motors is a dominant enterprise with a market share of more than 85% in India and more than 50% in district of Nashik along with a strong global network of subsidiaries and associate companies. Further, the Informant has also stated that Tata Motors is one of the leading automobile manufacturers in the world, providing mobility solutions to over 175 countries. Similarly, Reserve Bank of India (RBI) has categorised Tata Capital and Tata Motors Finance as systemically important Non-Deposit Accepting Core Investment Company (CIC). Furthermore, the Informant has stated that considering the factors as provided under the provisions of Section 19(4) of the Act such as market share, size and resource of enterprise, economic power of the 'enterprise/ Group', sale or service network of such enterprise, dependence of consumer on the enterprise *etc.*, OPs are completely dominant in the relevant market to the exclusion of other enterprises/ Groups.

29. On issue of abuse of dominant position by the OPs, the Informant has stated that Tata Motors was its sole business partner and the sale of SCV and passenger/ utility vehicles including their spare parts, after sale service; was at the mercy of Tata Motors. The Informant has alleged that the finance facility extended by Tata Capital and Tata Motors Finance took away the decision making power of the dealer and unfairly imposed liability of unpaid instalments of the borrower on the dealer, which caused depletion of working capital of the dealer and eventually made it financially sick. Furthermore, the Informant has averred that some of these liabilities were non-reversible *i.e.* irrespective of payment received or not by the

OPs, the dealer was liable to pay the dues of customer to the OPs without any privity of contract. Moreover, as per the Informant, Tata Motors Finance intentionally financed the slow-moving vehicles solely with the aim to increase the sale of Tata Motors's vehicles. Similarly, the Informant has alleged that Tata Motors Finance in spite of having sufficient knowledge of customer's inability to repay would still finance the vehicle to such customers in order to retain the market share of Tata Motors as the defaulted/ unpaid instalment of the customers would be recovered from the dealer illegally, using unfair, anti-competitive, restrictive and by abusing their dominant position.

30. It has also been averred by the Informant that the OPs by abusing their dominant position either sanctioned or restricted the finance facility depending upon the number and model of vehicles that Tata Motors wished the authorised dealer to off take rather than considering the balance sheet/ financial credibility of the dealer. Additionally, the OPs imposed exorbitant interest rate, additional interest or penal charges, increased or decreased the loan facility, stopped the supply of vehicles without any basis, abruptly discontinued the schemes to benefit a particular authorized dealer *etc*.

31. Moreover, it has been alleged that Tata Motors was entitled to call upon the dealers to deposit cash, additional sum of money by the way of security deposit and/ or furnish a bank guarantee or any other type of security. The Informant has claimed that such deposition of security amount with Tata Motors was unfair as Tata Motors did not provide any stock of vehicles or spare parts to its dealer on credit and withholding of these security deposits is nothing but abuse of dominant position by OPs as it increased the cost of setting up of the dealership and hindered the entry in the relevant market.

32. Further, as per the Informant, the finance facility was given by other banks/ NBFCs on the basis of comfort letter provided by Tata Motors and accordingly, the dealer was compelled to raise finance from Tata Capital and Tata Motors Finance in spite of OPs imposing exorbitant interest rates, additional interest, penal interest and

prepayment penalty. Moreover, Tata Motors used its discretion to provide the comfort letter to other lending institutions. It has also been alleged by the Informant that Tata Motors created a situation, whereby the loan extended to the dealer by banks and other NBFCs was exhausted and the dealer was unable to meet the target set by Tata Motors and thereafter Tata Motors started putting pressure on the dealer to increase its working capital otherwise threatened termination of the dealership.

33. Furthermore, the Informant has averred that it was obliged to create and upgrade the infrastructure *viz*. refurbishment of showrooms, upgradation of workshops, purchasing of vehicles for test drive, maintaining stock *etc*. Additionally, it was incurring recurring costs in terms of the salary of the officers/ employees to run the business of sale of Tata Motors's vehicles, spare parts, after sale service and high rate of interest rate imposed by Tata Capital and Tata Motors Finance.

34. The Informant has also impugned the various clauses of the agreement dated 10.02.2017 between the Informant and Tata Motors (regarding dealership of SCV category of vehicles) that were allegedly in violation of the provisions of Section 4 of the Act.

35. In this regard, reference was made to clause 4(d) which provided as follows:

> *'…The dealer shall not, without obtaining the prior approval of the company in writing, permit any person, company or organization, including any person or financing company/ organization of his own, for financing the sale of the products and for providing services and/ or any other products, to be positioned at, or to operate from, his dealership premises, or from the precincts thereof.'*

36. Further, the Informant has also impugned clause 15(c) of the aforesaid agreement and the same is also reproduced:

> *'...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) from the company in this regard.'*

37. The Informant has alleged that such clauses of the aforesaid agreement are in violation of the provisions of Section 4 of the Act. On similar lines, the Informant has alleged that clauses 24 and 27 of the aforementioned agreement relating to 'claims settlement' and 'consumer dispute' imposed unfair conditions in purchase and sale of goods and services by the OPs in contravention of the provisions of provisions of Section 4 of the Act. The Informant has also averred that the various terms and conditions stipulated in agreement dated 11.11.2016 between the Informant and Tata Capital militates against the provisions of Section 4 of the Act. Moreover, as per the Informant, finance facility extended by Tata Motors Finance was at a very high rate of interest *i.e.* 14% per annum. Thus, as per the Informant the same is reflective of the abuse of dominant position by the OPs.

38. It was further alleged that the Agreement dated 02.05.2009, 01.01.2013 & 01.01.2015 between the Informant and Tata Motors Finance stipulated various anti-competitive terms and conditions in violations of the provisions of Section 4 of the Act. Some of the relevant impugned clauses are as follows:

> *'2. The Dealer will: (i) satisfy himself, by making a thorough enquiry, of the creditworthiness of customer/s. (hereinafter referred to as 'the Customer/s) who wishes to acquire the said Products under the said schemes of the Company and his proposed Guarantor/s…'*

*'4…If the Customer/s fails to pay any monthly instalment/s or hire or makes any other default or contravenes any of the terms and conditions of the Facility Agreement, the Dealer, on being instructed by the Company, will arrange at his costs for repossession of the said Products from the Customer/s, which he will do in accordance ……The Dealer will also ensure that the repossessed products are kept and protected safely as per parameters defined by the Company……..'*

*'8. a) The Dealer will on account of its dealer liability, in case of any default in the payment by the Customer/s, be liable to pay to the Company as detailed below:*

i. *Where less than 12 EMIS have been paid in a contract: 30% of the loss.*
ii. *Where between 12 and 23 EMIs have been paid in a contract: 25% of the loss.*
iii. *Where between 24 & 35 EMIs have been paid in a contract: 20% of the loss.*
iv. *Where more than 35 EMIs have been paid in a contract: 10% of the loss…'*

*'12. The liabilities of the Dealer hereunder will not be discharged, diminished or affected by:*

(a) *a waiver by the Company of any breach of the provisions this Agreement by the Dealer;*
(b) *the granting of time or indulgence by the Company to the customer/s or the guarantor/s; and*
(c) *the failure of the Company to institute or pursue legal proceedings against the Customer/s and/ or to take steps for recovery of any dues from the Customer/s or the Guarantors under the said Facility Agreement.'*

39. It has also been alleged by the Informant that Tata Motors would decline to supply SCV or passenger/ utility vehicle of dealer's choice, if the dealer does not adhere to the terms and conditions set out by OPs. Moreover, the Informant has also alleged that it was being subjected to the supplementary obligation by the OPs having no connection with the dealership agreement of SCV or passenger/ utility vehicle and such acts are *ex-facie* in violation of the provisions of Section 4 of the Act. Moreover, the Informant has averred that Tata Motors made it mandatory for the dealer to buy vehicles for test drive, which were to be purchased every year or even when there is slight variation in the model. This resulted in incurrence of additional cost on dealership. Thus, the Informant has claimed imposition of supplementary obligation by OPs in violation of the provisions of Section 4 of the Act.

40. Additionally, the Informant has alleged imposition of various unfair costs by the OPs *viz.* stock audit charge, *ad hoc* fee, processing fee, temporary OD limit fee from the channel finance facility, that constitutes an abuse of dominant position by the OPs. Similarly, imposition of mandatory Annual Maintenance Charge (AMC), ISO Certification charge, no stock correction, loyalty card are other instances of abuse of dominant position by the OPs, highlighted by the Informant. Further, the Informant has also alleged that it was forced to sell the AMC and loyalty cards to the customers on threat of stoppage of the supply of vehicles by OPs. Additionally, the Informant has also alleged that Tata Motors illegally adjusted the dealer's commission by raising false, frivolous and vexatious claims and withheld the commission without any consent on part of the Informant. The non-payment of commission led to decrease in working capital of the Informant and eventually deteriorated the financial position of the Informant.

41. Lastly, the Informant has alleged that Tata Motors *vide* its communication dated 04.07.2016 terminated its passenger/ utility vehicle dealership arbitrarily on ground of poor performance in terms of failure to achieve sales target for passenger/ utility vehicle without providing any opportunity of being heard. Further, Tata Motors also did not buy back the stock of passenger/ utility vehicles once the dealership

was terminated creating the issue of liquidating the vehicle's stock after termination of the dealership.

42. With respect to the allegations under the provisions of Section 3(4) of the Act, the Informant has alleged that OPs engaged themselves in tie-in arrangement by coercing the Informant to order the SCV or passenger/ utility vehicles according to the list provided by it *via* e-mail and later asking the dealer to paste the contents of the attachment without any changes on dealer's letter head and sending back the scanned copy of such list (as provided by Tata Motors) immediately *via* e-mail followed by the original hard copy *via* post. The Informant has averred that the same was done to coerce the dealer for billing the SCV or passenger/ utility vehicles as desired by Tata Motors and thereafter, preparing a paper trail to wrongfully show that the vehicles were requested by the dealer. Further, the Informant has alleged that Tata Motors directed its dealers to create fake names and bill the vehicles to them which is known in business parlance as 'Billed but not delivered' (BBND) so that Tata Motors could push the off take of vehicles or justify its forced billing on papers on its dealer by creating wrong record of stock of vehicles.

43. Furthermore, the Informant has also stated that Tata Motors also billed outdated, damaged, wrecked vehicle to its dealer. The Informant has also 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. Further, tie-in arrangement of Discount Special Insurance Scheme (DSIS) was only on policies issued of participating insurance companies using existing TATA Business Support Service System (TBSS). Moreover, the Informant has alleged that Tata Motors had exclusive agreements with different vendor and accordingly the Informant was forced to buy the office furniture, TV Screen, employee's uniform, ceiling paint, office tiles *etc.* from a particular vendor only. The Informant has alleged that such tie-in arrangement has also caused an appreciable adverse effect on competition (AAEC) in India, if such factors are analysed on touchstone of provisions of Section 19(3) of the Act.

44. The Informant has impugned clauses 15(a), 15(b) and 15(c) *etc.* of dealership agreement dated 10.02.2017 between the Informant and Tata Motors. The Informant has also alleged that Tata Motors has violated of the provisions of Section 3(4)(b) of the Act which pertains to exclusive supply agreement by restricting the dealer from directly or indirectly engaging in, handling or promoting the sale and/ or service of any similar product, spare parts, accessories and value-added services manufactured or marketed by any other person or party within or outside the country. For the same, the Informant has stated that in year 2002, it started the dealership of SCV (Cargo and Passenger range) of vehicles and thereafter started other business by constituting other firms/ companies but OPs started creating problems in the other business of the Informant. Further, the Informant has alleged that OPs have illegally restricted it from starting any new businesses in order to have full control over the dealer and if the dealer starts any other businesses without approval of OPs, then OPs create a situation where other businesses of the dealer start to suffer. In support of the aforesaid, the Informant has alleged that Tata Capital illegally circulated 109 letters to various business associates of the Informant that it has committed a default in repayment of its dues that eventually resulted in closure of other businesses of the Informant as all other creditors choked their funding to the Informant.

45. Furthermore, the Informant has averred that the dealership of every dealer of Tata Motors was restricted or confined to the allotted territory. The said territory could be extended or curtailed simply by oral instruction from Tata Motors. For instance, clause 3(b) of the dealership agreement dated 10.02.2017 between the Informant and the Tata Motors, had specified the Informant's territorial limit to the districts of Nashik only. Further, the Informant has alleged that *vide* e-mail dated 24.11.2017 Tata Motors restricted the Informant from selling vehicle in Jalgaon district of Maharashtra. Accordingly, the Informant has alleged that the same is in nature of 'exclusive distribution agreement' as mentioned under the provisions of Section 3(4)(c) of the Act.

46. The Informant has also alleged violation of the provisions of Section 3(4)(e) of the Act by Tata Motors by restricting the discounting policy of its dealers that creates a situation of Resale Price Maintenance (RPM) by Tata Motors. As per the Informant, the same limited the competition between the dealers and also restricted the competition in the market.

**Reply of Tata Entities**

Case No. 21 of 2019

47. OPs in their response submitted that the Informant's Affidavit dated 05.03.2020 included several new and additional instances/ assertions and are devoid of any merit. Besides this, Tata Motors also raised certain preliminary issues such as (i) VASPL has only raised a commercial and contractual dispute for which the appropriate remedy does not lie before the Commission; (ii) VASPL's dealership was terminated on account of its deteriorating financial condition (mounting debts) rather than in abuse of dominant position by OPs; (iii) filing of the Information suffers from serious laches *etc.*

48. It was submitted by the OPs that the relevant market should be delineated as the *'market for manufacture and sale of commercial vehicles in India'* and should not be narrower than the *'market for manufacture and sale of commercial vehicles in the State of Uttar Pradesh'.* In respect of its dominant position, Tata Motors has stated that it has witnessed a sharp decline in its sales volumes in India, while the share of some of its competitors such as Mahindra & Mahindra and Ashok Leyland *etc.* has increased significantly. Accordingly, the OPs have denied the assertion that they are dominant in the aforesaid relevant market.

49. It has also been submitted by Tata Motors that mere inclusion of allegedly onerous terms in the Dealership Agreement does not, *per se*, amount to a contravention of the provisions of Section 4(2)(a)(i) of the Act, unless the Informant is able to show imposition of such terms and conditions by Tata Motors in an unfair manner. Moreover, specific contractual restrictions on the franchisee are necessary to

protect the know-how and goodwill and to maintain the common identity of the franchise network.

50. Tata Motors has also defended various clauses of the Dealership Agreement alleged to be in contravention of the provisions of Section 4 of the Act, on the following counts:

a. Clause 4(c)(ii) of the Dealership Agreement, which requires an authorized dealer to obtain Tata Motors's prior consent for creating any security, charge or lien (incurred by the dealer outside the ordinary course of dealership business). Thus, as per Tata Motors, this clause does not seek to impose a blanket restriction on the dealer. It merely requires the dealer to obtain Tata Motors's prior consent for borrowings outside the ordinary course of the dealership business.

b. Clause 4(d) of the Dealership Agreement required the dealer to obtain prior approval of Tata Motors before permitting any financing company (which offers retail loans to the consumers), including its own company, to be positioned at or to operate from the dealership premises. As per Tata Motors, this clause does not seek to impose a blanket restriction on the dealer. It merely required the dealer to obtain Tata Motors's prior consent for allowing any finance company to operate from the dealership premises.

c. Clause 17(b) of the Agreement between Tata Motors and the Dealer which specifically states that: *'...The dealer shall not start, se 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) from the company...'*. In this regard, Tata Motors has submitted that this clause does not seek to impose a blanket restriction on

the dealer. Moreover, VASPL has not provided even a single instance of Tata Motors denying NOC.

d. Further, Clauses 26 and 29 of the Dealership Agreement, provide that the Dealer shall be solely liable for any dispute, transit claims, insurance claims, third-party claims or consumer disputes and Tata Motors has the right to adjust the likely liabilities arising out of such claims or disputes against the dealer's deposit kept with Tata Motors. In this regard, Tata Motors has submitted that the Informant has failed to provide evidence of even a single instance of Tata Motors unduly deducting the likely liabilities arising out of imposing any dispute, transit claims, insurance claims, third-party claims or consumer disputes.

51. Tata Motors has submitted that the Informant has failed to meet the threshold for establishing an anti-competitive agreement as required under the provisions Section 3(4) of the Act. Further, Tata Motors has also defended the various clauses of Dealership Agreement that are alleged to be in contravention of the provisions of Section 3(4) of the Act. Some of these alleged clauses are as follows:

a. The Informant has alleged that the exclusivity obligations restricting the dealer from selling outside the allocated territory (in terms of Clause 5 of the Dealership Agreement) to be anti-competitive. However, Tata Motors has contended that in the absence of such a clause discouraging the dealers to actively sell outside the allocated territories, the dealers would not be incentivized to make investment in developing the dealership business. Moreover, as per Tata Motors, Clause 5 also enhances inter-brand competition as the authorized dealer would be better positioned to effectively compete with the dealers appointed by the other manufacturers within the same territory.

b. Similarly, the Informant has alleged that Clause 17(a) restricted the dealer from dealing with the products of a competitor during the tenure of the

Dealership Agreement. Countering the said allegation, Tata Motors has submitted that for such allegations, the onus is on the Informant to demonstrate that a restriction on dealing in competing product was, indeed, imposed; and that such restrictions affected competition. However, as per Tata Motors, the Informant has not presented even a shred of evidence to demonstrate that Tata Motors had either penalized or proscribed VASPL from engaging in the competing business activities. Moreover, as per Tata Motors, the dealership business entails significant capital investments by an authorized dealer. Thus, considering the financial commitments that the dealership business requires, it may not be practical or commercially viable for one dealer to parallelly operate sales outlets, service stations, workshops or maintain adequate stocks of spare parts, trained personnel *etc*. for different brands of commercial vehicles (as per the different quantitative and qualitative standards laid down by the different manufacturers) without prioritizing one over the other.

c. Tata Motors has also defended the other miscellaneous clauses that VASPL has alleged to be in contravention of the provisions of Section 3(4) of the Act such as Tata Motors's rights to determine the adequacy and use of the dealership premises (in terms of Clauses 17(b), 17(c)(i) and 17(c)(ii) of the Dealership Agreement); (c) requirement for dealers to use proprietary Customer Relationship Management (CRM) and Dealer Management system (DMS) software (in terms of Clause 10(a) and 10(c) of the Dealership Agreement); and; (d) requirement for dealers to maintain adequate stock at their own expense (in terms of Clause 12 of the Dealership Agreement).

52. Tata Motors has also denied the allegation that it compelled any of its authorized dealers, including VASPL to avail finance facility only from Tata Capital and Tata Motors Finance. Moreover, Tata Motors's dealers are free to avail finance facility from financial institutions of their own choice. The same is also borne out of the fact that of the total debt raised by VASPL, Punjab National Bank and the State

Bank of India (SBI) accounted for 67.88% of its total debt. Moreover, it has also been submitted by Tata Motors that VASPL has wrongly alleged that it had requested Tata Motors to issue a comfort letter for SBI and that Tata Motors did not respond to the said request.

53. The Tata Motors has also denied the Informant's allegation that Tata Motors in abuse of its dominant position had blocked VASPL's dealer code and stopped further supply of vehicles upon the request of Tata Capital and Tata Motors Finance. Tata Motors has submitted that Tata Motors is contractually obligated to the banks/ financial institutions to suspend supplies to the dealers who default in making the repayments. Further, Tata Motors has also stated that it has not deducted charges for loyalty cards from VASPL's account without the customers having purchased such loyalty cards. Moreover, it is also a standard practice for the manufacturers of commercial vehicles to offer loyalty programs for their customers.

54. Tata Motors has also mentioned that it does not set off-take related targets for its dealers. However, Tata Motors has stated that it expects its dealers to off-take minimum quantities of commercial vehicles every month to maintain a reasonable inventory of stocks at the dealerships for meeting expected/ unexpected demand from the market. Further, Tata Motors has also negated the allegation that it has coerced the dealer to copy-paste the list of vehicles provided by Tata Motors on dealer's letter head and sending back the same to the Tata Motors. It has submitted that purpose was to consolidate the orders placed by VASPL from time to time (through e-mails, phone calls or even in in-person meetings with Tata Motors's sales team) during a month into a single document. Thus, the same was done for internal record-keeping, internal accounting purposes and for operational convenience.

55. In response to another allegation that Tata Motors imposed 'No Stock Correction' Policy, it has been stated that 'No stock correction' refers to a situation where dealers decide to reduce their off-take and retail sales are carried out by pushing

accumulated stock. Tata Motors has submitted that it does not impose any off-take obligation even under the 'No stock correction' condition. It has further been clarified that 'No stock correction' is, in fact, a condition contained in the incentive schemes issued by Tata Motors for dealers, who, despite having an accumulated stock, decide to off-take more vehicles.

56. Further, Tata Motors has stated that it is not abusing its dominant position by tying the sales different category of commercial vehicles. The rationale being that if the full range dealers of Tata Motors refuse to stock certain minimum units of Tata Motors's offerings, then the consumers would be deprived of choice and access to Tata Motor's product offerings as Tata Motors's network of authorized dealerships is its only viable route to the market. Moreover, the same is also necessary for sales push for the newly launched vehicles.

57. Further, Tata Motors has denied tie-in arrangement with respect of insurance products for commercial vehicles and has stated that it neither restricts the customers from availing the services of other insurance companies nor does it require its dealers to promote the insurance schemes offered by the partner insurance companies. On similar lines, Tata Motors has denied imposition of compulsorily annual maintenance contracts (AMCs) charges, training charges, SIEBEL software fee, ISO certification charges *etc*. either on dealers or customers.

58. Further, countering the averment of VASPL that Tata Motors engaged in 'resale price maintenance', Tata Motors submitted that it merely determines the net dealer price and the MRP of the products. Thus, the dealer is free to sell the product at any price which is below the MRP. Further, Tata Motors has also stated that it also offers various incentives to its authorized dealers to encourage off-take of vehicles and promote retail sales by using 'Notes for Approval/ NFA' (NFA is an incentive scheme for dealers to increase their off-take). Tata Motors has stated that dealers can obtain NFA scheme at their own volition that allows the dealer availing such NFA to acquire more vehicles at a cost that will be lower than the normal net dealer price (TML bears the cost of such subsidized rates) and Tata Motors at the same

time requests the dealers to share the benefit of this incentive with the end consumers.

59. Tata Motors has denied that upon termination of VASPL's dealership, it was saddled with the stock of commercial vehicles as Tata Motors does not have a stock buy-back policy. Tata Motors has submitted that at the time of termination of dealership, VASPL was operating with NIL stock, thus, there was no question of VASPL being thrust with the onus of liquidating the idle stock.

60. Lastly, it has been submitted by Tata Motors that neither the terms of the Dealership Agreement nor the allegedly anti-competitive conduct of Tata Motors have caused (nor is it likely to cause) any AAEC. Rather, Tata Motors' conduct has strengthened its dealership network; fostered strong inter-brand competition and benefitted consumers.

61. Tata Capital in its reply submitted that the present matter involves purely contractual issues. On issue of dominance in the relevant market, Tata Capital has stated that it has a miniscule presence with 6% share in the Indian corporate lending market. Thus, as per Tata Capital, allegation must be rejected at the very threshold itself as Tata Capital cannot be considered as a dominant player.

62. It has also been submitted that that there was no imposition on VASPL to avail credit facilities from Tata Capital. It was claimed by Tata Capital that it is a distinct legal entity with its separate board of directors, which extends finance facilities at its sole discretion. Thus, Tata Capital contended that any increase/ decrease in the finance facility is *inter alia* based on its independent assessment of the credit worthiness of such dealers. Further, it has also been submitted that the fairness of credit worthiness of a borrower cannot be a question for the determination of this Commission as aggrieved borrower has the option to seek redressal of its grievances in terms of the framework laid down by RBI or with consumer courts or civil courts of competent jurisdiction.

63. Further, Tata Capital submitted that non-deposit taking NBFCs such as it generally depends on the interests charged against finance facilities in order to generate revenue. As a result, the interest rates charged by such NBFCs could be higher than that of scheduled banks. Moreover, Tata Capital has also claimed that terms and conditions of the finance facilities extended by it are bilaterally negotiated between with the dealer. It has also been submitted that such terms in finance agreements with the borrowers like credit limit, charging of the penal interest *etc.* are standard practice for lenders with a view to secure their interest as a lender.

64. Furthermore, Tata Capital has stated that in terms of Clause 5 of the MoU between Tata Motors and it, Tata Motors agreed to assist Tata Capital in recovering the dues from a defaulting dealer. Therefore, it was only reasonable for Tata Capital to request Tata Motors to suspend further supplies to VASPL when VASPL's channel finance facility account became overdue.

65. Tata Capital also defended clause IV(14) of the channel finance Agreement with VASPL, which allows Tata Capital to adopt a beneficial interpretation in case of a conflict between the terms of the sanction letter and the Channel Finance Agreement. In respect of the same, Tata Capital has stated that this is yet another mutually agreed term of the Channel Finance agreement between Tata Capital and VASPL. Thus, as per Tata Capital, VASPL had the option of not accepting the sanction terms and thereby, not availing a finance facility from Tata Capital. Accordingly, it has been submitted that this allegation of VASPL is erroneous and without any basis.

66. Tata Capital has also opposed VASPL's allegation that it arbitrarily imposed various charges *viz.* stock audit charges; charges levied on account of delay in furnishing security deposit; and; processing fees *etc*. Tata Capital has stated that these charges were imposed in accordance with the mutually agreed terms of the channel finance agreement, which was voluntarily executed by VASPL. Further, on allegation that Tata Capital arbitrarily encashing a bank guarantee, it has been submitted that it is a standard industry practice for lenders to enforce the security

provided by a borrower under one loan/ finance facility against a cross-default relating to another loan or finance facility availed by the same borrower.

67. Tata Motors Finance in its reply alleged that the Informant has no personal knowledge of the matter, thus, all submissions by the Informant are clearly hearsay, apart from being severely hit by delay and laches. It has also been submitted by Tata Motors Finance that the Informant has steadily attempted to improve upon her case by abusing the process of law and by engaging in a roving and fishing inquiry. It has also been contended by Tata Motors Finance that VASPL has purely raised commercial/ contractual disputes which raise no competition concerns.

68. Further, Tata Motors Finance has submitted that it is not a dominant entity with a limited market share and faces significant competition from multiple players including scheduled banks as well as other financial institutions. Tata Motors Finance has also stated that the decision as to whether or not to avail a financing facility and from whom to avail such facility is a complete prerogative of the dealer. Moreover, VASPL has not placed any material on record to demonstrate that Tata Motors Finance had put any limitation upon VASPL's ability to approach any other financier.



69. Tata Motors Finance further countered the allegations with respect to Clause 2.1.2 and Clause 8.1.4 of the Channel Finance Agreement dated 11.03.2016 between OP-3 and VASPL. The impugned clauses are reproduced below:

> *'..2.1.2 Grant of Facility: The Dealer further acknowledge that TMFL may at its sole and absolute discretion and without any prior intimation to the dealer reduce the credit limit and/or internal credit limit and the same shall be acceptable and binding upon the Dealer…'*

*'...8.1.4 Covenants of the Dealer: The Dealer agrees and confirms that no interest will be payable by TMFL on negative balance of the Dealer...'*

**(**Emphasis supplied**)**

Tata Motors Finance has stated that both the aforesaid clauses are standard industry clauses and also denied that the fact that channel financing facility is modified as per targets set by Tata Motors.

70. On allegation as to the imposition of the liability for the unpaid instalments of the customers on dealer, Tata Motors Finance submitted that the same was mutually agreed and dealer earned a referral incentive as stipulated in clauses 2 and 11 of the aforesaid agreement for referring the CV customer to Tata Motors Finance. Further, as per Tata Motors Finance, it also leads to distribution of risk and also ensures that dealers discharge their obligations under this arrangement by following up with customers and ensuring minimal defaults.

71. Lastly, Tata Motors Finance denied that it illegally withheld the amounts payable to the Dealership and deliberately pushed the Channel Finance Facility into overdue. It was submitted that both the arrangements are separate and any adjustments made are in relation to amounts relatable to the same arrangement.

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72. At the outset, Tata Motors submitted that the Informant's financial indiscipline, inability to show business foresight *etc.* were the key causes for termination of his dealership for passenger/ utility segment of vehicles. Further, as per Tata Motors, SCV Dealership business is currently in existence but has become practically non-operational because Kanchan Motors/ the Informant has defaulted in repayment of loan to SBI.

73. It has also been submitted by Tata Motors that the present Information before the Commission is yet another attempt by a disgruntled dealer of Tata Motors to agitate issues having no merits in terms of the applicable provisions of the present Act. Further, as per Tata Motors, allegations of the Informant at best raise a commercial and contractual dispute between two contracting parties, the appropriate remedy for which does not lie before this Commission. Tata Motors has also contended that the present Information has been filed with severe laches and delay.

74. Tata Motors has stated that automobile dealership is in the nature of a franchise agreement and it is well settled that restrictions contained in such agreements have not been considered as anti-competitive by competition authorities across the world. The rationale being that the dealer is viewed as a representative of the manufacturer in its territory of operation. Therefore, in order to maintain the manufacturer's consumer base, brand name and attract more business, the manufacturer may impose certain reasonable restriction as agreed under the dealership/ franchisee agreement.

75. Tata Motors has delineated the relevant market as the *'market for manufacture and sale of commercial vehicles in India'*. Further, on issue of dominance, Tata Motors has submitted that it is facing intense competition and its market share in the SCV segment has fallen from 63% in FY 2012-13 to 40% in FY 2016-17. While, Tata Motors's market share in overall commercial vehicle segment has fallen from 57% in FY 2012-13 to 43% in FY 2016-17. Similarly, Tata Motors's share in the PV segment had fallen from 6% in FY 2012-13 to 2% in FY 2015-16. Thus, Tata Motors has submitted that it does not enjoy a dominant position in the relevant market.

76. Further, Tata Motors contended that mere inclusion of allegedly onerous terms in the SCV Dealership Agreement does not, *per se*, amount to a contravention of the provisions of Section 4(2)(a)(i) of the Act, unless the Informant is able to demonstrate that: (i) Tata Motors has acquired dominant position in the SCV segment; (ii) that it has imposed certain conditions; and; (iii) that such conditions

are 'unfair or discriminatory'. However, the Informant in the present case has failed to meet the above-mentioned legal test.

77. Tata Motors has reiterated its defence (as submitted in Case No. 21 of 2019) in respect of clause 4(d) and clause 15(c) of dealership Agreement that required the dealer to obtain prior approval of Tata Motors before permitting any financing company to be positioned at or to operate from the dealership premises and required the authorized dealer to seek a formal 'No Objection Certificate' from Tata Motors before starting any new business activity, respectively.

78. Further, in respect of the allegation that Clause 24 (claims settlement) and Clause 27 (consumer dispute) contravene the provisions of Sections 4(2)(a)(i) and 4(2)(d) of the Act, Tata Motors has submitted that these are standard clauses reflecting the commercial understanding between the parties and are meant to safeguard the reputation of Tata Motors's franchise.

79. Tata Motors has also stated that the Informant has made a bald and unsubstantiated allegation that Tata Motors prevented Kanchan Motors from reducing the stock of vehicles underneath the garb of 'No stock correction' and threat of stoppage of supply. Further, as per Tata Motors, under 'No Stock Correction' it incentivizes the dealer (reduced net dealer price) to ensure that their off-take of vehicles in a month matches the retail sales in the previous month. Tata Motors also denied the allegation that it exercised discretion in issuing comfort letter and compelled Kanchan Motors to raise finance from Tata Capital or Tata Motors Finance.

80. In respect of the allegation relatable to contravention of the provisions of Section 3(4) of the Act, reiterating the stand taken in its response in Case No. 21 of 2019, Tata Motors defended the practice as to territorial restriction on the dealership; restriction on dealing with the products of a competitors and its right to determine adequacy of the dealership premises and infrastructure; requirement of obtaining the prior consent of Tata Motors before appointing any sub-dealer, stockist *etc.*

81. Further, in respect of the allegation as to tie-in arrangement (that Tata Motors coerced the dealers to order the vehicles according to the list provided by Tata Motors), it was submitted that the Informant has failed to establish the legal standard for tie-in arrangement. Moreover, as per Tata Motors, the purpose was also to ensure reconciliation and consolidation of all records (all orders placed through phone, e-mail *etc.*) at one place. Tata Motors rebutted the allegation as to the tie-in arrangement of insurance using TBSS Portal. It submitted that TBSS portal seeks to enhance customers' convenience and provides customers the option to choose from eight different insurance companies along with the benefits of discounted rates and the convenience and efficiency of purchasing such insurance policies at the point of sale along with the vehicles.

82. Tata Motors has denied the allegation that its discount control policy operates as resale price maintenance. It was submitted that as per clause 13(c) of the dealership Agreement, the dealer was free to resell the products and/ or services at prices lower than the maximum retail prices. Moreover, it also denied the allegation of the Informant that it did not buy-back the stocks remaining with Kanchan Motors after termination of the dealership. Tata Motors submitted that it provides 90-day notice period to the dealer to liquidate unsold stocks either to the customers or to the other dealers of Tata Motors.

83. Further, in respect of the allegations as to the passenger/ vehicle's dealership of the Informant, Tata Motors has submitted that it is a minuscule player in the relevant market of *'market for manufacture and sale of passenger vehicles in India',* with a market share of 7% in FY 2018-19. Thus, in absence of dominance in the relevant market, the issue as to abuse of dominant position does not arise.

84. Lastly, Tata Motors has stated that its conduct has strengthened its dealership network, fostered strong inter-brand competition and benefitted consumers at large.

85. Tata Capital in its response stated that the Informant is a habitual defaulter and is resorting to frivolous and vexatious litigation to avoid its repayment liabilities.

86. In relation to abuse of dominant position, Tata Capital has submitted that the Informant has failed to meet the basic threshold of proving dominance. Moreover, as per Tata Capital, borrowing from it is merely an option and not an obligation on the dealer and the Informant has borrowed funds worth Rs. 22 Crores from other lenders as well. It has also been stated that at the initial instance, channel financing facility was availed by Kanchan Motors/ the Informant without a whisper of unfair or one-sided terms and condition of the Agreement.

87. It has also been stated that channel finance facility account is merely a credit account and not a standard savings account. Thus, Tata Capital is not required to pay any interest to the borrower in case of negative balance. Further, as per Tata Capital, the interest charged by it to Kanchan Motors was at competitive rate and charging of penal interest, stock audit charges, *ad hoc* fee/ processing fees/ temporary OD limit fee *etc*. from a borrower is a standard banking practice.

88. Lastly, Tata Capital has also stated that determination of default committed by Kanchan Motors is in accordance with the established banking practices and is guided by the directions issued by RBI including its Master Direction for NBFCs. Moreover, 109 letters, as alleged by the Informant, were sent only after demand notice under Section 13(2) of the SARFAESI Act, 2002 was published in the newspapers and that sending such letters do not contravene the provisions of Section 3(4) of the present Act.

89. Tata Motors Finance in its response stated that the dispute is purely commercial/ contractual and raises no competition issues. It was submitted that it is a miniscule player in the corporate loans market. Further, the alleged clauses in the Channel Financing Agreement and Dealership Agreement are standard industry practices and applicable guidelines and the sanctioned terms are disclosed to the borrower at the very outset of loan Agreement.

90. It was further stated that the present Information suffers from delays and the main grievance of the Informant is in respect of termination of dealership by Tata Motors. It has also been stated that the dealer is involved in bitter litigation against the OPs since termination of its PV's dealership. Moreover, as per Tata Motors Finance, the clauses set out in the Channel Finance Agreement are standard industry clauses and the question of exercising abuse of any dominant position does not arise as it operates in an extremely competitive environment.

91. Lastly, with regards to dealer's liability clause for non-payment of installments by customers, it was submitted that the dealer suffers a pre-determined and capped penalties according to the stipulated clauses in the Agreement, however, Tata Motors Finance itself takes major burden of such loss. The dealer itself receives incentives, thus, sharing of risk is clearly an equitable arrangement.

**Analysis**

92. The Commission has carefully considered the material available on record.

93. Before examining the issues projected in the Informations, the Commission deems it appropriate to deal with two preliminary objections raised by the OPs.

94. It was contended on behalf of the OPs that disputes involved in the present cases are purely contractual and commercial in nature involving no competition concerns and therefore, the Commission does not have the jurisdiction to examine the issues raised by the Informants in the present batch of cases.

95. Having considered the plea and bestowing thoughtful consideration thereon, the Commission is of the considered opinion that the plea that issues raised are contractual and commercial in nature and therefore, the disputes raised by the Informants ought to have been filed before appropriate forum and not before the Commission, is misconceived and misdirected. The provisions of the Act which prohibit abuse of dominant position *inter alia* categorically envisage imposition of

unfair or discriminatory condition/ price in purchase or sale of goods or service, as abusive conduct. That being so, entering into contractual arrangement between the parties is clearly implicit else the issue of purchase or sale of goods or service, would not arise. It cannot be gainsaid that more often than not a dominant undertaking, in abuse of its dominant position, would impose unfair or discriminatory conditions/ price upon the parties who are contracting with it besides indulging in other conduct relating to or surrounding/ neighbouring the contractual arrangement. If such a plea is accepted, the dominant undertakings would virtually acquire an immunity from anti-trust actions. This was neither the intent nor purport of the legislature and the same is clearly reflected and can be gleaned from the statutory scheme as engrafted in Section 4 of the Act. Resultantly, the Commission has no hesitation in holding that merely because disputes raised are contractual in nature and thereby Commission does not have the jurisdiction, is devoid of any force and the same is accordingly rejected.

96. It needs no reiteration that the scope of the Act empowers, rather obligates, the Commission to eliminate practices having adverse effect on competition, promote and sustain competition, protect the interests of consumers and ensure freedom of trade carried on by other participants. In this statutory framework, the preliminary objection raised by the OPs does not have any bearing upon the powers and scope of the Commission to investigate, assess and remedy any anti-competitive/ abusive practices of a dominant undertaking. Accepting such plea would render the powers of the Commission in regulating dominant firms, virtually redundant and nugatory. Moreover, the allegations as highlighted in the Informations, are not merely restricted to the nature of the clauses of Agreements but also pertain to the conduct of the OPs which falls squarely within the domain of the Commission if the same are found to be dominant in any relevant market.

97. The other preliminary objection raised by the OPs pertains to alleged laches and delays on the part of the Informants in approaching the Commission raising the issues highlighted in the Information. At the outset, the Commission notes that the scheme of the Act does not envisage or provide any period of limitation for the

obvious reason that the inquiries conducted by the Commission are *in rem* in nature and not in the nature of determining a *lis* between two competing parties and thereby acquiring characteristics of an *in personam* dispute. It also needs no emphasis that dynamic nature of markets makes application of plea of limitation to anti-trust inquiries as wholly irrelevant and ill-suited. In a changing and evolving market scenario, it cannot be determined with any exactitude as to when an anti-competitive behaviour commenced or morphed into another type of behaviour and when such conduct was terminated. It is also of relevance to point out that the concept of *locus standi* in instituting anti-trust actions has been completely negated and rejected and the issue has also been authoritatively settled by the Hon'ble Supreme Court of India. When the requirement of *locus standi* is not *sine qua non* for initiation of inquiry, it is futile to agitate delays on the part of the Informants or as contended by Tata Motors Finance that the Informant had no personal knowledge of the matter.

98. It is observed that recently the Hon'ble Supreme Court of India *vide* its judgement dated 15.12.2020 passed in *Samir Agrawal* v. *Competition Commission of India and Others*, has settled the issue related to *locus* of the Informant under the Act by holding that "….*when the CCI performs inquisitorial, as opposed to adjudicatory functions, the doors of approaching the CCI and the appellate authority, i.e., the NCLAT, must be kept wide open in public interest, so as to subserve the high public purpose of the Act*…". Thus, the contention of OPs challenging the *locus* of the Informant, is without any merit and is rejected. It needs no emphasis that proceedings before the Commission are inquisitorial and *in rem* in nature and any member of the public can bring any anti-competitive behaviour to the notice of the Commission by filing an Information as per the provisions of the Act and the Regulations framed thereunder. No doubt, after bringing such conduct to the notice of the Commission, the statutory mechanism would work as provided under the Act and during the subsequent inquiry/ investigation process, if any, by very nature of the things, the role of the Informant would be confined to such assistance, as may be required by the Commission or the Office of the Director General, as the case may be. In such proceedings, it would be wholly out of scheme of the Act if

the Informant is allowed to consider itself as *dominus litis* in such *in rem* proceedings.

99. The concept and application of principles of limitations or delays/ laches in instituting the inquiries at the hands of the information provider is wholly out of context in the case of inquisitorial proceedings as against the adversarial proceedings, as provided under the law.

100. This is, however, not to suggest that the Informants can walk in at any stage by raking up belatedly their cause. The Commission is fully entitled to examine the justifications for approaching the Commission at a belated stage and on a holistic examination of the reasons and in light of the duty enjoined upon it to eliminate practices having adverse effect on competition, promote and sustain competition, protect the interests of consumers and ensure freedom of trade; it may proceed with the inquiry or decide not to proceed in the matter if the issues have become stale due to lapse of time or otherwise inconsequential due to change in market dynamics and scenario. Pursuing such matters would result in culpable wastage of public resources with no tangible outcomes. In sum, such assessment has to be done in the peculiar facts of each cases taking into consideration the larger goal of market correction and the harm likely to be caused to the consumers and competitive process.

101. In the facts of the present cases, it is not doubt true that the dealership agreement between the Informant and Tata Motors was last renewed on 11.10.2011 and the same was terminated w.e.f. 24.08.2017. Thus, the Information which was filed on 19.05.2019 cannot be the ground to throw out the Information *in limine* particularly when similar allegations have also been made in the subsequent case *i.e.* Case No. 16 of 2020 where the dealership agreement for commercial vehicles between the Informant and Tata Motors was signed on 10.02.2017 to remain effective from 01.04.2016 to 31.03.2021, as provided in the agreement. Thus, this is a subsisting agreement at the date of filing Information. No doubt the dealership agreement for passenger vehicles between this Informant and Tata Motors was signed on

28.02.2014 which was to remain in force till 31.03.2017, which, as noted previously, was terminated on 04.07.2016. Needless to mention, the Commission is not inclined to examine this agreement and the conduct emanating therefrom or surrounding thereto at this belated stage as also for the reason that OPs command no significant market power in the passenger vehicles market.

102. Having dealt with the jurisdictional and preliminary pleas raised by the OPs, the Commission proceeds to examine the issues projected by the Informants on merits within the framework of the Act.

103. Before examining the issues on merits, the Commission is constrained to note that a fusillade of challenge has been laid to the various clauses of the agreements and the conduct emanating therefrom or antecedent thereto by the Informants in an omnibus manner. In this backdrop, having considered the dominance of Tata Motors in the relevant market, as discussed in the succeeding paras, the Commission deems it appropriate to confine the investigation with respect to the clauses of the dealership agreements and conduct in respect of commercial vehicles as detailed in the latter part of this order, executed between the dealers and Tata Motors, in terms of the provisions contained in Section 4 and Section 3(4) of the Act. It is 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, which do not appear to command any significant market power in the verticals where they are operating.

104. In this backdrop, it is observed that the Informant(s) are primarily aggrieved of the fact that the Tata Motors has imposed unfair terms and conditions in the dealership agreement for commercial vehicles, as detailed in the Information(s), in abuse of its dominant position in contravention of the provisions of Section 4 of the Act.

105. In this regard, first the relevant market needs to be defined and thereafter the dominance of the enterprise or group concerned has to be ascertained therein before proceeding any further to examine the alleged abusive conduct.

106. 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 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.

107. 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 on Section 19(5) of the Act.

108. 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 and need for secure or regular supplies or rapid after-sales services.

109. 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, price of goods or service, consumer preferences, exclusion of in-house production, existence of specialized producers and classification of industrial products.

110. Thus, in any case of alleged abuse of dominant position, delineation of relevant market is important as it sets out the boundaries of competition analysis. Proper delineation of relevant market is necessary to identify in a systematic manner, the

competing alternatives available to the consumers and accordingly the competitive constraints faced by the enterprise under scrutiny. The process of defining the relevant market is in essence a process of determining the substitutable goods or services as also to delineate the geographic scope within which such goods or services compete.

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

112. In relation to the relevant product market, the Commission observes that Tata Motors is engaged *inter alia* in manufacturing of commercial vehicles. It is observed that commercial vehicles are separate from other category of vehicles such as passenger or utility vehicles on issues such as speed, mileage, appearance, engine capacity, usage *etc*. Thus, considering the factors as enshrined in Section 19(7) of the Act, such as physical characteristics, end use, consumer preference, existence of specialised producers *etc.*, the relevant product market in the present matter appears to be *'market for manufacture and sale of commercial vehicles'*.

113. As regards the relevant geographic market, the conditions of demand and supply for commercial vehicles do not differ from one region to another and are fairly homogeneous throughout India. Thus, the relevant geographic market in the instant case may be taken as 'India'.

114. Accordingly, the relevant market in the present matter may be *prima facie* delineated as *'market for manufacture and sale of commercial vehicles in India'* to examine the allegations made in the Informations.

115. As regard, as the dominance of Tata Motors in the *supra* delineated market, the Commission observes that it is discernible from the Annual Report 2019-20 of Tata Motors itself that it enjoys a market share of 43.0% in the commercial vehicle segment. In this market scenario, it cannot be, at *prima facie* stage, ruled out that Tata Motors enjoy a high market share as compared to the competing

manufacturers such as Mahindra & Mahindra, Ashok Leyland and VECV-Eicher *etc.*

116. The dominant position of Tata Motors, in the aforementioned market, is also substantiated from the Tata Motor's Annual Report for 2018-19 wherein the following has been noted:

> *'...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...'*
>
> (Emphasis added)

117. When the aforesaid market structure and share is considered, it seems that Tata Motors enjoys *prima facie* a dominant position in the *'market for manufacture and sale of commercial vehicles in India'* which enables it to enjoy a position of strength to operate independently of the competing forces prevailing in the market and affect its competitors or consumer in its favour.

118. In the aforesaid backdrop, the Commission deems it appropriate to analyse the various allegations levelled against Tata Motors in the commercial vehicle segment are concerned, which are stated to be in contravention of the provisions of Section 4 of the Act.

119. Specifically, the Commission notes the allegation made by the Informant(s) 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.

120. Tata Motors in its response has denied the allegation by stoutly contending that it does not set off-take related targets for its dealers. It was, however, pointed out that it expects its dealers to off-take minimum quantities of commercial vehicles every month to maintain a reasonable inventory of stocks at the dealerships for meeting expected/ unexpected demand from the market. Further, Tata Motors has also negated the allegation that it has coerced the dealers to copy-paste the list of vehicles provided by Tata Motors on dealer's letter head and sending back the same to the Tata Motors. It has submitted that the purpose was to consolidate the orders placed by VASPL from time to time (through e-mails, phone calls or even in in-person meetings with Tata Motors's sales team) during a month into a single document. Thus, the same was done for internal record-keeping, internal accounting purposes and for operational convenience.

121. Here, the Commission notes that VASPL has provided a complete trail of the e-mails as evidence that *ex facie* suggest that Tata Motors indulged in practice of coercing the dealers to bill vehicles as per its own needs and requirement. The same may result in swarming dealers with a stock of slow-moving vehicles and may further impair the financial health of the dealer. In such a disputed scenario of foundational facts, the Commission is of the view that such practice *prima facie* appears to be an unfair imposition upon the dealers besides being in the nature of a supplementary obligation imposed upon the dealers, in contravention of the provisions of Section 4(2)(a)(i) and 4(2)(d) of the Act and the matter requires an in depth investigation to ascertain the factual basis.

122. The Commission next notes the allegations made by the dealers that the dealership agreement provides that 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. In this regard, Tata Motors in its response defended the said clause on the basis that it does not seek to impose a blanket restriction on the dealer for seeking an NOC. However, looking at the overarching restriction and the actual implementation of

such clauses, the Commission has no hesitation in holding that the same appears to be unduly restrictive and expansive in its coverage and interferes with the freedom of trade. Consequently, the Commission is *prima facie* of the opinion that such clause is an unfair imposition upon the dealers besides resulting in 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.

123. As regards the allegations that Tata Motors obligated dealers to raise finance/ loan from NBFCs such as Tata Capital and Tata Motors Finance and did not readily issue comfort letters for availing financing facility from other lenders, it is observed that in response to the Commission's query to VASPL as to whether it was free to avail finance , including channel finance facility, from other financial institutions such as banks/ NBFCs, VASPL responded by stating that dealers can avail the term loan and other facility from other financial institutions, however, the loan facility can be availed subject to the Comfort Letters issued by Tata Motors. From the response and the documents filed therewith, the Commission is unable to decipher any such imposition by TATA Motors. VASPL has alluded to an e-mail dated 30.01.2015 sent by it to Tata Motors to support its allegation that Tata Motors imposed such requirement upon dealers and VASPL requested Tata Motors to issue a Comfort Letter for availing facility from SBI. On the contrary, Tata Motors pointed out that there is nothing on record to indicate that it compelled its dealers to avail finance facility from Tata Capital or Tata Motors Finance or VASPL asked for any Comfort Letter from Tata Motors, as this e-mail of VASPL merely states that '...*SBI asking for Comfort Letter'* . There is nothing on record to show that Tata Motors imposed such requirement upon dealers for availing finance facility from other sources. Further, from the response of Tata Motors, it is evident that VASPL itself has outstanding debts to various lenders in the following ratio: PNB (38%), SBI (12.23%), Tata Capital (20%), Tata Motors Finance (12%). In such a diversified outstanding debt portfolio of VASPL itself and in the absence of any material showing imposition, as alleged, in this regard by Tata Motors, the allegations made by VASPL do not appear to be well founded. Thus, the allegation of the Informant(s) on this count remains unsubstantiated and fails.

124. Lastly, the Commission notes that the Informant in Case No. 16 of 2020 has also alleged that the dealership agreement of every dealer with Tata Motors restricts and confines to the allotted territory. The said territory could be extended or curtailed simply by oral instruction from Tata Motors. It has been highlighted that such clause in the case of the Informant had specified the Informant's territorial limit to the districts of Nashik only. Further, the Informant has alleged that *vide* e-mail dated 24.11.2017 Tata Motors restricted the Informant from selling vehicle in Jalgaon district of Maharashtra. Accordingly, the Informant has alleged that the same is in nature of 'exclusive distribution agreement' as mentioned under the provisions of Section 3(4)(c) of the Act.

125. Having considered the clause and the allegations made by the Informant in connection therewith, the Commission notes that such clause has the potential to create barriers to new entrants in the restricted market besides having the consequence of foreclosing of competition by hindering entry into the market. No tangible accrual of benefits to consumers or improvements in distribution have been shown by Tata Motors. It was, however, contended by Tata Motors that in the absence of such a clause discouraging the dealers to actively sell outside the allocated territories, the dealers would not be incentivized to make investment in developing the dealership business. Moreover, it was argued that such restrictions enhance inter-brand competition as the authorized dealers would be better positioned to effectively compete with the dealers appointed by the other manufacturers within the same territory.

126. Having examined the rival submissions on the point, the Commission is of the considered opinion that the defence raised by Tata Motors requires a detailed investigation to ascertain the effectiveness, veracity and validation of this plea. In the considered view of the Commission, such restriction is *prima facie* in violation of the provisions of Section 3(4)(c) of the Act.

127. Based on the foregoing, the Commission is of the view that *prima facie* a case of contravention of the provisions of Section 3(4) and Section 4 of the Act is made out against Tata Motors, as detailed hereinabove in this order and the matter requires to be investigated.

128. In view of the foregoing, the Commission directs the DG to cause an investigation to be made into the matter under the provisions of Section 26(1) of the Act. The Commission also directs the DG to complete the investigation and submit the investigation report within a period of 60 days from the receipt of this order.

129. It is also made clear that nothing stated in this order shall be tantamount to a final expression of opinion on the merits of the case and the DG shall conduct the investigation without being swayed in any manner whatsoever by the observations made herein.

130. Before parting, it is noted that Tata Motors and Tata Capital have filed their submissions/ response/ affidavit in two versions *viz*. confidential as well as non-confidential. The confidential versions were kept separately during the pendency of the proceedings. 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 and the DG shall be at liberty to examine the confidentiality claims in accordance with law.

131. It is seen that VASPL has also moved an application dated 08.09.2020 under the provisions of Section 45 of the Act against OPs for furnishing of alleged false information on affidavit. In view of the proposed investigation, no further or other directions are required to be passed in this regard as such factual aspects can only be determined and ascertained after a detailed investigation. Resultantly, the application stands disposed of by OPs being premature.

132. The Secretary is directed to send a copy of this order along with the material available on record to the DG forthwith.

**Sd/-**

**Ashok Kumar Gupta**
**(Chairperson)**

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

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

**New Delhi**
**Date: 04/05/2021**