

Debabrat Mishra v. Daimler Financial Services India Private Limited and Ors (MANU/CO/0007/2017)

Decision Date: 02.02.2017

Key Words: *abuse of dominant position; vertical agreement; anti competitive agreement*

Issue: Whether there was abuse of dominant position by a lease financing company for luxury cars and whether clauses in the lease requiring certain parties to repair the luxury car amounted to an agreement causing AAEC?

Rule: Sec. 3(4)(a) and (b) and Sec. 4(2)(a)(b)(c) and (e) of the Competition Act, 2002

The Informant in the present case alleged that the Opposing Parties had (i) abused their dominant position under Sec. 4(2)(a)(b)(c) and (e) of the Competition Act, 2002 (Act) that the vertical agreement entered into between OP-2 and OP-3 violate Sec. 3(4)(a) and (b) read with Sec. 3(1) of the Act.

In the present case, OP-2 and OP-3 through OP-1 provide the service of lease/financing for the vehicles manufactured by OP-2 to customers. The informant alleged that certain clauses of the lease agreement entered into with OP-1 are abusive by virtue of the dominant position enjoyed by the OP's.

In order to analyze whether OP-1 had a dominant position in the market, the Commission determined that the relevant market for the same would be provision of lease financing services for luxury cars in India. Further based on this delineation and the information available in the public domain, the commission determined that there are numerous players in the relevant market, thus making it improbable that OP-1 could have operated independently of the market forces in the relevant market. Thus it held that since OP-1 does not have a dominant position, the question for abuse under the same does not arise.

Further, the informant claimed that OP-2 and OP-3 form a part of a vertical chain and the agreement entered with them, has deprived the Informant of availing the services of independent repairers, thereby falling foul of Sec. 3(4) of the Act. The informant alleges that

since he had “no other alternative but send the vehicle to the workshop of the OP’s and buy the spare parts from the OP’s” he incurred higher repair costs and thus is causing AAEC. Sec. 3(4) deals with *“any agreement amongst enterprises or persons at different stages or levels of the production chain in different market... shall be an agreement in contravention of sub-section (1) if such agreement causes or is likely to cause an appreciable adverse effect on competition in India.”*

In response to this the Commission notes that the car, being a luxury car, was highly expensive. Further since the lessee was not the owner of the car, it was only fair to impose such a condition to safeguard the commercial interest of the lessor who also owns the car. Thus holding that there was no violation of Sec. 3 either.

In conclusion, the Commission ordered closure of the case under Sec. 26(2) of the Act.

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