



Driving towards Competition Compliance - CCI and the Automobile Sector

24 January 2020

This analysis covers:

1	Overview of the automobile sector in India	2
2	Competition law issues in the automobile sector	2
3	Cartel enforcement	3
4	Competition law risks in the changing landscape	4
5	Conclusion	4

1 Overview of the automobile sector in India

Over the last decade, the automobile sector in India has witnessed new players, consolidation, inflow of foreign investment and new distribution models for sale of vehicles. However, recently the sector is showing signs of slowdown with dwindling sales and revenue growth. This slowdown can be attributed to the technological shift and growing popularity of electric and hybrid cars, on-demand rides and autonomous driving. The sector is also witnessing increased scrutiny of compliance with environmental and safety standards for vehicles.

2 Competition law issues in the automobile sector

From an enforcement perspective, the sector has historically been assessed for vertical restraints (i.e., exclusive dealing, resale price maintenance¹ (RPM), tie-in arrangements and refusal to deal) along with cartels and abuse of dominance. Competition law-related risks that companies in the automobile sector face arise from various factors, such as:

- a. Manufacturers restricting over the counter sale of spare parts and tools by their dealers.
- b. Collaborations between Original Equipment Manufacturers (OEMs) and Original Equipment Suppliers (OES) leading to anti-competitive exchange of information or potential imposition of vertical restraints by OEMs on the OES.
- c. Tie-in arrangements requiring customers to purchase complementary products such as sound systems, Compressed Natural Gas (CNG) kits, etc. along with the vehicle.

The first definitive finding of RPM was in the case of *Hyundai Motor India (Hyundai)*². The Competition Commission of India (CCI) imposed a penalty of INR 87 crores (USD 12.24 million) on Hyundai for imposing RPM by setting and implementing a 'Discount Control Mechanism' on its dealers through mystery shopping agents. Hyundai was also found to *prima facie* impose tie-in arrangements which mandated that its dealers use recommended lubricants.

The automobile industry has been under scrutiny from the CCI since the substantive provisions of the Competition Act were notified. The CCI has assessed a wide spectrum of cases in the automobile sector leading to the development of significant jurisprudence in this sector. The CCI's intervention has benefitted consumers on various issues such as cartels, vertical restraints and abuse of dominance. This analysis highlights the key issues in the automobile sector from a competition law perspective in India.

¹ RPM includes an agreement to sell goods on the condition that the price to be charged on resale by the purchaser must be the price stipulated by the seller, unless stated that a lower price may be charged.

² RPM includes an agreement to sell goods on the condition that the price to be charged on resale by the purchaser must be the price stipulated by the seller, unless stated that a lower price may be charged.

Similarly, in *Toyota & Ors. v. Competition Commission of India*, the erstwhile Competition Appellate Tribunal (**COMPAT**) affirmed the CCI's decision that the practice of requiring dealers to source spare parts only from OEMs or their approved vendors, restricting access to spare parts and diagnostic tools, cancelling warranties if cars were repaired by independent repairers, amounted to an exclusive supply and distribution agreement and refusal to deal. The CCI relied upon the inability of vehicle owners to switch to competing spare part providers after the purchase of the vehicle to find the OEMs dominant in the aftermarket. Subsequently, the COMPAT found 14 car manufacturers to be dominant in the aftermarket for their own genuine spare parts and after-sale services and penalised them for abusing their dominance in this secondary market.

Besides these, the CCI is currently dealing with two ongoing investigations in the automobile sector against Maruti Suzuki India Limited (**Maruti**) and Honda Motorcycle and Scooter India Private Limited (**Honda**) on issues pertaining to vertical restraints and abuse of dominance.

The investigation against Maruti was initiated in 2019 on account of an anonymous e-mail sent by a purported distributor alleging anti-competitive discount control policy. The CCI *prima facie* found that Maruti was sending a 'Mystery Shopping Audit Report' seeking clarification from dealers found violating its discount control policy. The errant dealers were penalised by Maruti for providing additional discounts than the permitted levels. The CCI preliminarily found this to be anti-competitive and amounting to RPM.

In the Honda investigation, the CCI *prima facie* found that Honda was abusing its dominant position and imposing vertical restraints through various practices, such as:

- unfairly restricting the sale of oil, lubricants and, batteries;
- requiring mandatory purchase of accessories and merchandise items;
- forcing the dealers to purchase slow-moving models of cars, to meet its own internal targets;
- making certain purchases contingent upon the purchase of items from a specific entity;
- terminating dealerships without prior notice.

The CCI preliminarily found these practices of Honda to be anti-competitive in nature, as they pertained to RPM, discount control mechanisms, allocation of markets for the sale of goods, exclusive supply agreements and refusal to deal.

3 Cartel enforcement

The office of the Director General, the investigative arm of the CCI, has been investigating various domestic and global automobile companies for alleged anti-competitive practices having an appreciable adverse effect on competition in India. The leniency regime enables enterprises and individuals to avail a reduction in penalty for anti-competitive conduct by proactively assisting in cartel enforcement. Enterprises and individuals who provide vital disclosures by submitting evidence of a cartel including applicants who provide added value to evidence that is already in possession of the CCI (i.e., subsequent applications), may benefit from the leniency regime.

The CCI has been proactively conducting public awareness programs about its leniency regime to encourage disclosure of information on anti-competitive practices. This has led to a surge in the number of leniency applications before the CCI, many of which are in the automobile and automotive spare parts sector. Recently, the CCI passed its first order based on a leniency application in the automobile sector, where it imposed a penalty of over INR 17 crores (USD 2.39 million) on Japan's JTEKT Corporation and its Indian subsidiary JTEKT Sona Automotive India Limited for colluding with NSK Limited, Japan for determining prices, allocating markets, coordinating bid responses and manipulating the bidding process of OEMs. This decision demonstrates the CCI's willingness to act strongly against cartels and reduce penalties for those enterprises and individuals forthcoming with upfront information.

4 Competition law risks in the changing landscape

The automobile sector is witnessing innovative collaborations between OEMs. One such collaboration which we recently witnessed in the Indian market was between Toyota Motor Corporation (**Toyota**) and Suzuki Motor Corporation (**Suzuki**). This collaboration involved Toyota and Suzuki acquiring minority stakes in each other. Their cross-holding would allow the two companies to pool their resources to develop new technologies and also cross-badging³ that would enable them to sell each other's products in the Indian and overseas markets.

However, such close cooperation between rival firms may potentially result in anti-competitive collusion and companies entering into such innovative collaborations must be careful to ensure that they do not violate competition law in India. To mitigate any competition law concerns, any collaboration between automobile companies must demonstrate '*proved efficiencies*' in order to be compliant with the provisions of the Competition Act, 2002.

5 Conclusion

The CCI periodically conducts advocacy initiatives to engage with stakeholders in the automobile sector to enable them to imbibe best practices and provide feasible and practical solutions to existing competition law issues that they face. It would, therefore, be prudent for companies in the automobile sector to undertake consistent and periodic audits of their existing business practices to ensure that their conduct, at the horizontal and vertical levels, is compliant with competition laws in India.

If you require any further information about the material contained in this newsletter, please get in touch with your Trilegal relationship partner or send an email to alerts@trilegal.com. The contents of this newsletter are intended for informational purposes only and are not in the nature of a legal opinion. Readers are encouraged to seek legal counsel prior to acting upon any of the information provided herein.

³ Cross-badging or badge engineering is a strategy by OEMs to sell the same car with minor changes in design, etc. This helps the OEMs to benefit from each other's strengths and increase their product portfolio.