

**FUELLING COMPLIANCE WITH COMPETITION
COMPETITION COMMISSION OF INDIA AND THE AUTOMOBILE SECTOR**

- *Soumya Hariharan**, *Nandita Sabai***,
*Sakshi Agarwal****, *Akrathi Shetty*****

I. INTRODUCTION

The automobile sector has undergone significant consolidation, witnessed the entry of new players and joint ventures amongst automobile companies and proliferation of innovative distribution models for sale of automobiles in India. Antitrust regulators across the globe have undertaken detailed scrutiny of the automobile sector, owing to its significant economic value, distribution models, aftermarkets¹ and consumer interest. From an enforcement standpoint, the CCI has assessed the automobile sector for cartels, anti-competitive vertical arrangements, i.e., exclusive dealing, resale price maintenance (**RPM**), tie-in arrangements and refusal to deal, and abuse of dominance. The CCI has imposed significant penalties on automobile companies found guilty of indulging in anti-competitive conduct.

The CCI has assessed approximately 40 combination cases until 2019, under its merger control regime, covering a number of players such as automobile component manufacturers, Original Equipment Manufacturers (**OEMs**), Original Equipment Suppliers (**OES**), manufacturers of tyres, etc. While assessing the automobile sector from a merger control perspective, the key parameters considered by the CCI include, market shares of the parties to the combination, number of players, existing and potential vertical relationships, vertical foreclosure, nature of operations, and overlaps between the parties, etc.

* Partner, Competition Law, Trilegal.

** Senior Associate, Competition Law, Trilegal.

*** Senior Associate, Competition Law, Trilegal.

****Associate, Competition Law, Trilegal.

¹ The market for supply of spare parts, including the diagnostic tools, technical manuals, catalogues, etc., and provision of after sale services, including servicing of vehicles, repair and maintenance services.

II. RISKS

The key risks that companies in the automobile sector are likely to face may result from manufacturers restricting their dealers from selling their spare parts, tools, etc., over the counter, or collaborations between OEMs and OES leading to exchange of information that could potentially result in imposition of restrictive clauses. Tie-in arrangements requiring customers to purchase products other than the vehicle itself, such as, sound systems, Compressed Natural Gas (**CNG**) kits, etc., may also be considered anti-competitive. Further, procurement of automobile components by OEMs could lead to collusion amongst the common OES. OES providing parts to multiple OEMs may act as conduits of information exchange amongst the OEMS. Other competition law contraventions that are likely to arise in the automobile sector include price-fixing and bid rigging for various products in the automobile sector. The Director General (**DG**)² has been investigating various domestic and global automobile companies for their participation in alleged anti-competitive practices having an appreciable adverse effect on competition (**AAEC**) in India.³ To date, the CCI has scrutinised approximately 100 cases in this sector, most of them having arisen on account of leniency applications.⁴

Several automobile component manufacturers, specifically OEMs, have availed the benefit of India's lesser penalty regime by filing leniency applications with the CCI. Section 46 of the Act and the Competition Commission of India (Lesser Penalty) Regulations, 2009 (**Leniency Regulations**), govern the leniency regime in India. Companies and individuals who provide vital disclosures by submitting evidence of a cartel and subsequent companies and individuals who provide 'added value' to the evidence that is already in possession of the CCI, may benefit from the leniency regime. The reduction in penalties that may be awarded to such companies and individuals depends on the quality of evidence submitted and timing of the disclosure made to the CCI.

² The investigative arm of the CCI.

Recently, the CCI passed its first order based on a lesser penalty application in the automobile sector, where it imposed a penalty of approximately INR 17 crores⁵ on Japan's JTEKT Corporation (**JTEKT**) and its Indian subsidiary JTEKT Sona Automotive India Limited (**JSAI**) for colluding with NSK Limited, Japan (**NSK**) and its Indian subsidiary Rane NSK Steering Systems Ltd. (**RNSS**).⁶ The cartel pertained to the supply of Electric Power Steering Systems (**EPS Systems**) to three automotive manufacturers, by means of directly or indirectly determining price, allocating markets, co-ordinating bid response and manipulating the bidding process. NSK/ RNSS received complete immunity amounting to a 100% reduction in penalty, as the first leniency applicant. JTEKT/JSAI as the second leniency applicant availed a 50% reduction in penalty on account of it providing significant added value to the evidence already in possession of the CCI to establish the existence of the cartel in India. Notably, the conduct of former employees was also investigated by the CCI for their role in the cartel at the time when the contravention was committed. This case signifies the CCI's willingness to conduct an in-depth scrutiny, including investigating former employees, when assessing contraventions against the Act. Companies and individuals in the automobile sector may benefit from the leniency regime by availing reduction in penalty for anti-competitive conduct and pro-actively assisting the CCI in cartel enforcement.

The National Company Law Appellate Tribunal (**NCLAT**) which is the appellate tribunal has also assessed certain cases in the automobile sector, dealing with vertical restraints imposed through RPM by limiting discounts offered by dealers and abuse of dominance by OEMs⁷ in the secondary market for repairs and maintenance services, which are currently pending on appeal to the Hon'ble Supreme Court of India (**SC**).

³ Veena Mani, *CCI issues 100 notices to auto parts firms to investigate global cartels*, BUSINESS STANDARD (Mar. 5, 2018, 9:40 PM IST), https://www.business-standard.com/article/companies/cci-issues-100-notices-to-auto-parts-firms-to-investigate-global-cartels-118030501169_1.html.

⁴ Annual Report, COMPETITION COMMISSION OF INDIA, 14 (2017-2018).

⁵ USD 2.35 million.

⁶ *In Re: Cartelization in the supply of EPS Systems*, Suo Motu Case No. 07 (01) 2014.

⁷ Assessed by the erstwhile COMPETITION APPELLATE TRIBUNAL (COMPAT).

III. GLOBAL ISSUES

The CCI possesses extraterritorial jurisdiction to inquire into anti-competitive conduct taking place outside India. Section 32 of the Act enables the CCI to enquire into activities having an AAEC in India. The CCI in its investigation of the automobile sector has exercised its extraterritorial powers to investigate global companies and the role of individuals involved in multi-jurisdictional cartels based overseas, that cause an AAEC in India.

Since the establishment of the CCI in 2009, the CCI has increased its collaboration with global antitrust authorities to ensure international co-operation for exposure to best practices, capacity building and knowledge sharing. The CCI has entered into eight Memorandums of Understanding (**MoUs**) with the antitrust regulators of the United States of America (**USA**), Federative Republic of Brazil, Russian Federation, People's Republic of China, Republic of South Africa, Canada, the European Union (**EU**) and Australia. The MoUs facilitate closer competition law co-operation and effective implementation of the law. This collaboration allows the CCI to effectively discharge its duties under the Act by co-operating with its international counterparts on global cartels.

Recently, antitrust regulators across the globe have launched investigations into alleged collusive practices of automobile companies, relating to vehicular emission technologies and standards. The regulation of emission of air pollutants and reduction in greenhouse gas emissions has become stricter with the adoption of stringent standards and emission norms. For OEMs, this translates to higher costs and increased investments in technology upgradation. The European Commission (**EC**)⁸ has cautioned German car companies BMW, Daimler and VW AG (Volkswagen, Audi, Porsche) of its preliminary view that they have breached EU antitrust laws from 2006 to 2014 by colluding to restrict competition on the development of technology to clean the emissions of petrol and

⁸ The antitrust regulator for the EU.

diesel passenger cars.⁹ The EC found that BMW, Daimler and VW AG participated in a collusive scheme aimed at restricting competition on innovation for two emission cleaning systems and in doing so, denied consumers the opportunity to buy cars with the best available technology.

Similarly in the USA, Department of Justice (**DOJ**)¹⁰ has initiated an antitrust investigation into four OEMs that allegedly forged a deal with the State of California on vehicle-emissions standards.¹¹ The arrangement between Ford Motor Company, Honda Motor Company, BMW AG and Volkswagen AG was announced in collaboration with the State of California's air quality officials to loosen emission standards and is being investigated on account of alleged cartel implications.

The automobile sector is also witnessing novel alliances amongst automobile companies globally, which is subject to antitrust scrutiny. For instance, Maruti Suzuki India Limited (**Maruti**) of India along with Toyota Tsusho India Private Limited (**TTIPL**) of India, its parent Toyota Tsusho Corporation (**TTC**) of Japan received approval from the EC for acquisition of joint control over a joint venture in India. The joint venture will supply, dismantle and process end-of-life vehicles and market and sell scrap and other products generated from such activities in India. This joint venture was subject to EC's merger control assessment and was unconditionally approved.

Going by this trend of investigations by mature antitrust regulators such as, EU and USA, it is likely that other antitrust regulators will follow suit and initiate similar investigations based on the conduct of such automobile companies in their respective jurisdictions.

⁹ Press Release, *Antitrust: Commission sends Statement of Objections to BMW, Daimler and VW for restricting competition on emission cleaning technology*, EUROPEAN COMMISSION (Apr. 5, 2019), https://europa.eu/rapid/press-release_IP-19-2008_en.htm.

¹⁰The antitrust regulator for the USA.

¹¹ Andrew J. Hawkins, *Justice Department launches antitrust probe into four automakers around emissions deal with California*, THE VERGE (Sep. 6, 2019, 12:44pm EDT) <https://www.theverge.com/2019/9/6/20852839/trump-antitrust-ford-vw-honda-bmw-california-emissions>.

IV. CURRENT ISSUES

India's automobile sector is presently facing a slowdown with dwindling sales and revenue growth. However, it is anticipated that the automobile sector in India is likely to witness foreign investment in the coming years on account of dynamic changes and new developments such as government support through tax cuts.¹² One of the notable features of this sector includes innovative collaborations between OEMs which will enable them to address novel trends in the industry, such as, higher environmental and safety standards, technological shifts, electric and hybrid cars, on-demand rides and autonomous driving. These trends also help in identifying major risk factors that players in the automobile sector must be mindful of in the future.

Recently, the Indian market witnessed collaborations between Toyota Motor Corporation (**Toyota**) and Suzuki Motor Corporation (**Suzuki**). As a part of this collaboration, Toyota and Suzuki would acquire minority stakes in each other.¹³ Their cross-holdings would enable the two companies to pool their resources and develop new technologies and enable cross-badging that will permit them to sell each other's products in Indian and overseas markets.¹⁴ Close co-operation between rival firms may potentially result in anti-competitive collusion and companies entering into such innovative collaborations, must be careful to ensure that they are compliant with competition laws in India. The Indian market is likely to witness further collaboration aimed at bringing in innovative mobility solutions to keep up with the increasing importance of ride sharing and radio taxi services.

The Act prohibits anti-competitive agreements between competitors, and such horizontal agreements are presumed to cause an AAEC. Joint venture agreements which increase efficiency in terms of production, supply, distribution, storage, acquisition or control of

¹² Shreya Nandi, *Nirmala Sitharaman says govt working on measures to help auto industry*, LIVEMINT (Sep. 10, 2019, 10:56 PM IST) <https://www.livemint.com/politics/policy/govt-to-respond-to-auto-industry-s-demands-says-nirmala-sitharaman-1568106333458.html>.

¹³ Malyaban Ghosh, *Toyota, Suzuki forge deeper ties by buying stakes in each*, LIVEMINT (Aug. 28, 2019, 11 :28 PM IST) <https://www.livemint.com/auto-news/toyota-and-suzuki-announce-capital-alliance-1566982470668.html>.

goods or provisions of services, may be exempt from this presumption. Any collaboration between competitors must demonstrate proved efficiencies in order to be compliant with the provisions of competition law.

V. KEY CASES

5.1. ANTI-COMPETITIVE AGREEMENTS: CARTELS, RESALE PRICE MAINTENANCE; EXCLUSIVE SUPPLY/DISTRIBUTION AGREEMENTS; TYING AND BUNDLING; REFUSAL TO DEAL.

Section 3 of the Act prohibits anti-competitive agreements which cause or are likely to cause an AAEC in India. The CCI has held dealership agreements to be vertical arrangements as the parties (manufactures and distributors / dealers) are at different stages of the production and supply chain and are present in different markets. Horizontal agreement means an agreement between enterprises, each of which operates at the same level in the production or distribution chain. On the other hand, vertical agreements are agreements between firms operating at different levels in the production and supply chain. Unlike horizontal agreements, in the case of vertical agreements there is no presumption of an AAEC.

Vertical agreements are considered anti-competitive only if they cause AAEC in the market. In order to determine whether an agreement results in anti-competitive vertical restraints, the following five essential ingredients must be satisfied:

- (i) There must exist an agreement amongst enterprises or persons;
- (ii) The parties to such agreement must be at different stages or levels of production chain, in respect of production, supply, distribution, storage, sale or price of, or trade in goods or provision of services;
- (iii) The parties must be in different markets;
- (iv) The agreement should be of the nature as illustrated under the Act; and
- (v) The agreement should cause or should be likely to cause AAEC.

¹⁴Cross-badging or badge engineering is a strategy by OEMs to sell the same car with minor changes in design, etc.

In its prior decisional practice, the CCI held that dealership agreements between manufacturers and dealers/ distributors, are in the nature of vertical agreements as the parties are at different stages of the production and supply chain and are in different markets. With an increase in competition and the number of players, the automobile sector has been subject to scrutiny by the CCI, particularly, issues arising out of the distribution and servicing of motor vehicles and cartel activity in relation to various auto-components.

One of the landmark decisions in the automobile sector, is *Toyota & Ors. v. Competition Commission of India (Spare Parts Order)*.¹⁵ The CCI held 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, cancellation of warranty if cars were repaired by independent repairs, amounted to exclusive supply and distribution agreements and refusal to deal under the Act. The erstwhile COMPAT¹⁶ affirmed the CCI's decision. The COMPAT held that the OEMs imposed restrictions through agreements and practices on OES by restricting them from selling spare parts, including technical manuals, diagnostic tools, etc., in the aftermarket, including to the independent repairers, and to the authorised dealers, restricting them from sourcing spare parts from OESs and from selling spare parts to independent repairers thereby refusing to deal with the latter. This amounted to an anti-competitive exclusive supply agreement, exclusive distribution agreement and refusal to deal.¹⁷

The CCI's decision in *Hyundai Motor India Limited (Hyundai)* is another significant decision dealing with vertical restraints. Hyundai was found to be imposing RPM by setting and implementing a 'Discount Control Mechanism' on its dealers through, *inter alia*, mystery shopping agents, as well as tie-in arrangements which mandated that its dealers use recommended lubricants, sell CNG kits and insurance policies and services.

This helps the OEMS to benefit from each other's strengths and increase their product portfolio.

¹⁵Toyota & Ors. v. Competition Commission of India, 4204 Appeal No.60/2014.

¹⁶THE FINANCE ACT, 2017 has transferred the appellate functions under the Act to the NCLAT, from the COMPAT, which has ceased to exist effective May 2017.

¹⁷The matter is currently pending on appeal before the SC.

This case is the first definitive finding of RPM, where the CCI levied a penalty of INR 87 crores¹⁸ on Hyundai.¹⁹

5.2. ABUSE OF DOMINANT POSITION

Explanation (a) for section 4 of the Act defines dominant position to mean "*a position of strength enjoyed by an enterprise in a relevant market, which enables it to operate independently of competitive forces prevailing in the relevant market or affect its competitors or consumers or the relevant market in its favour.*" The Act does not prohibit the existence of dominance (i.e., big is not bad) and instead prohibits the abuse of such dominant position.

While determining dominance, the CCI is required to consider the factors listed in Section 19(4) of the Act, including market share of the enterprise, size and resources of the enterprise, size and importance of competitors, economic power of the enterprise (including commercial advantages over competitors), vertical integration of the enterprises or sale or service network of such enterprises, dependence of consumers on the enterprise, etc. Section 4(2)(b) of the Act sets out a list of abusive practices which are prohibited under the Act.

The delineation of the relevant market is crucial in order to first assess whether an entity is a dominant player, and the parameters of abuse of dominance are subsequently assessed within the relevant market. The relevant market includes the relevant product market and the relevant geographic market. In the automobile sector, the CCI has delineated the relevant market to be the "market for manufacture and sale of luxury cars in India"²⁰; "market of sports utility vehicles in India"²¹; "market of truck and trailer components"²²; "aftermarket for spare parts", etc. It has also been held that the

¹⁸USD 12.06 million.

¹⁹Fx Enterprise Solutions India Pvt. Ltd. v. Hyundai Motor India Limited, Case Nos. 36 & 82 of 2014. The CCI's order has been set aside on appeal by the NCLAT due to lack of credible evidence and non-delineation of relevant market by the CCI. The matter is currently on appeal before the SC.

²⁰*In Re: Ravi Beriwal v. Lexus Motors Ltd. & Jaguar Land Rover India Ltd.*, Case No. 79 of 2016.

²¹*In Re: Ravi Bhushan Sharma v. Toyota Kirloskar Motor Pvt. Ltd.*, Case No. 92 of 2016.

²²*In Re: M/s Amit Auto Agencies v. M/s King Kaveri Trading Co.*, Case No. 57 of 2013.

automobile sector can be segmented into four segments, i.e., two-wheelers; three-wheelers; passenger vehicles; and commercial vehicles.

One of the most noteworthy decisions in the automobile sector is the Spare Parts Order,²³ wherein the CCI found 14 car manufacturers guilty of indulging in anti-competitive conduct. In this case, the CCI delineated the relevant market to be the primary market for "manufacture and sale of cars in India" and the aftermarket for "sale of spare parts and repair and maintenance services". The CCI found the 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. The CCI relied upon the initial investment and inability of vehicle owners to switch to competing spare part providers after purchasing a car, to find the OEMs to be dominant in the aftermarket. An aftermarket is a market for a secondary product, i.e., a product which is purchased only as a result of buying a primary product. It was found that a consumer in the primary automobile market is locked in the aftermarket for spares and repair services because a consumer of a particular model of car manufactured by an OEM cannot switch to the spare parts manufactured by another OEM.

The OEMs were found to be abusing their dominance by restricting independent repairers and other non-authorized repairers from accessing the secondary market (aftermarket) and marking up the prices of spare-parts of automobiles. Further, these OEMs did not allow independent service providers access to their spare parts, thus protecting their position in the after-sale services market as well. It was found that the OEMs leveraged their dominance in the relevant market of supply of spare parts to protect the market for after sales service and maintenance, thereby violating the Act. On appeal, the COMPAT affirmed the CCI's finding and held that each of the OEMs were dominant in the market for after-sale repairs and services of their vehicles. They abused their dominant position by imposing unfair conditions by restricting purchase or sale of goods or services from their authorized dealers and OES. The OEMs indulged in denial of market access to independent repairers of automobiles to the spare parts in the

aftermarket. The OEMs also leveraged their dominant position in the spare parts aftermarket to protect the other relevant market i.e., the repairs and maintenance market. Further, the OEMs had used their dominant position in the spare parts aftermarket to protect their authorized dealers in the repairs and service market for automobiles.²⁴

The CCI has, in its assessment of certain other cases, also dismissed various allegations of deficiency in quality and services as consumer cases do not amount to anti-competitive conduct and fall under the ambit of the Consumer Protection Act, 1986.²⁵

5.3. COMBINATIONS

The merger control regime in India is governed by Section 5 and Section 6 of the Act and came into effect from 1 June 2011. All acquisitions, mergers and amalgamations that exceed the jurisdictional thresholds under the Act are required to be notified to the CCI.²⁶

Under its merger control regime, the CCI has made certain noteworthy observations while assessing the automobile sector. In the case of *ZF Friedrichshafen AG*,²⁷ the CCI while delineating the market has observed that the automobile industry in India has particularly evolved around three major regions, namely, Mumbai-Pune-Nashik-Aurangabad; Chennai-Bangalore-Hosur; and Delhi-Gurgaon-Faridabad region, since the automobile industry in India is largely present in clusters in these regions with OEMs as centres of growth. In a recent transaction between CK Holdings, Fiat Chrysler Automobile N.V. and Magneti Marelli S.p.A.,²⁸ the CCI observed that the automotive components may be segmented into broad categories such as body electronics, heating, ventilation and air conditioning, human machine interface electronics, lighting,

²³Shamsher Kataria v. Honda Siel Cars India Ltd. & Ors., Case No. 3 of 2011.

²⁴The matter went before the Delhi HC on a constitutional challenge and the order (Mahindra Electric Mobility Limited & Ors. v. CCI, W.P.(C) 11467/2018) clarified the constitutionality of various provisions of the Act and the scope of the CCI's powers.

²⁵ *In Re: Akhil R. Bhansali and Skoda Auto India Pvt. Ltd. & Anr.*, Case No. 44 of 2017; *In Re: Ravi Beriwal v. Lexus Motors Ltd. & Jaguar Land Rover India Ltd.*, Case No. 79 of 2016; *In Re: M/s Shree Hari Inn Pvt. Ltd. v. M/s Mercedes Benz India Pvt. Ltd.*, Case No. 93 of 2016; *In Re: Ravi Bhushan Sharma v. Toyota Kirloskar Motor Pvt. Ltd.*, Case No. 92 of 2016.

²⁶ The notifiable transactions which satisfy the specified jurisdictional thresholds are known as "combinations" under the Act.

²⁷C-2014/10/215.

²⁸C-2019/01/639.

powertrain, suspension, exhaust; and parts for aftermarket. These categories can be further sub-segmented into various modules or components, which can be further classified on basis of type of vehicles, i.e., light vehicles, two wheelers, etc.

VI. HIGH COURT AND SUPREME COURT FINDINGS IN THE AUTOMOBILE SECTOR

In a recent landmark case, the Hon'ble High Court of Delhi (**Delhi HC**), by a common judgment in *Mahindra Electric Mobility Limited & Ors. v. Competition Commission of India & Ors.*²⁹ disposed of writ petitions filed by car manufacturers challenging the constitutionality of certain provisions of the Act.³⁰ The Delhi HC held that the revolving door policy of the CCI destroys the right of a fair hearing and violates the basic principle of "*one who hears must decide*". Guidelines were issued directing that all proceedings shall be heard *en banc*, and no addition or change in members shall be permitted during a final argument in the interest of principles of natural justice. Remarkably, the Delhi HC declared Section 22(3) of the Act as void in entirety, while keeping the proviso intact which mandates a quorum of minimum 3 Members. This was owing to the potential mischief of the casting vote by which the Chairperson of the CCI may tip the balance the other way by his second vote. It was also clarified that the scope and subject matter of investigation can be expanded by the DG.

In the landmark Spare Parts Order³¹, Nissan Motors India Private Limited,³² Toyota Kirloskar Motor Private Limited,³³ and Ford India Private Limited³⁴ filed an appeal before the SC against the order³⁵ passed by the erstwhile COMPAT which upheld the decision of the CCI. The SC has granted an interim injunction on the application of the order of the COMPAT and the matter is currently pending disposition. In the Hyundai

²⁹W.P. (C) 11467/2018.

³⁰Section 22(3), Section 27(b), Section 53A, Section 53B, Section 53C, Section 53D, Section 53E, Section 53F and Section 61 of the Act.

³¹Shamsher Kataria v. Honda Siel Cars India Ltd. & Ors., Case No. 03 of 2011.

³²Civil Appeal No. 951 of 2017.

³³Civil Appeal No. 1222 of 2017.

³⁴Civil Appeal No. 1054 of 2017.

³⁵Appeal No. 62 of 2014.

case, the CCI has filed an appeal before the SC, against the order of the NCLAT which set aside the order passed by the CCI on the grounds that the CCI failed to appreciate the evidence and that the impugned order was passed merely on the opinion of the DG.³⁶

VII. KEY TRENDS

Amongst other investigations, the CCI is currently assessing and investigating two ongoing matters in the automobile sector, against Maruti and Honda Motorcycle and Scooter India Private Limited (**Honda**), respectively, on issues pertaining to vertical restraints and abuse of dominance.

In 2019, the CCI ordered an investigation against Maruti, based on an anonymous e-mail sent by a purported distributor, on allegations pertaining to anti-competitive discount control policy.³⁷ The CCI *prima facie* found Maruti to be dominant in the market for sale and distribution of passenger cars in India. Maruti was found to be the market leader in the passenger cars segment in India with more than 50% market share in 2017-2018. Maruti indulged in practices to fix the maximum discount which its dealers could offer to end customers, by sending 'Mystery Shopping Audit Reports' seeking clarification from dealers found violating its discount control policy. The errant dealers were penalised for providing additional discounts over and above the permitted level, which was considered anti-competitive and amounted to RPM.

The CCI has also ordered an investigation against Honda³⁸ against its practices towards unfair restriction of sale of oil, lubricants and batteries, requiring mandatory purchase of accessories & merchandise items, forceful billing of slow moving vehicles, compulsory deduction of advertising expenses, restricting insurance and finance options, making certain purchases contingent upon purchase of booklets from a specific entity, terminating dealerships without prior notice and refusal for stock buyback. Honda was found to be *prima facie* dominant in the market for manufacture and sale of scooters in

³⁶ Competition Commission of India v. Hyundai Motor India Ltd. & Ors., Civil Appeal No(s). 11250 of 2018.

³⁷ Alleged anti-competitive conduct by Maruti Suzuki India Limited (MSIL) in implementing discount control policy vis-à-vis dealers, Case No. 1 of 2019.

³⁸ Vishal Pande v. Honda Motorcycle and Scooter India Private Ltd., Case No. 17 of 2017.

India, based on sales data and market shares. The supplementary obligations imposed in the Dealership Agreements, by their commercial usage, were found to have no connection with the subject of the contract. Mandatorily requiring dealers to purchase oil and consumables, genuine accessories, advertising services, merchandise items, batteries, insurance and finance options, etc., from designated sources, amounted to anti-competitive restraints. The CCI found that these practices pertained to abuse of dominance, RPM, discount control mechanism, allocation of markets for sale of goods, exclusive supply agreements, refusal to deal and were *prima facie* anti-competitive in nature.

From an Indian antitrust standpoint, the role and conduct of several OEMs and automobile components manufacturers are also being investigated by the CCI for their alleged anti-competitive practices, including their role in global cartels.³⁹ Notably, under Section 41 of the Act, the CCI, through the DG, periodically conducts "dawn raids" as a part of its investigation into cartel activity. Dawn raids are CCI's evidentiary tool to curb anti-competitive practices through various surprise search and seizure activities, drawing its power to do so under Section 41 of the Act. Documents and materials seized by the DG during such a search can be used as evidence during the inquiry.⁴⁰ The DG has conducted six dawn raids across multiple sectors, to collect crucial evidence as a part of the investigative process.⁴¹

In order to avoid antitrust risks, enterprises in the automobile sector would need to implement robust competition compliance practices tailored to their needs and requirements, conduct internal training sessions, audits, and mock dawn raids to identify potential antitrust issues and take corrective remedial measures.

³⁹Veena Mani, *CCI issues 100 notices to auto parts firms to investigate global cartels*, BUSINESS STANDARD (Mar. 5, 2018, 9:40 PM IST), https://www.business-standard.com/article/companies/cci-issues-100-notices-to-auto-parts-firms-to-investigate-global-cartels-118030501169_1.html.

⁴⁰Competition Commission of India v. JCB India Ltd., Criminal Appeal No. 76 and 77 of 2018.

⁴¹Sectors such as construction, batteries, breweries, food and pulses, railway equipment and tarpaulin manufacturing.