

## **Competition Commission and its Omissions: Jurisprudence entangled\***

### **INTRODUCTION**

The Competition Commission of India for the first time scrutinized automobile industry and delivered a landmark decision on vertical agreements on August 25, 2014 & July 27, 2015 in the case of Shri Shamsher Kataria v. Honda Sael Car India Ltd. & Ors<sup>1</sup>(Auto Parts Case) wherein it found 17 automobile companies guilty of anti-competitive practice, in violation of Section 3(4) and Section 4 of the Competition Act, 2002 and imposed upon them a staggering penalty of INR 2964.91 crores by concluding that there exist three different relevant markets including a distinct market for after sale “repair and maintenance services”. But in the Suzuki Motorcycle case<sup>2</sup>, to determine the allegations, the commission, without citing any reasons, very strangely took the relevant market to be “market of the manufacturing and sale of two wheeler vehicle” instead of “repair and maintenance service” market which was in question by the informant. Thus setting two different standards for same sector making the light of justice murkier.

### **Auto Parts Case –**

In the instant Auto Parts case, the main allegation filed by the informant was the anti-competitive agreement entered by the Original Equipment Manufacturers (hereinafter referred to as “OEMs”) with Original Equipment Suppliers (hereinafter referred to as “OESs”) and authorized dealers, whereby the genuine spare parts of automobiles manufactured by them were not made freely available in the open market.

### **Relevant Market :**

The edifice of competition law rests upon dynamics of competition in one particular market. Benefits or harm to competition has to be assessed with respect to that market. The definition of relevant market is an essential step in the analysis of most anti-trust cases. The concept of “Relevant Market” is used to define markets (both product and geographic) i.e. to identify the range of products and regions that pose a competitive constraint to the dominant undertaking's product or region in which its product is sold. The purpose of market definition is to identify the economic space in which a firm or combination of firms may be able to exercise market power.<sup>3</sup>

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<sup>1</sup> Shri Shamsher Kataria v. Honda Sael Cars India Ltd. & Ors, Case No. 03 of 2011 (CCI, 25/08/2014).

<sup>2</sup> Shri Shrikant Shivram Kale Vs. M/s Suzuki Motorcycle India Private Limited, Case No. 01 of 2015(CCI, 19/03/2015)

<sup>3</sup> *The Concept of Relevant Market under the Competition Act, 2002*, Fair Play(Newsletter by Competition Commission of India) Vol. 11, October –December 2014 at page 23.

After conducting detailed analysis and providing cogent reasons, the DG concluded that the spare parts market for each brand of cars comprising of vehicle body parts (manufactured by each OEM, spare parts sourced from the local OESs or overseas suppliers), specialized tools, diagnostic tools, technical manuals for the aftermarket service together formed a distinct relevant product market. With regard to the question as to whether maintenance and repair services of the products in the primary market constitute a separate relevant market, the DG has concluded that after sale repair and maintenance services constitute a distinct relevant product market. The DG's investigation has further revealed that the spare parts for a particular brand of vehicle were available through the authorized dealers of the respective OEMs in any part of India and hence concluded that the relevant geographic market would be "India".

### **Abuse of Dominance**

Once the relevant market is defined, the Commission proceeds to examine the dominance of the enterprise in such market before looking at the alleged abusive conduct. In its Main Order, the Commission noted that the underlying principle in the definition of a dominant position is linked to the concept of market power which allows an enterprise to act independently of competitive constraints. Such independence enables an enterprise to manipulate the relevant market in its favour to the economic detriment of its competitors and consumers. The Commission noted that due to the technical specificity of the cars manufactured by each OEM, the spare parts of a particular brand of an automobile cannot be used to repair and maintain cars manufactured by another OEM, thus diminishing the inter-brand substitutability of spare parts among cars manufactured by different OEMs.

It was further revealed during the investigation of the DG that each OEMs had entered into various agreements with their overseas suppliers or OESs or both to ensure that they become the sole supplier of their own brand of spare parts and diagnostic tools in the aftermarket. The OEMs pursuant to such agreements have effectively shielded themselves from any competition. The Commission also took into account the DG's finding that various multi-brand repairer/maintenance service providers were unable to cater to the demand of the customers to service their automobile because of the non-availability of the spare parts of the OEMs in the open market.

Taking into consideration the aforesaid, the Commission held that each OEM is a 100% dominant entity in the aftermarket for its genuine spare parts and diagnostic tools and correspondingly in the aftermarket for the repair services of its brand of automobiles. The Commission discarded the argument raised by various OEMs that they hold a miniscule market share in the primary market of sale of cars and therefore, miniscule share in the aftermarket. It was observed by the Commission, that each OEM has a clear competitive advantage in the aftermarket for sale of spare parts/diagnostic tools and repair services for their respective brand of automobiles, irrespective of the market share they hold in the primary market.

On the issue of leveraging, the Commission had held that since the car owners purchasing spare parts have to necessarily avail the services of the authorized dealers of the OEMs, OEMs have used their dominance in the relevant market of supply of spare parts to protect the relevant market for after sales service and maintenance thereby violating Section 4(2)(e) of the Act. Further, since the access to specialized diagnostic tools, fault codes, technical manuals, training etc. is critical for undertaking maintenance and repair services of such vehicles, the independent repairers are substantially handicapped from effectively attending to the aftermarket requirements of automobiles due to the lack of access to specialized diagnostic tools. Therefore, the Commission was of the view that the conduct of the present OEMs is in contravention of section 4(2)(e) of the Act

In Summarize form, the DG found the conduct of the OEMs abusive, and observed that in the absence of availability of genuine spare parts, diagnostic tools, technical manuals etc. in the open market, the ability of the independent repairers to offer repair and maintenance services to the vehicle owners and effectively compete with the authorized dealers of the OEMs for similar services was severely hampered. Such conduct was found to be in contravention of section 4(2)(a)(i) and 4(2)(c) of the Act, as it amounts to an imposition of unfair condition and denial of market access to independent repairers by OEMs. Further, as per the DG, each OEMs used their dominant position in the market for the supply of their spare parts to protect their dominance in the market for repair and maintenance services for their respective brands of automobiles which amounted to a violation of section 4(2)(e) of the Act.

The Commission not only imposed a monetary penalty upon the 15 out of 17 car manufacturing companies of 2% of their total turnover in India but also issued directives against all 17 car manufacturing companies, one of which read as -

*"OPs are directed not to impose a blanket condition that warranties would be cancelled if the consumer avails the services of any independent repairer."*

### **Suzuki's Case: Complete U-turn**

But in the recent **Suzuki Motorcycle case**<sup>4</sup>, the commission took the entirely different stand. In it, the informant alleged that Suzuki using its dominant position imposes unfair and anti-competitive condition in the sale of its two-wheeler ACCESS 125cc.

As per clause "Limitation of Warranty" in the owner's manual, "if any of the free or paid service is not done as per the schedule, the warranty tends to stand void". And as per the schedule mentioned in the owner's manual, free service coupons were provided for alternate services *i.e.* if paid services are done with the dealer of the Opposite Party only then the customer is eligible for the free services. Thus the customers would not be entitled to avail Suzuki's free services in the event they visit a local garage for paid services, thereby resulting in a denial of market access to local auto garage owners.

To determine the allegations, the commission very strangely took the relevant market to be "market of the manufacturing and sale of two wheeler vehicle" although the commission in the previous case had dealt in detail with the issue of determining the relevant market and discarded the "Unified systems market" approach and held that the primary market of "manufacture and sale of cars" and aftermarkets- "sale of spare parts, diagnostic tools etc." and "service of repair and maintenance" are three separate relevant markets.<sup>5</sup> If the CCI has taken a view that the sales and the after sales market are different in the automobile industry, then surely the same standard needs to be adhered to for evaluating the two-wheeler market as well. There might have been other factors that the CCI may have evaluated, which factors, unfortunately have not been discussed in the order dated March 19, 2015 but should have laid out as said by Justice Arun Mishra<sup>6</sup> that the rule of reason is the antithesis to arbitrariness in action and is a necessary concomitant of the principles of natural justice. If a statutory or public authority/functionary does not record the reasons, its decision would be rendered arbitrary, unfair, unjust and violating Articles 14 and Article 21 of the constitution of India.

But again in the order dated July 27, 2015<sup>7</sup>, The commission in the same auto-parts case while passing the order against the remaining three car-manufacturing companies, applied the same

<sup>4</sup> Shri Shrikant Shivram Kale Vs. M/s Suzuki Motorcycle India Private Limited, Case No. 01 of 2015(CCI, 19/03/2015)

<sup>5</sup> Supra 1, 20.5.54.

<sup>6</sup> B.A. Linga Reddy V Karnataka State Transport Authority (2015) 4 SCC 515, Paras 17 and 20

<sup>7</sup> In Re: Shri Shamsher Kataria, Case No. 03/2011 (CCI, 27/07/2015)

reasoning as it did earlier and held that there exist three different relevant market with the market of repair & maintenance to be altogether a different relevant market.

### **Conclusion**

The CCI is authorized under the Competition Act to impose penalties on companies engaging in cartel formation, price manipulation or abuse of their dominance to the tune of 10% of their turnover or an amount thrice their annual profit. But this approach of commission which determines the lines in one case and erases it in another, will make it difficult to set one-golden-precedent and would tarnish the idea of 'Justice' which is the "crowning glory", "the sovereign mistress" and "the queen of virtue" as Cicero had said.

