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CCI FINDS MARUTI SUZUKI GUILTY OF RESALE PRICE MAINTENANCE

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On 23 August 2021, the Competition Commission of India (CCI) imposed a penalty of INR 200 crore on Maruti Suzuki India Limited (MSIL) for employing a Discount Control Policy (DCP) *vis-à-vis* its dealers, amounting to Resale Price Maintenance (RPM).[1]

Facts

On 17 November 2017, an anonymous email was received by CCI from an alleged MSIL dealer, wherein it was alleged that MSIL's DCP contravenes Section 3(1) read with Section 3(4)(e) of the Competition Act, 2002 (Act). The email alleged that MSIL instructed its dealers not to offer discounts without its permission, over certain pre-restricted levels. Further, any dealer violating this policy was monetarily penalised and threatened with the suspension of supplies of premium models.

By way of an order dated 4 July 2019 under Section 26(1) of the Act, CCI directed the Director General (DG) to investigate the allegations as the CCI was of the *prima facie* opinion that MSIL had an anticompetitive RPM arrangement with its dealers.[2]

DG Report Findings

First, the DG delineated the markets for investigation as the markets for the (i) sale of passenger cars in India (upstream market); and (ii) distribution of passenger cars in India (downstream market). Next, upon analysis of the emails exchanged between MSIL and its dealers between August 2012 to July 2019, the DG observed that MSIL indulged in RPM by imposing its DCP on dealers across India. To enforce its DCP, MSIL appointed Mystery Shopping Agencies (**MSAs**) or mock customers to ascertain if any additional discounts were being offered over and above the pre-authorised discount rates. If additional discounts were found to be offered by dealers, the MSA would report to MSIL management with audio or video proof.

The DG concluded that such RPM violated Section 3(4)(e) of the Act as it caused an appreciable adverse effect on competition (AAEC) in the delineated markets. It lowered inter-brand competition (brands competing with MSIL) and intra-brand competition (competition among the various dealers); and led to products not being offered to consumers at best prices.

[1] In Re: Alleged anti-competitive conduct by Maruti Suzuki India Limited in implementing discount control policy vis-à-vis dealers, (Case no. 01 of 2019), order dated 23 August 2021 (available here).
[2] In Re: Alleged anti-competitive conduct by Maruti Suzuki India Limited in implementing discount control policy vis-à-vis dealers, (Case no. 01 of 2019), order dated 4 July 2019 (available here).

Analysis by the CCI

First, the CCI rejected MSIL's objections regarding absence of a formal agreement in place for implementation of the DCP. It remarked that the scope of "agreement" defined under Section 2(b) of the Act is wide enough to include even a mutual understanding or action in concert.

Second, it rejected MSIL's contentions that even if the DCP existed in certain regions, it was an *inter se* measure by the dealers to police themselves and MSIL was merely a third party. Based on the email evidence adduced in the DG's report, it was clear to CCI that MSIL regularly conducted meetings on its DCP, imposed a mandatory prior approval mechanism for provision of additional discounts, threatened to stop supplies, and imposed sanctions.

After concluding the presence of a RPM mechanism, CCI carried out an AAEC analysis under Section 19(3) of the Act to conclude that MSIL's DCP prevents effective competition both at the intra-brand as well as at the inter-brand levels. That is, by fixing the maximum discount that can be offered, the DCP is setting the minimum prices at which the sale can be made by the dealer and thus, restricting MSIL dealers to compete effectively on price. This leads to other brands who track MSIL's prices to factor it in their pricing strategy, thereby softening the competitive environment. The CCI observed that when a significant player such as MSIL imposes minimum selling price restrictions on its dealers, RPM can decrease the pricing pressure on competing manufacturers. The trickle- down effect of such a model-results in the end-customers being denied benefits accruing from effective competition who are made to pay higher prices.

Lastly, the argument put forth by MSIL that RPM is necessary to eliminate the problem of free riding was also rejected by the CCI. It contended that eliminating price competition between dealers may not necessarily incentivise the dealers to pass on the benefit of extra margins to consumers by way of providing better services. Thus, the harm caused by RPM does not outweigh the benefits that it may have in the market.

With this, the CCI concluded that MSIL violated Sections 3(4)(e) read with 3(1) of the Act and caused an AAEC. Therefore, the CCI ordered MSIL to cease and desist from indulging in such RPM and directed it to deposit a penalty of INR 200 crore.

Comments

This case has brought back the spotlight on the automobile sector as this was not the first time CCI has penalised an automobile manufacturer for engaging in RPM through monitoring discounts.

In 2017, Hyundai Motor India Limited (HMIL) was fined INR 87 crore by the CCI for a similar DCP supervised through its MSAs. Similar to its order against MSIL, CCI had assumed anticompetitive effects of RPM in the market without adducing specific evidence for the harm caused at the intra-brand and inter-brand level.[3] However, the National Company Law Appellate Tribunal (NCLAT) subsequently set aside the order and stayed the penalty on procedural grounds.[4]

Perhaps as a learning from the HMIL case, the CCI has thoroughly deliberated upon the evidence provided and arguments advanced, and, used cogent reasoning to find a contravention. It deep-dived into examining the pro and anticompetitive effects of the

[3] In Re: Fx Enterprise Solutions India Pvt. Ltd. And Hyundai Motor India Limited (Case No. 36 of 2014) with In Re: St. Antony's Cars Pvt. Ltd. And Hyundai Motor India Limited (Case No. 82 of 2014) (order dated 14 June 2017) (available here).
[4] Hyundai Motor India Ltd. v Competition Commission of India (Competition Appeal (AT) No. 06 of 2017), judgment dated 19 September 2018 (available here).

DCP to demonstrate how the adverse effects on the market outweigh any free-riding concerns or perceived benefits accruing from distribution efficiencies.

Despite finding MSIL guilty of violating the Act, the CCI has adopted a considerate and lenient approach while imposing the penalty in view of the impact of the pandemic on the automobile sector.

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