

## CCI PENALISES MARUTI SUZUKI FOR INDULGING IN RESALE PRICE MAINTENANCE

### 1. BACKGROUND

- 1.1. On August 23, 2021, the Competition Commission of India (“CCI”) imposed a penalty of INR 200 crores (approximately USD 27 million) on Maruti Suzuki India Limited (“**Maruti Suzuki**”) for imposing resale price maintenance (“RPM”) restrictions on its dealers.<sup>1</sup> The matter was taken up *suo motu* by the CCI (in 2019) based on an anonymous e-mail received from a purported dealer of Maruti Suzuki, alleging that: (i) the dealers in Maharashtra (excluding Mumbai and Goa) are not permitted to give discounts to their customers beyond those prescribed by Maruti Suzuki in the announced ‘consumer offer’; and (ii) the dealers are being penalised if found to be providing extra discounts.
- 1.2. The *modus operandi* followed by Maruti Suzuki was that it conducted a mystery shopping audit through an independent agency, i.e. mystery shopping agencies (“MSA”) who would pose as a customer before the dealerships and check whether any extra discounts were being offered. If extra discounts were offered, the MSA would send audio proof of the offer to Maruti Suzuki’s management who, in turn, would send a ‘mystery shopping audit report’ to the errant dealership *via* e-mail asking for clarification. If the clarification provided was not satisfactory, a penalty would be levied on the dealership.

### 2. CCI’s FINDINGS

- 2.1. A detailed investigation by the Director General (“DG”) highlighted that Maruti Suzuki had indulged in RPM. Regarding the market structure, the DG observed and the CCI concurred, that Maruti Suzuki operated in the upstream market of the manufacture of passenger vehicles (comprising passenger cars, utility vehicles and vans) and commanded the highest market share of 51.22% (in the financial year 2018-19), while the dealers were operating in the downstream market of distribution and sale of passenger vehicles, across India. Accordingly, the agreement between Maruti Suzuki and its dealers entered on a principal-to-principal basis could be examined as an anti-competitive vertical agreement. Further, the CCI noted that while the formal dealership agreement between Maruti and its dealers did not include any stipulation restricting the ability of the dealers to give discounts, the scope of ‘agreement’ under the Competition Act, 2002 is wide enough to include any understanding arrived between them by way of e-mails. In fact, the e-mails exhibited by the DG demonstrated that pursuant to Maruti Suzuki’s discount control policy (“DCP”): (i) the dealers were discouraged from giving extra discounts, freebies, etc. to consumers over permitted levels; and (ii) the dealers were threatened with stoppage of supplies and imposition of penalty on the dealership as well as its individuals (such as, direct sales executive, regional manager, showroom manager, etc.).
- 2.2. Hence, the CCI concluded that Maruti Suzuki indulged in RPM as: (i) under the DCP, it framed guidelines and gave instructions to its dealers to not offer discounts without its permission over certain pre-restricted levels; (ii) it appointed MSAs to keep a track of the discounts offered by the dealers and threatened to impose monetary penalties/ sanctions for violating the DCP; and (iii) it was actively involved in the planning and implementation of the DCP as it tracked the imposition and recovery of penalties imposed.

<sup>1</sup> CCI order, available at: <https://www.cci.gov.in/sites/default/files/SM-01-of-2019.pdf>

2.3. The CCI further noted that the RPM enforced by Maruti Suzuki upon its dealers caused an appreciable adverse effect on competition within India, as it resulted in: (i) significant reduction in intra-brand competition and softening of inter-brand competition, leading to higher prices for the consumers; (ii) hindering the distribution of goods and the provision of services in relation to new cars; and (iii) creating barriers to entry on new dealers as they would take into consideration restrictions on their ability to compete on prices.

### 3. **INDUSLAW VIEW**

3.1. Competitive pricing is an important component for ensuring healthy competition in the markets. Discounts are instrumental to pricing, especially when offered by: (i) new entrants, as it allows them to gain market share and exert pressure on the incumbents to provide their products and services at competitive levels;<sup>2</sup> and (ii) the dealers/ distributors as it ensures fierce competition amongst them. RPM raises competition law concerns as it has the effect of depriving the consumer of competitive prices and reduces the ability of dealers/ distributors to compete amongst themselves.

3.2. The CCI's order against Maruti Suzuki is only the second instance where a company has been penalised for indulging in RPM, after Hyundai Motors in 2017.<sup>3</sup> Interestingly, both the orders pertain to the automobile sector. This order is important to the RPM jurisprudence in India as the CCI has clarified that while assessing allegations of RPM, it will not just look at the terms of the formal executed agreement but also examine the conduct of the parties to determine whether there was any tacit/informal arrangement/understanding between them regarding RPM. Additionally, this order also follows the recent general trend where on account of the economic disruption caused due to the pandemic, the CCI has taken a lenient view and either refrained or only imposed nominal penalties.

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<sup>2</sup> In *Bharti Airtel v. Reliance Industries & Another*, the CCI noted that "In a competitive market scenario, where there are already big players operating in the market, it would not be anti-competitive for an entrant to incentivise customers towards its own services by giving attractive offers and schemes." (CCI order, available at: <https://www.cci.gov.in/sites/default/files/3%20of%202017.pdf>)

<sup>3</sup> *Ex Enterprise Solutions India Private Limited vs. Hyundai Motor India Limited and St. Antony's Cars Private Limited v. Hyundai Motor India Limited* (CCI order, available at: <https://www.cci.gov.in/sites/default/files/36%20and%2082%20of%202014.pdf>). However, on appeal, the National Company Law Appellate Tribunal ("NCLAT") by way of its order dated September 19, 2018, set aside the CCI's order (NCLAT order, available at: <https://nclat.nic.in/Useradmin/upload/6594600435ba2337253f81.pdf>). The CCI has challenged the NCLAT's order, and it is currently pending before the Supreme Court of India.