INTERNATIONAL RESEARCH PROJECT

TITLE – COMPETITIVE SCENARIO IN THE CONSUMER DURABLES AFTERMARKET: THE CASE OF MICROWAVE OVENS

UNDER THE GUIDANCE OF –
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ACKNOWLEDGEMENT

This research project has been undertaken by me as a part of the internship programme of Competition Commission of India. To begin with, I am extremely grateful to Shri R N Sahay, Adv. (Eco), CCI, who gave me the inspiration to work on this project. He has been a great mentor to me. His unconditional support along with his valuable inputs paved the way for me for a successful completion of this research project.

I would like to especially thank Shri Shekhar, Dy. Dir. (Investigation), CCI, without whose support and able guidance, the completion of this project would not have been possible. His insightful suggestions proved extremely beneficial and acted as a guiding light through the difficult stages of the project.

A special mention also needs to be made for the kind and supportive library staff of CCI who were always eager to lend me any assistance required in terms of access to the vast library resources.
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CHAPTER I - INTRODUCTION

In the modern world, microwave ovens have virtually become an integral part of the household kitchen. The wide ranging and easy to use features of the modern microwave ovens have led to their increased popularity. Moreover, due to factors like busy schedules, rise in number of working women and with the concept of ‘ready-to-eat’ meals gaining popularity across the globe, the usage of microwave ovens is increasing rapidly.\(^1\) It is a rare sight nowadays to witness a contemporary kitchen without a microwave oven. With such increasing popularity of microwave ovens and their penetration amongst most household kitchens, it has become imperative to assess the competitive scenario in the microwave oven industry.

The microwave oven industry can be broadly classified into primary market i.e. the market for microwave ovens and secondary market i.e. the market for spare parts and annual maintenance contracts. In this research project, the competitive scenario with regards to both the primary and secondary market will be assessed albeit with special focus on the secondary market.

The main objective of this research project is to assess the probable anti-competitive effects (if any) in the primary and secondary markets of consumer durables, specifically, microwave ovens. Dealing with the primary market, the researcher will present an overview of the microwave industry in India in terms of the various players in the market and their market shares, market structure, etc. Thereafter, the researcher will examine the market for possible contraventions of any statutory provisions of the Competition Act, 2002.

With regards to the secondary market, the researcher will first examine the practices followed by various microwave oven manufacturers in India. To undertake this examination, reliance will be placed on information available in the public domain as well as information collected from various sources (like warranty terms and conditions, annual maintenance contract terms and conditions, conversations with customer care representatives, conversations with authorised service technicians, spare part shops, etc). Subsequently, the researcher will

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\(^1\) http://ec.europa.eu/consumers/consumer_research/market_studies/docs/category_micro_wave_ovens_en.pdf

analyze the aforementioned information collected from various sources in light of the statutory provisions of §3 and §4 of the Competition Act, 2002 for the assessment of probable anti-competitive effects.
CHAPTER II - PRIMARY MARKET

The Indian market for consumer durables can be broadly categorized into the following 3 categories:\(^3\)

- Major Appliances or White Goods (Eg. Airconditioners, Refrigerators, Washing Machines, etc)
- Small Appliances or Brown Goods (Eg. Microwave Ovens, Chimneys, Mixers, etc)
- Consumer Electronics or Shiny Goods (Eg. TVs, Music Systems, PCs, etc)

As can be seen, a microwave oven falls in the category of small appliances or brown goods. Now, for an appraisal of the possible anti-competitive effects in the primary market of microwave ovens in India, it is important to first understand what is meant by a primary market and the nature of the product in question i.e. a microwave oven. In simple terms, a primary market can be understood as the market where a primary product/good/service is traded between manufacturers and customers.\(^4\) In the instant case, the market for the sale of microwave ovens in India is the primary market.

Microwave ovens are kitchen appliances used for cooking\(^5\) as well as reheating food and are capable of doing so much faster than the conventional ways of cooking or reheating food. There are primarily 3 types of microwave ovens: (1) solo; (2) grill; and (3) convection. Of these, the convection type microwave oven is the most recent one in the chain of microwave ovens to be developed and has gained immense popularity since due to its ability to perform the functions of a solo type microwave oven as well as a grill type microwave oven.

The microwave oven industry in India consists of numerous players, foreign and indigenous, big and small. Some of the prominent names include those of LG, Samsung, Onida, Godrej, etc. Therefore, the primary market of microwave ovens in India can be categorised as ‘monopolistic competition’ since there are a large number of firms in the market and there are also a large number of buyers without any entry barriers per se in the market.

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\(^4\) http://www.wisegeek.com/what-is-a-primary-market.htm

\(^5\) <http://ec.europa.eu/consumers/consumer_research/market_studies/docs/category_micro_wave_ovens_en.pdf>
MARKET SHARES

In this sub-section, the researcher will present the available data in the public domain relating to the market shares of the various microwave oven manufacturers in India to provide an insight into the competitive landscape of the primary market of microwave ovens in India.

The figure below presents the market shares of the various microwave oven manufacturers in India as of 2007. 

Further, the figure below presents the market shares of the various microwave oven manufacturers in India as of 2010-11.

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It is evident from the above figures that the market of microwave ovens in India has a number of players with a distributed market share and no one manufacturer having a significantly high market share. Thus, it seems that the competitive landscape in the primary market of microwave ovens in India is one with stiff competition amongst the various players.

**COMPETITIVE SCENARIO ANALYSIS IN TERMS OF SECTION 3**

In this sub-section, the researcher will examine whether the primary market of microwave ovens in India contravenes any provisions of Section 3 of the Competition Act, 2002 (hereinafter *the Act*).

Section 3 of the Act primarily aims at the prohibition of anti-competitive agreements between enterprises or persons which cause or are likely to cause an appreciable adverse effect on competition in India. The factors to assess the appreciable adverse effects on competition due to an agreement are listed in Section 19(3) of the Act. The relevant portions of Section 3 and Section 19(3) are enumerated below.

“3. Anti-Competitive Agreements

... (3) Any agreement entered into between enterprises or associations of enterprises or persons or associations of persons or between any person and enterprise or practice carried on, or decision taken by, any association of enterprises or association of persons, including cartels, engaged in identical or similar trade of goods or provision of services, which—

(a) directly or indirectly determines purchase or sale prices;

(b) limits or controls production, supply, markets, technical development, investment or provision of services;

(c) shares the market or source of production or provision of services by way of allocation of geographical area of market, or type of goods or services, or number of customers in the market or any other similar way;

(d) directly or indirectly results in bid rigging or collusive bidding, shall be presumed to have an appreciable adverse effect on competition.

(4) Any agreement amongst enterprises or persons at different stages or levels of the production chain in different markets, in respect of production, supply, distribution, storage, sale or price of, or trade in goods or provision of services, including—
(a) tie-in arrangement;
(b) exclusive supply agreement;
(c) exclusive distribution agreement;
(d) refusal to deal;
(e) resale price maintenance,

shall be an agreement in contravention of sub-section (1) if such agreement causes or is likely to cause an appreciable adverse effect on competition in India.

19. Inquiry into certain agreements and dominant position of enterprise

(3) The Commission shall, while determining whether an agreement has an appreciable adverse effect on competition under section 3, have due regard to all or any of the following factors, namely:—

(a) creation of barriers to new entrants in the market;
(b) driving existing competitors out of the market;
(c) foreclosure of competition by hindering entry into the market;
(d) accrual of benefits to consumers;
(e) improvements in production or distribution of goods or provision of services;
(f) promotion of technical, scientific and economic development by means of production or distribution of goods or provision of services."

The researcher posits that after a perusal of the above quoted provisions of Section 3 of the Act and after a detailed search in the public domain, there has been no evidence of any anti-competitive agreements. This observation is reinforced by the fact that the market shares of all the players in the primary market of microwave ovens in India are almost evenly distributed and no one player has a significantly high market share. Thus, there seems to be fierce competition amongst the rivals in the market.

**COMPETITIVE SCENARIO ANALYSIS IN TERMS OF SECTION 4**

This sub-section deals with the practices of various players in the primary market of microwave ovens in India and examines if any of these practices contravene provisions of Section 4 of the Act.
This section aims at the prohibition of abuse of dominant position by an enterprise or group in the relevant market in India. The factors that need to be taken into account while evaluating whether an enterprise has a dominant position or not are listed in Section 19(4). The relevant excerpts of the provisions of Section 4 and Section 19(4) are enumerated below.

**4. Abuse of dominant position**

... 

(2) There shall be an abuse of dominant position under sub-section (1), if an enterprise or a group -

(a) directly or indirectly, imposes unfair or discriminatory -

(i) condition in purchase or sale of goods or service; or

(ii) price in purchase or sale (including predatory price) of goods or service.

...

(b) limits or restricts -

(i) production of goods or provision of services or market therefor; or

(ii) technical or scientific development relating to goods or services to the prejudice of consumers; or

(c) indulges in practice or practices resulting in denial of market access in any manner; or

(d) makes conclusion of contracts subject to acceptance by other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts; or

(e) uses its dominant position in one relevant market to enter into, or protect, other relevant market.

**19. Inquiry into certain agreements and dominant position of enterprise**

(4) The Commission shall, while inquiring whether an enterprise enjoys a dominant position or not under section 4, have due regard to all or any of the following factors, namely:—

(a) market share of the enterprise;

(b) size and resources of the enterprise;

(c) size and importance of the competitors;

(d) economic power of the enterprise including commercial advantages over competitors;
(e) vertical integration of the enterprises or sale or service network of such enterprises;

(f) dependence of consumers on the enterprise;

(g) monopoly or dominant position whether acquired as a result of any statute or by virtue of being a Government company or a public sector undertaking or otherwise;

(h) entry barriers including barriers such as regulatory barriers, financial risk, high capital cost of entry, marketing entry barriers, technical entry barriers, economies of scale, high cost of substitutable goods or service for consumers;

(i) countervailing buying power;

(j) market structure and size of market;

(k) social obligations and social costs;

(l) relative advantage, by way of the contribution to the economic development, by the enterprise enjoying a dominant position having or likely to have an appreciable adverse effect on competition;

(m) any other factor which the Commission may consider relevant for the inquiry.”

For the purposes of enquiry to assess whether there is a case of any abuse of dominance in the microwave industry in India in terms of the provisions of Section 4, it is first imperative to ascertain the relevant market in terms of Section 2(r) of the Act. In this case, the relevant market is the market for ‘buying and selling of microwave ovens in India’. Now, to assess whether there is dominance of any player in the primary market for microwave ovens in India, we will examine the industry keeping in mind the factors provided in Section 19(4), as have been listed above.

On the point of market shares, it begs repetition as it has already been stated above that the market shares of the various enterprises in the microwave oven industry in India are distributed and no one enterprise has any significant market share. The size and resources of the various enterprises are vast and most of the enterprises are part of huge Multinational Corporations. Thus, almost all of the enterprises are financially strong. Therefore, for any one enterprise that we may pick for evaluation of its dominant position in the market, its competitors in the market will also be equally or more financially strong. Further, on perusal of the information available in the public domain, the researcher could not find any evidence of any vertical integration of the enterprises in the market of microwave ovens in India. Furthermore, consumers are not dependent on any one enterprise as such for purchase of
microwave ovens as the consumers have various choices and options in terms of sellers of microwave ovens and there is not high dependence of customers on any one particular enterprise. Additionally, there are no entry barriers in the market of microwave ovens in India. This is evidenced by the fact that the microwave industry in India has grown consistently from 2007 till 2010-11 and this growth does not refer to the growth of only the already existing enterprises but also the entry of new enterprises like Koryo, Croma, etc.\(^8\)

In light of these observations, it is reasonable to conclude that no enterprise in the market of microwave ovens in India has a dominant position and therefore, the question of assessing the abuse of dominant position does not arise. There is fierce competition in the industry and if any enterprise was to even attempt at abusing its position with regard to whatever market share it has, it would only lead to the detriment to the interests of the enterprise as the fierce competition will not let the customer fall prey to the abusive tactics of the enterprise.

Therefore, the researcher posits that, in essence, the competitive scenario with regards to the primary market of microwave ovens in India is highly competitive and no contraventions of the provisions of Section 3 and 4 have been found.

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CHAPTER III – AFTERMARKET

Aftermarket refers to a market comprising "complementary products (or 'secondary products') that are purchased after the purchase of another product (the 'primary product') to which it relates". Aftermarkets are also commonly referred to as 'secondary markets'. A simple example to illustrate the difference between a primary market and a secondary market would be that of the car industry. Here, the buying and selling of cars is the primary market and the buying and selling of spare parts for cars and their service and repair would constitute as the secondary market.

The issue regarding possibility of increase in prices of secondary products above the price due to effective competition is primarily dependent on the extent to which consumers will be deterred from purchasing the primary product due to an increase in the price of the secondary product. A firm selling the secondary products at a price higher than the price due to effective competition will certainly earn greater profits from sale of secondary products in the aftermarket. However, there is a possibility that due to an increase in the price of secondary products above the price due to effective competition may lead to a decline in the purchase of the primary products. Thus, the firm will incur losses in the primary market and if the loss incurred in the primary market is more than the profit earned in the secondary market, then the firm may not increase the prices of the secondary products above the price due to effective competition.

In an aftermarket, there are two probable scenarios – first, where the primary product in question is compatible with secondary products of different brands and therefore, there may be other suppliers of the secondary products in the aftermarket apart from the supplier supplying the primary product. Second, where the primary product is such that the secondary products of only one brand are compatible with it and in such a case, the supplier of the primary product may be the only supplier of the secondary products in the aftermarket.

9EC Discussion Paper on Article 82, para 243.
12 Alison Jones and Brenda Surfin, EC Competition Law, page 368-369.
13 EC Competition Law Boo, page 368-369.
The assessment of a secondary market or an aftermarket might also involve a close assessment of the primary market as it seems that the two are intertwined for an evaluation of the competitive scenario in the secondary market. An increase in prices of secondary products above competitive levels might have a direct bearing on the reduction in the firm’s sale of primary products. Further, if a secondary product is compatible with different brands of primary products, the possibility of increasing prices of secondary products will be directly affected. Due to such issues, there have been issues raised along similar lines before various courts in different jurisdictions.

In the case of Commercial Solvents the European Court of Justice held that *it is in fact possible to distinguish the market in raw material necessary for the manufacture of a product from the market on which the product is sold*. In this case, Commercial Solvents Corporation used to produce the raw materials, nitropropane and aminobutanol which were then used to make a drug for tuberculosis called ethambutol. The plaintiffs instituted this case after the Commercial Solvents Corporation refused to supply the raw materials to an Italian company Zoja, which was in the business of producing ethambutol based products.

In the case of Hugin Cash Register the question whether the secondary market of spare parts of the Hugin cash register constitute a separate market distinct from the primary market of buying and selling of the Hugin cash register. Hugin was the manufacturer and seller of cash registers and their spare parts having a 12 percent market share in the cash register market in Europe. After supplying spare parts of Hugin cash registers to local repairers for some time, Hugin refused to supply spare parts to them thereafter. Consequently, the local repairers were unable to undertake the task of servicing or repairing a Hugin cash register and a complaint was filed by Liptons Cash Registers and Business Equipment Ltd before the European Commission. The European Court of Justice held that the relevant market in this case was that of Hugin spare parts only which were required by local repairers for carrying out the servicing and repair work of Hugin cash registers.

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On a similar line of reasoning as in the *Hugin Cash Register* case, the European Court of Justice in the cases of *Volvo*\(^{18}\) and *Renault*\(^{19}\) held that spare parts for cars constitute a separate market from the cars themselves.

In a landmark judgement of *Kodak*\(^{20}\) of 1992, the United States Supreme Court dealt with the issue *whether a defendant’s lack of market power in the primary equipment market precludes – as a matter of law – the possibility of market power in derivative aftermarkets*\(^{21}\).

The case concerned with a dispute between the Eastman Kodak Company which manufactured and sold photocopiers and micrographic equipment and also sold services and replacement parts for its services and between 18 independent service organisations (ISOs) who were involved in the business of servicing and repairing Kodak photocopiers and micrographic equipment. After 1980s, Kodak adopted a policy under which it refused to sell its photocopier and micrographic equipment parts to the ISOs. Aggrieved by this policy of Kodak, the ISOs brought a claim against Kodak. The Court held that *there is no immutable physical law - no ‘basic economic reality’ - insisting that competition in the equipment market cannot coexist with market power in the aftermarkets*\(^{22}\).

To assess the competitive scenario in the secondary market, the researcher collected and analyzed information under the following 3 broad heads:

- Warranty Terms and Conditions
- Availability of Spare Parts
- Annual Maintenance Contracts Terms and Conditions

**WARRANTY TERMS AND CONDITIONS**

Given below are portions of the warranty terms and conditions of major players in the market of microwave ovens in India. Only those clauses have been enumerated hereunder which in seemed unreasonable and to the detriment of the interests of the consumers in the opinion of the researcher.

1. **LG**

   “2. Repairs or replacement will be carried out by the dealer from whom the product has been purchased or through the authorised service centre of LGEIL.

   3. Repair under warranty shall be carried out by an authorised service personnel only.

   8. In case of any... repairs by unauthorized personnel... the warranty conditions are not applicable.

   *This warranty is no applicable in any of the following cases:*

   5. Any repair work is carried out by persons other than authorised service personnel."

2. **Samsung**

   “2. Repair or replacement will be carried out through the Company's Service Centres (Refer the list) or it's Authorised Service Centres or it's Dealer's Service Centres.

   3. For units installed beyond the municipal limits of the jurisdiction of the authorised service centre/company's service centre/authorised dealer's service centre, all expenses incurred in collection the unit or part/s thereof from the company's service centre/authorised service centre/authorised dealer's service centre, as well as expenses incurred in connection with deputing of service personnel/ technicians towards to and fro travel, conveyance and other incidentals etc. will be borne by the customer.

   6c. In case of any transit damage, the product shall be repaired by the concerned service centre on charges and warranty for unexpired period to continue.

   *THIS WARRANTY IS NOT APPLICABLE IN ANY OF THE FOLLOWING CASES:*

   3. The product is not purchased from an Authorised SAMSUNG dealer.

   7. Installation/ repair work is carried out by persons/agency other than authorised by the company."

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3. **Onida**

“3. This warranty shall stand automatically terminated in the event of the said unit being serviced, repaired, installed, de-installed, re-installed or otherwise attended to by any person or organization or agency or by the said purchaser himself other than the authorized representative of the company.

5. For attending any service call under this warranty beyond the municipal limits of the locality in which the authorized representative/dealer is situated (outstation locations), all to and fro travelling and other incidental expenses as prevailing from time to time incurred in connection with the visit of the service personnel, technicians, etc shall be borne by the said purchaser and shall be payable in advance. Additionally, all expenses incurred by the authorized representative /dealer in collecting the said unit or any part thereof from such outstation locations and its return to the original location shall be borne by the said purchaser.

10. Warranty null and void if:

i. The Microwave Oven is not purchased from the authorized dealers of the company.

... 

v. At any time, during the warranty period if any part of the unit is tampered with, altered, repaired or serviced by any unauthorized person, not being the authorized representative of the company or its authorized dealers.”

4. **IFB**

“1. This warranty is not valid in case of the following events:

... 

d) If the appliance has been serviced, repaired, opened, or tampered by any unauthorised personnel.”

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Due to lack of information available in the public domain for spare parts and AMCs, the researcher had to conduct a survey to gather the necessary information.

**Survey Details**

The survey was conducted with the intention of collating information regarding the availability of spare parts and annual maintenance contract terms and conditions which was not available in the public domain. The scope of the survey was limited to information gathered from the customer representatives of the various microwave oven manufacturers, their authorised service centres, their authorised dealers and also, from other suppliers of microwave oven spare parts and annual maintenance. It must be noted that the researcher did not seek the responses of the consumers and restricted the scope of the survey to the aforementioned sources only. The methodology followed in conducting the survey was a question-response format where the researcher asked the survey-taker a set of predetermined questions and noted the response received from them.

*Availability of Spare Parts*

With regards to the availability of spare parts, the following questions were formulated:

1. Are spare parts available freely?
2. How and from where can they be procured?
3. What are the approximate prices of spare parts?

The responses received were as follows:

1. On the question of availability of spare parts:
   - LG - Spare parts are not available freely in the market. Only authorised service centres provide spare parts. Further, these spare parts are not sold directly to the customer or any other buyer.\(^{26}\)
   - Samsung - Selling of functional/technical parts is not allowed directly to the customers or other buyers. Only accessories can be directly sold to the customer or other buyers.\(^{27}\)

\(^{26}\)Response recorded pursuant to a telephonic conversation with a customer care executive of LG Service Centre on +91-9910006536 on 17/05/2013 at 5.30 PM.
• Onida ï Spare parts can be procured from authorised service centres only and are not sold directly to customers or other buyers.  

• Whirlpool ï Only authorised service centres sell spare parts.

• Navrang Audio & Video, New Delhi, authorised dealer of brands like LG, Samsung, IFB, Godrej, Onida, etc ï Spare parts are not available at the stores of authorised dealers and may be procured from the authorised service centres. Further, spare parts may be available in open market also. However, the genuineness of these spare parts available in the open market remains doubtful.

• After surveying the markets of New Delhi, it was observed by the researcher that spare parts of microwave ovens were available in the open market but the genuineness of the spare parts could not be confirmed by the researcher and thus, the question whether the spare parts available in the open market are original or counterfeit remains unresolved.

2. On the question of how and from where the spare parts could be procured ï

• The response received on this point was, in essence, the same from the authorised service centres of various microwave oven manufacturers like LG, Samsung, Onida, Whirlpool, etc. The response was that the spare parts could be procured only by a service technician from the authorised service centre and not directly by the customer. Thereafter, the service technician would visit the site and replace the spare part.

27Response recorded pursuant to a telephonic conversation with a customer care executive of Samsung Service Centre on 011-43317747 on 17/05/2013 at 4.05 PM.
28Response recorded pursuant to a telephonic conversation with a customer care executive of Onida Service Centre on 011-25279156 on 18/05/2013 at 4 PM.
29Response recorded pursuant to a telephonic conversation with an executive of Supertech Systems & Services, New Delhi, authorized spare parts dealer of Whirlpool, on 011-26806215 on 18/05/2013 at 4.30 PM.
30Response recorded pursuant to an in-person conversation with Mr. Dharamveer, a salesman at Navrang Audio & Video, New Delhi on 16/05/2013 at 11.40 AM.
31Response recorded pursuant to surveying the markets of New Delhi and the vendors identified were Spares India, Bhagirath Place, Chandni Chowk, New Delhi and MK Trading Co, Darya Ganj, New Delhi.
32Response recorded pursuant to a telephonic conversation with a customer care executive of LG Service Centre on +91-9910006536 on 17/05/2013 at 5.30 PM.
33Response recorded pursuant to a telephonic conversation with a customer care executive of Samsung Service Centre on 011-43317747 on 17/05/2013 at 4.05 PM.
34Response recorded pursuant to a telephonic conversation with an executive of Supertech Systems & Services, New Delhi, authorized spare parts dealer of Whirlpool, on 011-26806215 on 18/05/2013 at 4.30 PM.
• On a survey of the markets of New Delhi, it was observed that spare parts though are available at some shops but there is always a question about the genuineness of those spares.

3. On the question of price of spare parts

• LG  A magnetron would cost approximately Rs 1250 and a touch pad approximately Rs 650.35
• Samsung  Could not disclose the prices due to company policy.36
• Whirlpool - A magnetron would cost approximately Rs 2500 and a touch pad approximately Rs 800.37
• Spares India, New Delhi  Magnetrons ranged between Rs 600-750 depending on the brand and make of the microwave oven and the touch pads were for approximately Rs 200.
• MK Trading Co, New Delhi  Price of a magnetron would be approximately Rs 700.

**Annual Maintenance Contract Terms and Conditions**

The table below indicates the questions formulated with regards to the terms and conditions of an annual maintenance contract and also the responses received from the major players in the microwave oven market in India

<table>
<thead>
<tr>
<th>Questions</th>
<th>LG</th>
<th>Samsung</th>
<th>Onida</th>
<th>IFB</th>
</tr>
</thead>
<tbody>
<tr>
<td>Q.1. What are the different plans available for AMC?</td>
<td>1 year (Rs 750+Service Tax) or 3 years (Rs 2250+Service Tax)</td>
<td>Samsung does not provide AMC or extended warranty on microwave ovens</td>
<td>1 year (Rs 1000) or 2 years (Rs 1800)</td>
<td>1 year (Rs 800-1500) or 2 years (Rs 1300-2500) * Prices vary for different models and taxes extra</td>
</tr>
</tbody>
</table>

35Response recorded pursuant to a telephonic conversation with a customer care executive of LG Service Centre on +91-9910006536 on 17/05/2013 at 5.30 PM.
36Response recorded pursuant to a telephonic conversation with a customer care executive of Samsung Service Centre on 011-43317747 on 17/05/2013 at 4.05 PM.
37Response recorded pursuant to a telephonic conversation with an executive of Supertech Systems & Services, New Delhi, authorized spare parts dealer of Whirlpool, on 011-26806215 on 18/05/2013 at 4.30 PM.
<table>
<thead>
<tr>
<th>Q.2. What is covered under AMC?</th>
<th>Everything except damage to rubber, plastic, fibre, glass and damage due to transportation or mishandling</th>
<th>-NA-</th>
<th>Everything that is included in the warranty</th>
<th>Everything that is included in the warranty</th>
</tr>
</thead>
</table>
| Q.3. Can AMC be taken at any stage i.e. within warranty and post warranty | Yes | -NA- | Yes | Yes  
* IFB gives a warranty of 3 years unlike other brands who give a warranty of only 1 year |
| Q.4. What is the procedure to enter into an AMC? | Call customer care and register a request. Technician will come and inspect the microwave oven.  
3 conditions need to be satisfied  
a) Within 5 years from date of purchase  
b) Microwave bought in India  
c) Should be in working condition | -NA- | Call customer care and register a request. Technician will come and inspect the microwave oven.  
If microwave is in working condition, warranty can be extended.  
If microwave not working, then first have to get it repaired and only then warranty can be extended. | Call customer care and register a request. Technician will come and inspect the microwave oven.  
If microwave is in working condition, then AMC can be entered into. |
| Q.5. Are the spare parts used under AMC genuine or reconditioned? | Reconditioned | -NA- | Reconditioned | Reconditioned |
| Q.6. Can a customer enter | Yes | -NA- | Yes | Yes |
into an AMC if he got the microwave repaired by an independent repairer after expiry of the warranty?

### Source

| Source | Telephonic conversation with a LG customer care executive on 18001809999 on 14/05/2013 at 4.45 PM. | Telephonic conversation with a Samsung customer care executive on 1800300082 82 on 18/05/2013 at 3.30 PM. | Telephonic conversation with a Onida customer care executive on 011-39889000 on 18/05/2013 at 3.50 PM. | Telephonic conversation with a IFB customer care executive on 18604255678 on 18/05/2013 at 4.25 PM. |

### Observations on Warranty Terms and Conditions

- All the major players in the market for buying and selling of microwave ovens in India (hereinafter ‘original equipment suppliers’), under their warranty terms and conditions, impose a limitation on the consumers to the effect that the consumers shall get their microwave ovens repaired from the authorised service centres/authorised service technician only. A contravention of this limitation results in the warranty becoming void.

- A direct consequence of this is that it makes the customers dependent on the authorised service centres/authorised service technicians for repair work and even if the customers feel that the problem can be remedied much faster by independent repairers, they cannot employ their services because if they do, the warranty of their microwave oven will become void.

- Reliance exclusively on authorised service centres for all repair work during the warranty period could have severe adverse effects on the service provided to people not living in metros or big cities/towns. The smaller towns and cities might not have
authorised service centres and thus, the service provided to such customers will certainly be a delayed one necessarily causing hardship to them.

- This hardship gets further aggravated in light of the warranty stipulation imposed by Samsung or Onida that the consumers will have to bear the monetary burden of transportation and deputing service technicians between the site of operation of the microwave oven and the authorised service centre.
- Another stipulation in the warranty terms and conditions of Samsung and Onida that seems unreasonable is that the consumers will be able to avail the product warranty for microwave ovens only if the product has been purchased from an authorised dealer.
- However, a simple justification may be afforded by the original equipment suppliers on the point of limitation imposed vis-a-vis repair work to be carried out exclusively by authorised service centres. They could contend that there is a possibility that the independent repairers might not be able to resolve the problems persisting in a microwave oven and rather, worsen the problem, especially due to either their lack of adequate qualification or lack of technical know-how specific to that particular brand or make of microwave oven. Further, in light of the fact that during the warranty period, the monetary burden of servicing and replacing faulty parts with new parts is to be borne by the original equipment suppliers and not the customers, in the event that the independent repairer worsens the problem persisting in a microwave oven, unnecessary additional monetary burden will be imposed upon the original equipment suppliers for no fault of theirs. This may have a further consequence that the original equipment suppliers might want to increase the selling prices of microwave ovens and increase their profit margins to account for such additional monetary burden, thus adversely affecting the interests of the consumers in the long run.

**Observations on Spare Parts Availability**

- Spare parts are not generic in nature in the sense that the spare parts made for a particular microwave oven brand cannot be used in the microwave of any other brand.
- None of the major microwave brands sell spare parts openly or over the counter directly to customers. It is the authorised service technician of a microwave manufacturer who procures the requisite spare part from the authorised service centre/
authorised spare parts dealer of that manufacturer and then replaces it on site. However, it must be noted that Samsung does sell some non-technical/non-functional spare parts like rubber belt, plastic ware, rotating plate, etc directly to the customer.

- From a survey of the markets and gathering information from shopkeepers and traders dealing in microwave spare parts, the researcher submits that though there are suppliers supplying spare parts for microwave brands in the market but genuineness of the spare parts is a major issue.

- The perception regarding availability of spare parts thus prevalent in the market is that the spare parts are available only from the authorised service centres/authorised spare parts dealers of the original equipment suppliers due to the lack of visibility of the few other spare parts suppliers that are there in the market. Moreover, what reinforces and further strengthens this perception is the concern over the genuineness of spare parts sold by these other suppliers due to which the customers who may even be aware of these suppliers may also choose not to procure spare parts from them. Therefore, for all practical purposes, the only source of spare parts in the market are authorised service centres/authorised spare parts dealers of the original equipment suppliers, at least for original/genuine spare parts.

- The current policy regarding sale of spare parts followed by original equipment suppliers is to not sell spare parts over the counter to independent repairers or any other person or even customers using their brand microwave ovens. This amounts to foreclosure in terms of availability of spare parts. A necessary consequence of such foreclosure is that the consumer is rendered completely dependent on the manufacturer for spare parts as there is no availability of genuine spare parts in the aftermarket. This results in dominance of the original equipment suppliers vis-a-vis the spare parts of their own brand. This dominance is susceptible to abuse by the original equipment suppliers by overcharging for the spare parts and despite the knowledge of being overcharged, the consumers will have no option but to purchase these overpriced spare parts as and when the need arises.

**Observations on Annual Maintenance Terms and Conditions**

- Annual Maintenance may be sought for a period of 1 year, 2 years or 3 years.
- Prices for annual maintenance range between 750-1000 for 1 year and 1500-1800 for 2 years depending on the make, model and brand of the microwave oven.
• Under the annual maintenance contract, the services included are the same as those under a warranty agreement. Thus, annual maintenance covers service and repair work as well as replacement of non-working parts with new spare parts, although these spare parts are generally reconditioned parts.

• An annual maintenance contract can be entered into by the consumer at any point of time after the purchase of the microwave oven i.e. within the warranty period or even after the expiry of the warranty period. However, LG imposes a further condition stipulating that an annual maintenance contract can be entered into only within 5 years from the date of purchase of the microwave oven.

• The procedure to enter into an AMC is to call the service centre of the original equipment supplier and register a request for entering into an AMC. A service technician will then visit the site and inspect the microwave oven. After the inspection, if the technician is of the opinion that the microwave oven is in a ‘working condition’ or has ‘no defects’, only then the customer will be allowed to enter into an AMC. Else, the unit will first have to be repaired and only then AMC could be entered into.

• It must be noted that amongst the major players in the microwave oven market in India, Samsung is the only brand which does not have any provision for either AMC or extended warranty. Therefore, consumers have no option but to avail of the costly on-call services from Samsung’s authorised service centres each time the microwave oven malfunctions or stops working completely.

COMPETITIVE SCENARIO ANALYSIS IN TERMS OF SECTION 3

In this sub-section, the researcher will examine whether the aftermarket of microwave ovens in India contravenes any provisions of Section 3 of the Act. The relevant provisions of Section 3 are as under:

“3. Anti-Competitive Agreements

... (3) Any agreement entered into between enterprises or associations of enterprises or persons or associations of persons or between any person and enterprise or practice carried on, or decision taken by, any association of enterprises or association of
persons, including cartels, engaged in identical or similar trade of goods or provision of services, which—

(a) directly or indirectly determines purchase or sale prices;

(b) limits or controls production, supply, markets, technical development, investment or provision of services;

The position regarding availability of spare parts, as can be seen from the survey data above, is such that the only source of availability of original/genuine spare parts are the authorised service centres of the respective original equipment suppliers. Although, in the survey data, it can be observed that there are in fact other suppliers of microwave oven spare parts in the market apart from the authorised service centres. However, these suppliers are being excluded from the purview of this research project on account of the doubts regarding their genuineness. Thus, it is stated that the authorised service centres are the only source of spare parts for microwave ovens in India. It must be noted here that this practice of making spare parts available only through their authorised service centres is being followed by not one but almost all the major players in the microwave oven industry in India. Proof for such practice has already been enumerated above in the survey data. Although, the survey data provides an insight into the practice followed by only 4 enterprises, it must be borne in mind that these 4 enterprises, namely LG, Samsung, Onida and IFB are the enterprises with the highest market shares in the market of microwave ovens in India and it is due to paucity of time that the researcher could not explore the practices followed by the other manufacturers of microwave ovens in India.

It might be argued by some that since there is no evidence of any agreement or collusion between the various manufacturers concerting to follow such a practice, it cannot be brought within the ambit of Section 3(3). However, it must be noted that Section 3(3) includes "practice carried on...by, any association of enterprises..." and thus, it can be reasonably asserted that the even if there is no express agreement or evidence of any collusion, the fact that the practice is being carried on by almost all the major players, it can be brought within the purview of Section 3(3). Therefore, such practice of making spare parts available only through authorised dealers is one which takes the form of an anti-competitive agreement under the meaning of the provisions of Section 3(3). Due to such a practice, there is virtually no competition in the aftermarket since the authorised dealers are the only source of spare parts and as the spare parts are not generic i.e. the spare parts of LG cannot be used in the
microwave oven of Samsung. Therefore, this results in foreclosure of competition in the aftermarket for spare parts in India.

**COMPETITIVE SCENARIO ANALYSIS IN TERMS OF SECTION 4**

In this sub-section, the researcher will examine whether the aftermarket of microwave ovens in India contravenes any provisions of Section 4 of the Act. The relevant provisions of Section 4 are as under ĭ

“4. **Abuse of dominant position**

... (2) There shall be an abuse of dominant position under sub-section (1), if an enterprise or a group -

(a) directly or indirectly, imposes unfair or discriminatory -

(i) condition in purchase or sale of goods or service; or

(ii) price in purchase or sale (including predatory price) of goods or service.

... (b) limits or restricts -

(i) production of goods or provision of services or market therefor; or

(ii) technical or scientific development relating to goods or services to the prejudice of consumers; or

(c) indulges in practice or practices resulting in denial of market access in any manner; or

(d) makes conclusion of contracts subject to acceptance by other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts; or

(e) uses its dominant position in one relevant market to enter into, or protect, other relevant market.”

*Relevant Market*
For the purposes of an examination of abuse of dominant position of an enterprise, it is imperative to first delineate a relevant market in accordance with S 2(r) of the Act which defines it as “the market which may be determined by the Commission with reference to the relevant product market or the relevant geographic market or with reference to both the markets.”

Relevant product market has been defined in Section 2(t) of the Act as “a market comprising all those products or services which are regarded as interchangeable or substitutable by the consumer, by reason of characteristics of the products or services, their prices and intended use.”

In the case of Commercial Solvents the European Court of Justice held that “it is in fact possible to distinguish the market in raw material necessary for the manufacture of a product from the market on which the product is sold.”

In Hugin, the Commission defined the relevant market as the market for Hugin spare parts since they were not substitutable and Hugin cash registers were compatible with only Hugin spare parts.

The European Court of Justice in the cases of Volvo and Renault held that spare parts for cars constitute a separate market from the cars themselves.

In light of Section 2(r) and Section 2(t) and the aforementioned cases, it can be said that in the instant case, there will be two relevant markets. First, will be that of ”buying and selling of spare parts of [a particular brand] of microwave oven in India.” For instance, if the examination of abuse of dominance is being undertaken, then the relevant market would be market for buying and selling of spare parts of LG in India. The other relevant market will be that of ”repair and service of microwave ovens of [a particular brand] in India.”

**Dominance**

Dominant position has been defined in the Act as “a position of strength, enjoyed by an enterprise, in the relevant market, in India, which enables it to—

(i) operate independently of competitive forces prevailing in the relevant market; or

(ii) affect its competitors or consumers or the relevant market in its favour.”

i. In the relevant market of spare parts of a particular brand of microwave oven in India

It is known from the survey data that the only source of genuine spare parts in India is the respective authorised service centre of a microwave oven manufacturer. It is also known that the spare parts of one brand of microwave oven are not compatible with the microwave oven of another brand. In terms of the factors listed under Section 19(4) of the Act, it must be noted that there is no competition in the relevant market of spare parts of microwave ovens in India as the authorised service centres of the microwave oven manufacturers are the only source of supply of spare parts. Thus, there are no competitors that a microwave oven manufacturer has to compete against. Additionally, the consumers are totally dependent on the microwave oven manufacturers for supply of original spare parts of that particular brand. Furthermore, the entry barriers in the market of spare parts of a particular brand of microwave oven in India are very high as the new entrant will not be able to procure the spare parts to be able to sell it to the consumers.

ii. In the relevant market for service and repair of microwave ovens of a particular brand in India

Keeping in mind the fact that there is no availability of spare parts in the aftermarket and even from the authorised service centres of the different microwave oven manufacturers, buyers cannot directly procure spare parts. Consequently, independent repairers wanting to engage in the business of servicing and repairing microwave ovens will not be able to do so because if they require spare parts for the proper and successful repair of a microwave oven, they will not be able to deliver due to non-availability of spare parts. Therefore, the independent repairers will not be able to operate. Thus, the only option left with the consumer would be to turn to the microwave oven manufacturers authorised service centre for service and repair, thus, making it dominant in the market.

Explanation (a) to Section 4, Competition Act, 2002.
Abuse of Dominance

It is not merely enough to establish that an enterprise has a dominant position in the relevant market to establish a successful claim against an enterprise. It will also have to be shown that the dominant enterprise is abusing its dominant position. The relevant factors to be taken into consideration for assessing the abuse of dominant position of an enterprise are listed in Section 19(4) and are as under i

19. Inquiry into certain agreements and dominant position of enterprise

(4) The Commission shall, while inquiring whether an enterprise enjoys a dominant position or not under section 4, have due regard to all or any of the following factors, namely:—

(a) market share of the enterprise;
(b) size and resources of the enterprise;
(c) size and importance of the competitors;
(d) economic power of the enterprise including commercial advantages over competitors;
(e) vertical integration of the enterprises or sale or service network of such enterprises;
(f) dependence of consumers on the enterprise;
(g) monopoly or dominant position whether acquired as a result of any statute or by virtue of being a Government company or a public sector undertaking or otherwise;
(h) entry barriers including barriers such as regulatory barriers, financial risk, high capital cost of entry, marketing entry barriers, technical entry barriers, economies of scale, high cost of substitutable goods or service for consumers;
(i) countervailing buying power;
(j) market structure and size of market;
(k) social obligations and social costs;
(l) relative advantage, by way of the contribution to the economic development, by the enterprise enjoying a dominant position having or likely to have an appreciable adverse effect on competition;
(m) any other factor which the Commission may consider relevant for the inquiry.”
In *Commercial Solvents* case, the ECJ held that an undertaking which has a dominant position in the market in raw materials and which, with the object of reserving such raw material for manufacturing its own derivatives, refuses to supply a customer, which is itself a manufacturer of these derivatives, and therefore risks eliminating all competition on the part of this customer, is abusing its dominant position.\(^{44}\)

In both *Volvo*\(^{45}\) and *Renault*\(^{46}\) the ECJ confirmed that the refusal to supply spare parts by a company having an exclusive right to the production of such spare parts, may constitute an abuse.

In *Metzler v Bear Automotive Service Equipment Co*\(^{47}\), the refusal to sell certain replacement parts for defendant's automotive diagnostic equipment without purchase of accompanying repair service.

i. **In the relevant market of spare parts of a particular brand of microwave oven in India**

In the context of an aftermarket, while examining the abuse of dominant position of an enterprise, locking in of a buyer needs to be considered for which the circumstances to be assessed are imperfect information on the part of buyers or information asymmetry, significant buyer investment in the primary product, or high switching costs. If a buyer is locked in the seller will be in a position to abuse its dominant position and charge higher prices for the secondary products.\(^{48}\)

In the relevant market for spare parts of microwave ovens in India, the buyer is generally unaware about the necessary information regarding the aftermarket. The buyer is not made aware at the time of purchase of the microwave oven about the costs of spare parts and service and repair or the AMC terms and conditions. This leads to information asymmetry amongst the buyers. Further, the initial investment in the purchase of a microwave oven is generally high by Indian middle class standards. A decent microwave oven will cost approximately at least Rs 10000, which is certainly a high investment. Due to such a high investment, it is not feasible for a consumer to keep switching its microwave oven i.e.

\(^{44}\) *Commercial Solvents* Case, page 251.
\(^{47}\) 19 F Supp. 2d 1345 (S.D. Fla. 1998).
purchasing a new microwave oven instead of getting it serviced or repaired each time it stops working. Therefore, the customers are ‘locked in’ Furthermore, since the spare parts of one microwave oven brand are not compatible with another, customers have no choice but to procure the spare parts of a particular brand only. This makes them ‘captive customers’ meaning that the customers have been made captive to the microwave oven manufacturer as the customers have no other choice in terms of procurement of spare parts.

In light of such facts and observations, it can be reasonably asserted that there is an abuse of dominant position by the enterprises operating in the relevant market of supply of spare parts of a particular brand of microwave oven in India.

i. In the relevant market for service and repair of microwave ovens of a particular brand in India

After the warranty period of a microwave oven expires, a customer has two choices - first, to get the microwave oven repaired on a ‘call basis’ meaning that each time the microwave oven malfunctions, the customer calls the authorised service centre to get it repaired; second, to enter into Annual Maintenance Contract with the microwave oven manufacturer. The alternative of getting it repaired by an independent repairer is not available to a customer since, as has already been established above, the spare parts are not available and hence, the independent repairer will not be able to service or repair a microwave oven if a spare part needs to be replaced.

If a spare part needs to be replaced in a microwave oven and the customer calls the authorised service centre to register a request for its replacement, the customer might end up running a bill of Rs 2000-3000 easily, as parts like magnetron cost approximately around 1500 and touch pads cost around Rs 600. Therefore, if each time a microwave oven malfunctions and the customer calls the service centre for repair, it will turn out to be extremely expensive for the customer. On the other hand, entering into AMC for 1 year will cost a customer approximately Rs 1000. Therefore, entering into an AMC seems to be a cheaper and much more plausible option for a customer. Therefore, of these two choices, the first one of getting the microwave oven repaired on a ‘call basis’ is not really a viable choice. Thus, the only viable choice a customer has is to enter into an AMC.
Due to its dominance in the relevant market for supply of spare parts of a particular brand of microwave oven in India, the manufacturer is able to use its dominant position even in the relevant market for service and repair of microwave ovens in India. This is achieved by not allowing the free sale of spare parts in the market. Consequently, independent repairers are unable to operate in the market as they have no source to procure spare parts from. Therefore, in terms of Section 4(2)(e), it is clear that there is an abuse of dominant position by the manufacturers of microwave ovens in India.
CHAPTER IV – CONCLUSION

The objective with which this research project was undertaken was to assess the possible anti-competitive effects (if any) in the primary and the secondary market of microwave ovens in India. To fill in the gap after researching in the public domain, the researcher conducted a survey to find out all the necessary information, especially in the aftermarket for issues regarding availability of spare parts and terms and conditions of annual maintenance contracts.

In the primary market i.e. the market for trade of microwave ovens in India, there were found to be a number of enterprises such as LG, Samsung, Onida, IFB, etc. Analysing the most recent statistics available regarding the market shares of these enterprises, it can be concluded that LG ranked at the top with the highest market share of 28.92% as of 2010-11. However, none of the enterprises were found to be ‘dominant’ in terms of Section 4 of the Act in the relevant market of buying and selling of microwave ovens in India. Further, no evidence or facts were found suggesting that the enterprises engaged in any anti-competitive agreements and none of the enterprises were found to be in contravention of Section 3 of the Act. Therefore, in essence, it was observed that there was stiff competition in the primary market of trade of microwave ovens in India.

With regards to the aftermarket, it was observed that a common practice was prevalent amongst almost all the major microwave oven manufacturers in India. The spare parts were only available through the authorised service centres and even from the authorised service centres, were not available directly to the consumers. This was observed to be a ‘practice carried on...by, any association of enterprises’ under the provisions of Section 3(3) of the Act and is thus, argued to be anti-competitive in nature and thus, void in law. Additionally, for an analysis of the competitive scenario in the aftermarket vis-a-vis Section 4 of the Act, two relevant markets were identified i.e. (1) relevant market of spare parts of a particular brand of microwave oven in India; and (2) relevant market for service and repair of microwave ovens of a particular brand in India. In the first relevant market of spare parts of a particular brand of microwave oven in India, it was observed that a particular microwave oven manufacturer is dominant as its authorised service centre is the only source of supply of genuine spare parts which are not sold directly to the consumers. Due to the manufacturer of
microwave ovens being the sole supplier of spare parts, the customers became captive customers or were locked in wherein they had no choice but to rely on the services of the manufacturer and pay them the price they asked for each time they had to get a part in their microwave oven replaced. Thus, it was observed that there was a certain abuse of dominant position by the manufacturers of the microwave ovens albeit individually in terms of Section 4 of the Act. In the relevant market for service and repair of microwave ovens of a particular brand in India, it was found that the consumers had no real choice but to enter into AMCs with the manufacturers of microwave ovens because there were no independent repairers in the market due to non-availability of spare parts and the option of on call service would be a really expensive alternative. Essentially, due to the dominance of the manufacturers in the relevant market of spare parts of a particular brand of microwave oven in India, the manufacturers were able to foreclose all other viable options for consumers in the relevant market for service and repair of microwave ovens of a particular brand in India. Thus, it was observed that the manufacturers were in contravention of Section 4(2)(e) of the Act by using its dominant position in one relevant market to enter into or protect other relevant market.