



COMPETITION COMMISSION OF INDIA

***Suo Moto* Case No. 01 of 2019**

***In re: Alleged anti-competitive conduct by Maruti Suzuki India Limited
(MSIL) in implementing discount control policy vis-à-vis dealers***

CORAM

**Mr. Ashok Kumar Gupta
Chairperson**

**Mr. U. C. Nahta
Member**

**Ms. Sangeeta Verma
Member**

Present:

For the Opposite Party Mr. Rajshekhar Rao, Ms. Supritha Prodaturi, Ms. Chandni Anand and Ms. Gauri Puri, Advocates with Mr. Rohan Arora, Associate alongwith Ms. Manjaree Chowdhary, General Counsel, Mr. Zento Takashi, Advisor and Mr. Kiran Singh Thakur, Legal Manager.

Order under Section 26(1) of the Competition Act, 2002

1. The present matter arises out of an e-mail dated 17.11.2017 ('the e-mail') sent by a purported Maruti Dealer anonymously against Maruti Suzuki India Limited ('MSIL') alleging essentially Resale Price Maintenance resorted to by MSIL in its West-2 Region (Maharashtra State other than Mumbai & Goa).
2. It is alleged in the e-mail that dealers of MSIL in West-2 Region are not permitted to give extra discount to their customers and if a dealer is found



giving discounts more than the permitted level, penalty is levied depending upon the number of incidents found in a particular financial year. Copies of e-mails (after redacting the names of senders and recipients) have been enclosed alongwith the e-mail which highlight the penalties levied upon the defaulting dealers. It has also been pointed out that the purpose of imposing penalties is not mentioned in e-mails as the same is against the law.

3. To further elaborate, it is averred that prior to imposing penalty on errant dealers for discount policy violations, MSIL management sends an e-mail with a “Mystery Shopping Audit Report” to such dealers and then asks for a clarification regarding the discount being offered. MSIL’s independent agency does mystery shopping audit wherein a fake customer visits every dealer in Pune City checking whether extra discount is being offered or not. The independent agency will then send audio proof to MSIL management which, in turn, will send a “Mystery Shopping Audit Report” to the respective dealer seeking clarification. If the concerned dealer is not able to justify the extra discount, then MSIL levies a penalty. Such e-mails which record imposition of penalty is then sent to all dealers.
4. It is further alleged that the penalised dealer is asked to deposit a cheque of the penalty amount in the name of Ms. Swati Kale, wife of Mr. Vinod Kale (Vice-President of Wonder Cars Pvt. Ltd. - one of the MSIL dealers in Pune City). This money is utilised by MSIL for various expenses as decided by the management of MSIL.
5. Lastly, it is alleged that similar Discount Control Policy is implemented by MSIL across India - specifically, in the cities where more than 4 to 5 dealers operate in a single city.
6. Having considered the e-mail and the attachments sent therewith, the Commission decided to hold a preliminary conference with MSIL on



28.03.2019. Accordingly, a copy of the e-mail dated 17.11.2017 alongwith the attachments were forwarded to MSIL with a direction to submit its reply thereto within 4 weeks of receipt of the order. On 28.03.2019, the matter was adjourned to 22.05.2019 to allow MSIL to inspect its depositions and other documents filed by it, if any, in Case Nos. 36 & 82 of 2014.

7. On 22.05.2019, the Commission held preliminary conference with MSIL. During the preliminary conference, the learned counsel appearing on behalf of MSIL filed response to the allegations contained in the e-mail. Further, during preliminary conference, MSIL was directed to file an affidavit stating therein that it does not impose or receive, directly or indirectly, any alleged penalty which is levied upon dealers for giving extra discounts to end consumers, as argued by the learned counsel appearing for MSIL.
8. MSIL, in its response, stated that it does not exercise control or supervision over the dealers, except to maintain a balance between satisfaction of consumers and uniformity in schemes. It was submitted that there is no agreement between MSIL and its dealers which involves discount control policy. It was also stated that the Dealership Agreement sets out the relationship between MSIL and its dealers which *inter alia* provides for discounts.
9. Additionally, it was submitted that MSIL encourages dealers to give discounts to the consumers. This was sought to be evidenced by the fact that when the margin of particular models of vehicles are not sufficient to take care of the costs of the schemes for consumers/ Consumer Offers proposed by the dealers, MSIL supports its dealers by contributing to the schemes. This is stated to be done to encourage dealers to provide discounts and to maximise the benefits for consumers.



10. Alternatively, MSIL contended that it has not imposed a discount control policy and this was sought to be evidenced by the fact that in many instances dealers provided discounts higher than the Consumer Offers. It was reiterated that MSIL does not have the authority to penalise any dealer for giving additional discounts over the Consumer Offers.
11. Adverting to the e-mails, it was submitted that they do not pertain to any agreement/ understanding between MSIL and its dealers involving resale of its vehicles. The only agreement which is entered into between MSIL with regard to resale of vehicles is the Dealership Agreement which specifically allows dealers to provide discounts they deem fit. It was also stated that the penalties mentioned in the e-mails do not pertain to the Dealership Agreement.
12. Accordingly, it was submitted that there is no clause in the Dealership Agreement which allows MSIL to levy penalty on the dealers for providing discounts higher than those prescribed in the Consumer Offers to the consumers.
13. It was further submitted by MSIL that the “penalties” referred to in the e-mails relate to the schemes and guidelines launched by the dealers to ensure consumer satisfaction. It was stated that MSIL supports many such schemes launched by the dealers by making a contribution to the offers so that the entire cost of the offer is not borne by the dealers out of their margins. The compliance of such Consumer Offers is monitored by MSIL owing to its, (a) contribution to the scheme, and (b) object of ensuring consumer satisfaction by maintaining uniformity in schemes while simultaneously striking a balance between dealer confidence and consumer satisfaction.



14. It was further argued that the alleged agreement does not cause or is not likely to cause appreciable adverse effect on competition.
15. In sum, MSIL argued that it does not have in place a discount control policy. The Information lacks substance and does not meet the standard of making a *prima facie* case and accordingly, is liable to be rejected at the threshold stage itself.
16. Subsequently, MSIL filed an Affidavit dated 30.05.2019 wherein it was stated that “...MSIL does not levy any penalty for any alleged discount control policy (referred to in the information dated 17 November 2017). MSIL communicates the understanding by and amongst the Dealers. Any alleged penalty amounts are not received by MSIL and payments are made to the account of Ms. Swati Kale (wife of Mr. Vinod Kale, Vice-president of Wonder Cars Pvt. Ltd.- a dealership in Pune)”.
17. The Commission has perused the anonymous e-mail alongwith the attachments, response of MSIL filed on 22.05.2019 and Affidavit dated 30.05.2019 filed on behalf of MSIL.
18. The instant case pertains to alleged vertical agreement entered into by MSIL with its dealers/ distributors for Resale Price Maintenance (RPM). To analyse such agreement amongst enterprises or persons at different stages or levels of the production chain, Section 3(4) of the Competition Act, 2002 (‘the Act’) envisages competition assessment to be done in ‘different markets’. In this regard, it is observed that MSIL *inter alia* operates in the upstream market of manufacture of passenger cars while its dealers operate in the downstream market of distribution and sale of Maruti passenger cars to consumers.
19. MSIL has dealerships and distributorships across the country and its cars are sold across the territory of India. By its own submission, MSIL enhances its



brand value with the presence of 2627 sales outlets and 3403 service outlets across India. Therefore, the geographic spread for competition assessment may be considered as the territory of India, as the conditions of competition for sale and dealership/distributorship of Maruti passenger cars are uniform across the country. Thus, the present analysis may be undertaken in the market for sale of passenger cars (upstream market) and distribution of passenger cars (downstream market) in India.

20. At this stage, it would be appropriate to examine the market construct and the market shares of various Original Equipment Manufacturers (OEMs) in domestic passenger car market. The Table below shows the market share of various OEMs in the domestic passenger car market. From the Table, it appears that MSIL is market leader in the passenger cars segment in India with more than 50% market share in 2017-2018 followed by Hyundai Motor India Ltd with 19.65% market share during the same period.

Domestic Passenger Car market share for 2016-2017, 2017-2018

Company Name	Domestic Sales (In Numbers) April-March		Market Share (In %) April-March	
	2016-2017	2017-2018	2016-2017	2017-2018
Maruti Suzuki India Ltd	1,095,891	1,234,571	52.09	56.79
Hyundai Motor India Ltd	411,207	427,284	19.55	19.65
Tata Motors Ltd	134,499	135,430	6.39	6.23
Honda Cars India Ltd	130,344	110,109	6.2	5.06
Others (like Ford, Nissan, Toyota and Volkswagen)	3,31,906	2,66,556	15.77	12.27
Total	2,103,847	2,173,950	100	100

Source: <https://www.thehindubusinessline.com/economy/maruti-races-ahead-gains-yet-more-market-share-in-passenger-car-sales-in-2017-18/article23550120.ece>.



21. In the present case, there is a vertical agreement between MSIL and its dealers in the form of Dealership Agreement. Further, though MSIL has argued that there is no agreement between MSIL and its dealers which amounts to imposition of discount control policy, the Commission is of the view that such a plea is misconceived since as per Section 2(b) of the Act, “agreement” includes any arrangement or understanding or action in concert whether or not, such arrangement, understanding or action is formal or in writing; or whether or not such arrangement, understanding or action is intended to be enforceable by legal proceedings.
22. Thus, the above definition includes within its purview, any tacit or informal understanding between entities. Agreements restraining competition are generally made in smoke filled rooms and therefore it is difficult to find formal/ written agreements. It is with this objective that the Act has stipulated a wider definition of agreement to catch hold of such anti-competitive conduct. Therefore, MSIL’s submission that there exists no agreement to control discounts, is devoid of substance and merits rejection.
23. Coming to the issues involved in the present case, the Commission observes that, as per the allegations, MSIL dealers are penalized for non-compliance with the discount control policy, *i.e.* for granting additional discounts over and above the one stipulated by MSIL. In other words, as per the allegations, MSIL has indulged in resale price maintenance by fixing the maximum discount which its dealers could offer to end customers and in order to hide its engagement and enforcement of Discount Control Policy, penalty was to be paid in the name of “Swati Kale”, as noted *supra*.
24. In this regard, the Commission notes that according to the Section 3(4)(e) of the Act, “resale price maintenance” includes any agreement to sell goods on condition that the prices to be charged on the resale by the purchaser shall be



the prices stipulated by the seller unless it is clearly stated that prices lower than those prices may be charged.

25. MSIL, in its submissions, has denied imposition of RPM and instead stated that Clause 28.1 of the Dealership Agreement allows dealers to sell the products at a price lower than the Maximum Recommended Retail Price.
26. No doubt, Clause 28.1 of Dealership Agreement allows dealers to provide additional discounts and the response of MSIL lists out instances where discounts above consumer offer price has been provided, the Commission is of the opinion that investigation is required to ascertain as to whether such agreement that allows dealers to give additional discounts is also actually followed without any restraint. Though MSIL *vide* Annexure-6 to its response has provided details of instances where the actual discounts offered by dealers are above the Consumer Offers, the Commission observes that such instances pertain to only 9 dealers in the western region while MSIL has admittedly 2627 dealers across India. Thus, the examples given are too small to arrive at a definite conclusion to rule out instances of RPM.
27. The Commission further observes that the contention of MSIL that penalties are imposed on account of violation of schemes and guidelines launched by the dealers and their failure to ensure consumer satisfaction, is also not convincing. If penalties were imposed only for violation of guidelines, then it remains unanswered as to why such reasons are not mentioned in the e-mails.
28. The further contention of MSIL that Mystery Shopping Agencies are appointed by dealers to ensure maintenance of quality standards and consumer satisfaction and that MSIL had no role in their employment, also does not appear to be plausible, besides being contradictory, as MSIL itself has stated



that it is discharging the role of an independent third party in ensuring compliance of Sales Operating Procedure (SOP) amongst dealers.

29. The Commission also notes that it is not clear as to why dealers will appoint Mystery Shopping Agencies to check quality standards and consumer satisfaction. In these circumstances, the plea of MSIL that its only role is to play as independent third party in ensuring compliance of SOP amongst dealers and prevent conflict of interest amongst dealers themselves appointing the Mystery Shopping Agencies, lacks rationale. Clarity is needed as to how and why MSIL plays the role of an independent third party in ensuring compliance of SOP.
30. In view of the above, the Commission is of the considered opinion that a thorough and detailed investigation is required to be ordered to ascertain the factual position and *modus operandi* resorted to by MSIL as allegations *prima facie* reveal a fit case for investigation in respect of the alleged resale price maintenance arrangement put in place by MSIL upon its dealers in contravention of the provisions of Section 3(1) read with Section 3(4)(e) of the Act.
31. In view of the foregoing, the Commission directs the Director General ('DG') to cause an investigation to be made into the matter under the provisions of Section 26(1) of the Act. The Commission also directs the DG to complete the investigation and submit the investigation report within a period of 150 days from the receipt of this order.
32. It is also made clear that nothing stated in this order shall tantamount to a final expression of opinion on the merits of the case and the DG shall conduct the investigation without being swayed in any manner whatsoever by the observations made herein.



33. Before concluding, the Commission notes that MSIL has filed its response on 22.05.2019 in two volumes running into 931 pages with each page marked as “confidential”. Further, neither any application seeking confidentiality in terms of the Competition Commission of India (General) Regulations, 2009 has been made, nor any non-confidential version has been supplied. Under these circumstances, the response of MSIL shall be treated as non-confidential.
34. The Secretary is directed to send a copy of this order alongwith the material available on record to the DG forthwith.

Sd/-
(Ashok Kumar Gupta)
Chairperson

Sd/-
(U. C. Nahta)
Member

Sd/-
(Sangeeta Verma)
Member

New Delhi
Date: 04/07/2019