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IN THE COMPETITION COMMISSION OF INDIA
NEW DELHI

Case No. 03/2011

Decided On: 25.08.2014

Shamsher Kataria **Vs.** Honda Siel Cars India Ltd.

Hon'ble Judges/Coram:
Ashok Chawla, Chairman, Anurag Goel, Member (AG) and M.L. Tayal,Member (T)

Counsels:
For Appellant/Petitioner/Plaintiff: Sameer Oberoi and Aditya Patni, Advocates

For Respondents/Defendant: S. Seetharaman, S. Ramanathan, Advocates, A.N. Haksar, Sr. Advocate, R. Sudhindar, Advocate, R. Narain, Kanika Gomber, Advocates, Ramji Srinivasan, Sr. Advocate, Ravi Nath, Advocate, Ravinder Sethi, Sr. Advocate, Ajay Monga, Advocate, Jaideep Gupta, Sr. Advocate, Anand S. Pathak, Advocate, Abhishek Malhotra, Unnati Agarwal, Advocates, Avantika Kakkar, Advocate, Pallavi Shroff, Dinoo Muthapa, Advocates, Ashwini Mata, Sr. Advocate, R.B. Pendse, Advocates, Atul Dua, Advocate, Samir Gandhi and Vipin Singhania, Advocates

ORDER

1. Factual Background

The present information has been filed by Shri Shamsher Kataria (hereinafter, referred to as the "Informant") under Section 19(1)(a) of the Competition Act, 2002 (hereinafter, referred to as the "Act") against Honda Siel Cars India Ltd. (hereinafter, referred to as "Honda" or OP-1), the Volkswagen India Pvt. Ltd. (hereinafter, referred to as "Volkswagen" or OP-2) and Fiat India Automobiles Ltd. (hereinafter, referred to as "Fiat" or OP-3), alleging anti-competitive practices on part of the OPs whereby the genuine spare parts of automobiles manufactured by OP-1, OP-2 and OP-3, respectively, are not made freely available in the open market. OP-1 to OP-3 are involved in the business, inter alia, of manufacture, sale, distribution and servicing of passenger motor vehicles in India. It has been averred that the Opposite Parties also operate/authorize/regulate or otherwise control the operations of various authorized workshops and service stations which are in the business of selling automobile spare parts, besides, rendering after sale automobile maintenance services.

1.1 The Informant has also alleged, that even the technological information, diagnostic tools and software programs required to maintain, service and repair the technologically advanced automobiles manufactured by each of the aforesaid OPs were not freely available to the independent repair workshops. The repair, maintenance and servicing of such automobiles could only be carried out at the workshops or service stations of the authorized dealers of OP.

1.2 The Informant has further alleged that the restriction on the availability of genuine spare parts and the technical information/know-how required to effectively repair, maintain or service the automobiles manufactured by the respective OPs is not a

localized phenomenon. The OPs and their respective dealers, as a matter of policy, refuse to supply genuine spare parts and technological equipment for providing maintenance and repair services in the open market and in the hands of the independent repairers. In support of his allegations, the Informant has submitted letters from some independent service stations, where they have expressed their inability to service the Informant's vehicle due to the lack of access of such independent repairers to genuine spare parts and other technological information required to service/maintain the automobiles manufactured by the respective OPs. It has been stated by the Informant that he earlier owned a Maruti Suzuki vehicle and could easily get it repaired at independent workshops because the spare parts and the technological tools required to repair and maintain a Maruti Suzuki vehicle were freely made available by the company in the open market.

1.3 It has been further alleged that the OPs 1-3, by restricting the sale and supply of the genuine spare parts, diagnostic tools/equipment, technical information required to maintain, service and repair the automobiles manufactured by the respective OPs, have effectively created a monopoly over the supply of such genuine spare parts and repair/maintenance services and, consequently, have indirectly determined the prices of the spare parts and the repair and maintenance services. Additionally, the Informant has alleged, that such restrictive practice carried out by the OPs in conjunction with their respective authorized dealers, amounts to denial of market access to independent repair workshops.

1.4 The Informant has stated that the cost of getting a car repaired in an independent workshop is cheaper by 35-50% as compared to the authorized service centers of the OPs. The Informant has alleged that the OPs charge arbitrary and high prices to the consumers who are forced to avail the services of the authorized dealers of the OPs for repairing and maintaining their automobiles since the genuine spare parts, diagnostic tools and the technological information required to service their cars are not made available by the OPs to independent repair workshops. It has been also stated that the prices charged for the genuine spare parts and for repair and maintenance services by the authorized dealers of the OPs are even higher than what they charge in other markets in Europe. The Informant has alleged that such practices which allow the OPs to charge arbitrary and high prices result in significant increase in the maintenance cost to car owners.

1.5 It has been stated in the information that the components and parts used in the manufacture of their respective brand of automobiles are often sourced from independent original equipment suppliers (hereinafter, referred to as "OESs") and other suppliers who are restrained by the OPs from selling the parts/components in the open market. Such restriction on the ability of the OESs to sell the spare parts/components further limits the access of such spare parts/components in the open market, thereby, allowing the OPs to create a monopoly-like situation wherein they become the sole supplier of the spare parts/components of their respective brand of automobiles. Such restrictions allow the OPs to influence and determine the price of the spare parts/components used to repair and maintain the respective brands of automobiles.

1.6 The Informant has alleged that the restrictive and monopolistic trade practices, as detailed above, of the OPs and their authorized dealers have a negative effect not only on the consumer but also on the whole Indian economy since such practices increase the cost of the consumer to maintain an automobile. The Informant has stated that in a country like India where road transport is essential for the mobility of people and goods, the increased cost of vehicle maintenance may hamper the overall economic

growth of the country. The Informant has stated that as per a CII report, the size of the Indian automotive industry is estimated to be US$ 122-159 billion by the year 2016, which will be larger than the U.S. automotive market. It has been stated that growth in the market for genuine spare parts and repair and maintenance services is expected to be proportionate to the growth in the vehicle sales, as enumerated above.

1.7 The Informant has stated that effective competition at each level of automotive aftermarket is essential for fostering innovation and keeping mobility affordable. It has been contended that if a consumer is given a choice of getting his vehicle serviced/repaired at a workshop of his choice, it will foster competition among service providers which will in turn will not only lead to improvement in quality of service and a competitive pricing policy by the OPs, but also encourage innovation in the market. The Informant has alleged that due to the restrictive trade practices of the OPs, effective competition at each level of the Indian automotive industry is getting adversely affected.

1.8 The Informant has also alleged that the anti-competitive practices by the OPs have resulted in denial of market access to independent workshops which are usually micro, small and medium enterprises (MSMEs). The Informant has stated that MSMEs give employment to 45% of industrial workers. Furthermore, on the one hand the Government has introduced several policies and initiatives to encourage and support the MSMEs and on the other hand the current practices of the OPs are adversely affecting the sector.

1.9 The informant has stated that the European Commission has the so called 'Block Exemption Regulation' in place since the year 2002 to compel auto manufacturers to provide spares and tools etc., to independent operators. These regulations prohibit discrimination between authorized service dealers and independent operators. The European Commission had also taken commitments from auto majors to ensure supply of spares and technological knowhow to independent operators. To ensure effective competition in the auto repair and maintenance market, the European Commission issued the new regulation no. 461/2010 in the year 2010, which included specific guidelines apart from the earlier block exemption rules.

1.10 The Informant has stated that there are regulations in place in United States to ensure that emissions related diagnostic tools and information is available to independent vehicle repair shops. Several states of the U.S. have introduced the 'Right to Repair Act' to curb restrictive practices by automobile manufacturers. The Informant has further stated that all over the world consumers and governments are seeking to implement a free and fair competition regime in the automotive sector, with varying degree of success.

1.11 The Informant has alleged that the acts of the OPs in restricting the sale and supply of spare parts and technical information, diagnostic equipments and tools to independent automobile service providers indirectly determine the purchase or sale prices of both the price of automobile spare parts as well as the price of repair and maintenance services. The Informant has alleged that the anti-competitive acts of the OPs are arbitrary, illegal and devastating to free and fair competition. The Informant has alleged that such practices are in direct contravention of sections 3(3)(a) and 3(3)(b) of the Act. By refusing to sell the spare parts to independent operators the OPs are in violation of section 3(4)(d) of the Act. Further, the denial of access to the repair and maintenance market to the independent service workshops are in violation of section 4(2)(a), 4(2)(b) and 4(2)(c) of the Act.

1.12 The Informant has also filed additional information wherein it has been alleged that that the OPs and other vehicle manufacturers impose restrictions on their OESs from supplying automobile parts into the open market. It has been alleged that such practices amount to limiting and controlling production and supply of components/spares in the Indian automobile aftermarket and are in violation of section 4(2)(d) of the Act. As per the Informant the European Commission has effectively tackled the abovementioned restrictive practice aspect under their block exemption regulations by affording a statutory right to OESs to sell vehicle parts in the open market.

1.13 The Informant has also alleged in the supplementary information that the restriction by the OPs on their authorized dealers from taking up dealerships of other competing vehicle manufacturers is in contravention to the provisions of section 4(2)(a), 4(2)(b) and 4(2)(c) of the Act.

1.14 The Informant has sought the following reliefs:

> "(a) hold an enquiry into the trade practices of the Respondents and/or any other vehicle manufacturer and their authorized dealers/service centers indulging in similar activities as detailed herein and give a finding that such parties have committed restrictive and/or unfair trade practices in contravention of the Act;
>
> (b) order the Respondents to cease and desist from such restrictive, unfair, monopolistic trade practices and misusing its dominant position;
>
> (c) pass appropriate orders directing the Respondents No. 1-3 and other contravening vehicle manufacturers and their authorized dealers/services centers to provide spare parts, technical information, diagnostic tools, software and any other information and goods required for the repair, maintenance and servicing of the vehicles to independent repair workshops and also make the same freely available in the open Indian automotive aftermarket;
>
> (d) pass appropriate orders directing the Respondents and other contravening vehicle manufacturer indulging in similar activities as detailed herein to allow authorized dealers the right to undertake franchises/dealerships from different vehicle manufacturers without fear of malevolent action from the respondents or other defaulting vehicle manufacturers;
>
> (e) pass appropriate orders ensuring that access to the spare parts, tools, technical information, technical training and equipment for repair, maintenance and service of the vehicles and manufacturers by OESs is provided to the independent service providers, consumers and in the open market upon request and without undue delay and the price charged from such parts, tools, equipment should not be fixed by the vehicle manufacturers but be determined by independent market forces and free and fair competition;
>
> (e) award reasonable amount for costs incurred towards legal fees;
>
> (g) pass such further order as this Hon'ble Commission may deem fit and proper in the facts and circumstances of the case.

2. Prima Facie Opinion

The Commission after forming an opinion that a prima facie case exits in the matter, vide an order dated February 24, 2011, passed under section 26(1) of the Act directed the Director General (hereinafter, referred to as the "DG") to conduct an investigation into the matter and submit a report.

3. Investigation and Findings of the DG

3.1 In pursuance of the direction of the Commission the DG conducted investigation into the matter and submitted his investigation report (hereinafter, referred to as, the "DG Report") to the Commission.

3.2 From the submissions of the Informant, initial discussions held and the preliminary enquiries made during the investigation, the DG gathered that other automobile manufactures (other than the OPs (1-3)) may also be indulging in similar restrictive trade practices in the areas of after sales service, procurement and sale of spare parts from the OESs, setting up of dealership etc. In view of the fact that these practices may not be confined to the OPs (1-3) and considering that the case involved the larger issue related to prevalent anti-competitive conduct of the players in the Indian automobile sector and its implications on the consumers at large, the DG realized that the investigation should not be restricted to the OPs (1-3) mentioned above. Accordingly it was proposed by the DG that the investigation may be allowed to examine the alleged anti-competitive trade practices of all car manufacturers in India, as per the list maintained by the Society of Indian Automobile Manufacturers ("SIAM"). The DG, therefore, requested the Commission for direction to initiate investigations against all car manufacturers in India.

3.3 The Commission considered the abovementioned request of the DG to include within the scope of its investigations all automobile manufacturers in India as per the list maintained by SIAM and, vide order dated 26.04.2011, allowed the request to initiate investigation against other automobile manufactures of India (in addition to the OPs(1-3)). Such car manufactures were:

1) BMW India Pvt. Ltd. (hereinafter, referred to as "BMW")

2) Ford India Pvt. Ltd. (hereinafter, referred to as "Ford")

3) General Motors India Pvt. Ltd. (hereinafter, referred to as "GM")

4) Hindustan Motors Ltd. (hereinafter, referred to as "Hindustan Motors")

5) Hyundai Motor India Ltd. (hereinafter, referred to as "Hyundai", "HMIL")

6) Mahindra & Mahindra Ltd. (hereinafter, referred to as "M & M")

7) Mahindra Reva Electric Car Company (P) Ltd. (hereinafter, referred to as "Reva")

8) Maruti Suzuki India Ltd., (hereinafter, referred to as "MSIL")

9) Mercedes-Benz India Pvt. Ltd. (hereinafter, referred to as "Mercedes")

10) Nissan Motor India Pvt. Ltd. (hereinafter, referred to as "Nissan")

11) Premier Ltd. (hereinafter, referred to as "Premier")

12) Skoda Auto India Pvt. Ltd., (hereinafter, referred to as "Skoda")

13) Tata Motors Ltd., (hereinafter, referred to as "Tata")

14) Toyota Kirloskar Motor Pvt. Ltd. (hereinafter, referred to as "Toyota")

3.4 During the course of the investigation, the DG issued detailed questionnaires to seek information from each of the OEMs listed above, including their group companies, engaged in the automobile aftermarket in India. The DG also recorded statements on oath of representatives of the OEMS, the OESs and other multi-brand retailers. Besides, information was also collected from various third party stakeholders, such as:

(a) OES (original equipment suppliers)

(b) Authorized dealers appointed by each of the OEMs

(c) Multi brand service providers

(d) Independent repairers

(e) Discontinued dealers of the OEMs

3.5 Additionally, the DG obtained information from the following entities, namely:

(a) trade associations related to the Indian automotive industry, including SIAM, Automotive Component Manufacturer Association ("ACMA") and Federation of Automobile Dealers Association ("FADA"); and

(b) SPX India Limited ("SPX"), which supplies the specialized diagnostic tools for aftermarket servicing and repairing requirements to a large number of the OEMs.

3.6 The DG conducted its investigation of the market practices of all the automobile manufacturers or original equipment manufacturers ("OEMs") listed above and have submitted his findings to the Commission.

3.7 The DG has filed a main report (containing the DG's overall findings) and seventeen (17) sub-reports (each sub-report contains the findings of the DG's investigation with respect to the alleged anti-competitive trade practices of each of the 17 OEMs mentioned above).

3.8 The Commission makes it clear at this stage that the present order governs the alleged anti-competitive practices and conduct of OPs (1-14) only. The Commission shall pass separate order in respect of three car manufacturers, viz., Hyundai, Reva and Premier after affording them reasonable opportunity to make their submissions in respect of the findings of the DG report and queries raised by the Commission. Keeping this in mind, the findings of the DG report and contentions raised, if any, in respect of these three OPs have not been dealt with in this order.

3.9 After investigation the DG has found that the conduct and practices of the OPs are in violation of the provisions of section 3 and section 4 of the Act. The findings of the DG report, in brief, are discussed as under:

Relevant Product Market

3.9.1 The DG Report has identified following two separate product markets for the passenger vehicle sector in India:

1) The Primary Market: consisting of the manufacturing and the sale of the passenger vehicles.

2) The Secondary Market which is essentially the "Aftermarket". "Aftermarket" is the expression used to describe a market comprising complementary or secondary products and services which are purchased after another product i.e. the primary product which they relate to. According to the DG report the aftermarket in the present case comprises of spare parts, diagnostic tools, technical manuals and after sales repair and maintenance services that are required to be purchased after the purchase of primary product.

3.9.2 The DG further identified the two segments of the aftermarket for passenger vehicle sector in India. They are:

a) Supply of spare parts, including the diagnostic tools, technical manuals, catalogues etc. for the aftermarket usage; and

b) Provision of after sale services, including servicing of vehicles, maintenance and repair services.

3.9.3 The DG further analysed whether the aftermarket segments described above constitute distinct relevant product markets or the products in the primary market (i.e. the cars) and the products in the aftermarket (i.e., repair services and spare parts) were part of one indivisible 'system' of products consisting of a durable primary product and a complimentary secondary product.

3.9.4 While determining the relevant product markets, the DG took into account the technical difference between the various primary market products which leaves the customers with limited choice in complimentary products or services compatible with the primary product. This in the opinion of the DG implies that once the primary product has been purchased, consumer choice is confined to those aftermarket products or services compatible with that primary product. Hence, consumers are to a greater or lesser extent 'locked' into certain aftermarket suppliers.

Secondary Market for Spare Parts

3.9.5 To assess whether the spare parts market for each brand of car is a separate relevant market distinct from the respective primary market i.e., of that particular brand of car, the DG following international precedents identified two grounds where the two markets may not be separate relevant markets. Those grounds are as under:

a) If it was possible for a consumer to switch to spare parts manufactured by another producer (OEM); and

b) If it was possible for the consumer to switch to another primary product to avoid a price increase on the market for spare parts.

3.9.6 Regarding the first question, whether a consumer could switch to the spare parts produced by another OEM, the DG concluded that, based upon the submissions of the OEMs, most of the spare parts other than a few generic spare parts like tyres, batteries were manufactured specifically for the respective models of the cars. Moreover, even within the models of the same OEMs interchangeability of spare parts was limited.

Hence substitutability of spare parts across OEMs is drastically diminished. The DG further found that for spare parts that are manufactured in-house by the OEMs there is almost nil interchangeability and for those body parts that are procured from local OESs and other overseas suppliers there is limited substitutability. In this context the DG noted that the practice of the OEMs to consider only those spare parts as genuine which are purchased from the OEMs or the OESs specified by them and which bear the OEMs logo or trademark which further diminishes the possibility of a consumer, including the authorized dealer, purchasing spares from sources other than the OEMs or their specified vendors. It was also observed that, the OEMs also impose adverse implications on validity of warranties in using parts sourced from other channels. Based upon the above facts, the DG concluded that it is impossible for a consumer to switch to spare parts manufactured by another producer (OEM) as interchangeability between the spare parts manufactured by different OEMs is almost nil.

3.9.7 With respect to the second question, as to the possibility of the consumers to switch to another primary product (to avoid a price increase on the spare parts market), the DG concluded that due to high switching costs and the fact that post registration the residual value of a new car is lower than the price of a pre-registration new car, the owner of a car may only shift to another product in the primary market after incurring substantial financial loss. Thus, in the opinion of the DG, a purchaser of a product in the primary market is to a great extent locked in with the primary product and the feasibility of switching to another primary product to avoid a price increase in the secondary market of spare parts or repair services is limited.

3.9.8 Based on the above mentioned analysis, the DG concluded that the spare parts market for each brand of cars (each OEMs), comprising of vehicle body parts (manufactured by each OEMs, spare parts sourced from the local OESs or overseas suppliers), specialized tools, diagnostic tools, technical manuals for the aftermarket service formed a distinct relevant product market as defined under section 2(t) of the Act.

Secondary Market for Repair and Maintenance Services

3.9.9 In order to determine whether the maintenance and repair services of the products in the primary market constitutes a separate relevant market, the DG analyzed following factors:

a) The cost of after sale services in relation to the initial cost of the product in the primary market: The DG referred to data collected by ACMA which states that while the overall size of the automotive aftermarket in India is approximately Rs. 330 billion, three fourths of this constitutes spare parts and one fourth consists of maintenance and repair costs. The DG concluded after analyzing the aforesaid data and other data from similar sources, that the cost of after sale services over the lifetime of usage constitutes a significant amount. However, the DG viewed that such costs in the secondary market could not be efficiently compared with the costs of the products of the primary market as the choice of the consumers to choose a particular product in the primary market was based upon a variety of factors which differed amongst various users.

b) The DG then analyzed the ability of the consumers to factor in the after sale service and maintenance costs while purchasing the products of the primary market and whether such information was ascertainable and made available by the OEMs to the consumers. The DG after examining statements made by

representatives of various OEMs, concluded that it was not possible to estimate the cost of after sale service and maintenance over the years during which a consumer intends to use a car and that such costs varies depending upon the average run of the vehicle, the make and model, age of the vehicle, road condition, driving habits, regularity of maintenance services etc. Further, several OEMs claimed that such data were confidential in nature thereby indicating that such data was not shared with consumers.

c) The DG found that the OEMs provide after sale services through a network of authorized dealers who are engaged by the OEMs to either sell their products in the primary market, sell spare parts and/or provide maintenance and repair services in the secondary market. The presence of such specialized entities was evidence in itself that there was a separate product market for after sale maintenance and repair services.

3.9.10 Based on the aforesaid analysis the DG concluded that after sale repair and maintenance services constitute a distinct relevant product market as defined under section 2(t) of the Act.

Relevant Geographic Market

3.9.11 Regarding the relevant geographic market the DG has noted that the spare parts are available for a particular brand of vehicle from the authorized dealers of the OEMs in any part of India. Further, a perusal of the dealer agreements between the OEMs and the authorized dealers suggest that such dealers are required to provide service requirements to an OEM's customer irrespective of the State in which the vehicle is registered. Based on such findings, the DG has concluded that the relevant geographical market would be India.

DG's findings regarding dominance of the OEMs in the market for the supply of spare parts

3.9.12 The DG during its investigation carried out an assessment for each of the OEM in terms of the factors contained in section 19(4) to determine whether such OEMs can be stated to be dominant in the market for supply of spare parts for their brands of cars. This analysis is available in the sub-reports prepared by the DG in respect of each of the OEMs. The DG report, after analyzing the practices of each OEM, based upon the factors stipulated in section 19(4) of the Act, have concluded that, each OEM is a monopolistic enterprise/dominant player in the relevant market of supply of spare parts (including those manufactured in-house, sourced from overseas or obtained from local OESs), diagnostic tools, technical manuals, software, etc required to repair and maintain their respective brand of automobile. The main features of the DG's analysis have been summarized in the following paragraphs.

3.9.13 During the course of the investigation the DG identified that for the OEMs which manufacture all its spare parts in-house, there are no alternate sources available. Each OEM is the only source of such spare parts in the aftermarket. The DG also identified that the OEMs which source their spare parts from OESs restrict the ability of the OESs through restrictive agreements/contracts to sell spare parts in the open market. The over-seas suppliers of spare parts also in-fact does not sell such spare parts in the open market. Additionally, the dealers are required to source the spare parts only from the OEMs or their authorized vendors. Further, in India there is no concept of certification of matching quality and in the absence of such mechanism of quality confirmation for spare parts manufactured by alternate sources, the consumers have no means of

ascertaining the compatibility of spare parts sourced from other sources. The DG further noted that due to the fact that the overseas suppliers are not selling the spare parts to entities apart from the respective OEM, each OEM becomes the only source of supply of these spare parts for aftermarket requirement and acquires a position of dominance. The DG report elucidated in detail the restrictive agreements/contracts between OEMs & OESs, OEMs & Overseas Suppliers and OEMs and their authorized dealers while dealing with contravention under section 3(4) of the Act.

3.9.14 The DG's investigation has revealed that most of the cars across brands require specialized diagnostic tools, technical manual etc. for being serviced, repaired and maintained. The OEMs either source such specialized technical equipment from their overseas parent company or such tools are manufactured by SPX. The DG's investigation has shown that these diagnostic tools are not being sold directly into the aftermarket by the manufacturer of these tools on account of restrictions in agreement or arrangements between the OEMs and such equipment manufacturers. The investigation has also revealed that although in limited number of cases there may be alternate diagnostic tools available through other sources, however, in the absence of the required software to detect the fault codes (which are required by a repairer to effectively detect a particular fault in the highly sophisticated automobiles manufactured by the OEMs), the utility of such equipment would be limited. Therefore, given the circumstances, the DG finds each OEM to be the only viable source of supply of these specialized tools, technical manuals, fault codes, etc., for their particular brand of automobiles.

3.9.15 Therefore, the DG has concluded that each OEM is in a dominant position in the supply of its spare parts for its own brand of cars.

DG's findings regarding Abuse of Dominance

3.9.16 The DG has analyzed the practices and conduct of each OEM in terms of provisions of section 4 of the Act. The DG notes that the dominance of the OEMs emerge to a large extent on account of purported holding of relevant intellectual property rights over the spare parts being manufactured by the OESs or the OEMs themselves. Moreover, the DG after an exhaustive analysis of several international precedents have concluded that though the mere possession of a protective right does not amount to abuse of dominance by the holder of such protective rights, however, such exclusive rights may be prohibited when they result in discriminatory condition of sale, fixing of prices for spare parts at an unfair level or refusal to continue to manufacture spare parts of a particular type of automobile which is still in use.

3.9.17 The DG, during the course of its investigation, found that due the restrictions placed by the OPs on OESs and authorized dealers, spare parts, diagnostic tools etc. are not available in the open market particularly to the independent repairers and 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 undertake repairs and service of the vehicle of such brands of cars and effectively compete with the authorized dealers of the OEMs is severely impeded. The DG concluded that such conduct amounts to an imposition of unfair condition and denial of market access to independent repairers in terms of section 4(2)(a)(i) and 4(2)(c) of the Act, respectively. The DG further states that on account of the restrictions, the users of the cars are not in a position to choose between the independent repairers and the authorized dealers for their aftermarket requirements which amounts to imposition of unfair condition in violation of section 4(2)(a)(i) of the Act. Further, the DG also opined that OEMs use

their dominant position in market for the supply of its spare parts to protect their position in the market for repair and maintenance services which amounts to violation of section 4(2)(e) of the Act.

3.9.18 The DG states that in case of some OEMs, although the limited range of spare parts are available to the independent repairers as well as the owners of the cars in the open market, the ability of the independent repairers to undertake such jobs has been limited by not making available the appropriate diagnostic tools, technical manuals, fault codes, software etc., required to service and repair the respective brands of automobiles of the OEMs. This is particularly true with respect to those models of cars of the OEMs which require special tools for diagnosis and repairs. Further, for spare parts which are available in the open market, there is usually non-parity of terms at which the spare parts are available to the independent repairers vis-Ã -vis authorized dealers which adversely affects the ability of the former to compete effectively Therefore, the DG found that the conduct of such OEMs also results in denial of market access to independent repairers in terms of section 4(2)(c) of the Act. As such conduct also shuts out the choice of the car owners to choose their repair and maintenance service providers, it amounts to imposition of unfair conditions on the users of the automobiles in-terms of section 4(2)(a)(i) of the Act.

3.9.19 Further, based upon its investigation and analysis of international case-law and practices, the DG concluded that spare parts, diagnostic tools, manuals etc. of each OEM would constitute essential facilities for the independent repairers to be able to provide consumers with effective after sale repair and maintenance work and for such independent repairers to effectively compete with the authorized dealers of the OEMs. The DG has pointed out that the essential factors to be taken into account in determining whether spare parts, diagnostic tools, manuals etc. of each OEM would constitute essential facilities for the independent repairers, are: (a) control of the essential facility by the monopolist; (b) the inability to duplicate the facility; (c) the denial of the use of the facility, and (d) the feasibility of providing the facility.

3.9.20 The DG observed that due to the usage of high technology most of the models of automobiles manufactured by the OEMs require sophisticated diagnostic tools, technical manuals for proper diagnosis, service and repair. Therefore access to such technology is critical for any entity to undertake after sale service to compete effectively with the authorized dealers of the OEMs. Additionally, as explained above, the DG has found each OEM to be dominant with respect to its brand of automobiles and the spare parts of each brand of automobile is unique and cannot be replicated by the independent repairers from alternate sources. Therefore, based upon such considerations, the DG has concluded that the essential facilities doctrine is applicable to the restrictive practices of the OEMs, since the DG's investigation has revealed that by not making such material available to the independent repairers, the OEMs have put such repairers at a distinctly disadvantageous position and jeopardized their ability to undertake repairs of the automobiles manufactured by the OEMs.

3.9.21 The DG's investigation also shows that each OEM has substantially escalated the price of spare parts, for their respective brands of automobiles, from the price at which such spare parts have been sourced to the price at which such spare parts are available to the customers. There are also wide variations in the extent of escalation across spare parts which are an indication of the extent of discretion available with each OEM to price the spare parts. Consequently, the DG is of the opinion that OEMs are imposing unfair prices in the sale of spare parts in terms of section 4(2)(a)(ii) of the Act, which is substantiated by the considerable mark up of the prices and the significant variation

across the escalated prices of the spare parts of various brands of automobiles.

DG's findings regarding contravention of section 3 of the Act

3.9.22 The DG has gathered that the OESs are the suppliers of the auto components for the assembly line purposes as well as for the aftermarket requirements of the OEMs. The DG after conducting its investigation has broadly categorized OESs under the following heads:

(a) Where the design, drawing, technical specification, technology, know-how, equipment, quality parameters etc. are provided to the OESs by OEMs, the OESs are required to make the parts and supply according to these parameters.

(b) Where the patents, know-how, technology belong to the OESs however, the parts are manufactured based on the specification, drawings, designs supplied by the OEMs. The tooling/tooling cost may also be borne by the OEMs in some of these cases.

(c) Where the parts developed and sold by the OESs are made to their own specifications or designs which are commonly used in the automobile industry. Such parts are very few, for example, batteries, tyres etc.

3.9.23 The DG has reported that most of the OESs cannot supply spare parts which fall within category (a) and (b) mentioned above without seeking prior consent of the OEMs.

3.9.24 The DG after an examination of the agreements/letters of intent entered into between the OEMs and the OESs has found that most of such agreements/letters of intent have clauses which restrict the ability of the OESs to supply spare parts directly to third parties or in the aftermarket without the prior written consent of the OEMs. The DG's investigation has further revealed that such restrictive clauses typically appear in such agreements/letters of intent, where the OESs are manufacturing the spare parts using the proprietary drawings/designs and other intellectual property rights of the OEMs.

3.9.25 As per the DG's analysis such agreements between the OEMs and the OESs are, therefore, having features of exclusive distribution agreement and refusal to deal as per the provisions of section 3(4)(c) & (d) of the Act, respectively. Further, the DG stated that its investigation has not revealed a single instance where an OEM has granted permission to the OESs to supply spare parts directly into the aftermarket.

3.9.26 The DG has also observed that a large number of OEMs particularly those having foreign affiliations are sourcing large number of spare parts from overseas suppliers. The DG has undertaken a review of the import agreements/purchase order/letters of intent executed between the OEMs and the foreign suppliers of spare parts. The DG has reported that although no clause exists in such agreements which specifically restrict overseas suppliers from supplying such spare parts to independent repairers in the after market of spare parts in India, the investigation reveals that even such overseas suppliers are not supplying spare parts to any entities apart from the OEMs. The DG has further found out that in most cases the overseas suppliers are a group company or a parent company of the OEMs or has some linkages with the OEMs which indicates the possibility of an unwritten arrangement between the OEMs and the overseas suppliers for ensuring that such entities only supply the spare parts to the OEMs or its authorized vendors in contravention of section 3(4) of the Act.

3.9.27 The DG report also dealt with, in detail, the rationale of the restriction claimed by the OEMs for restricting OESs from distributing the spare parts manufactured by them without the consent of the OEMs in the open market. The OEMs have claimed the exemptions under section 3(5)(i) of the Act stating that the restrictions imposed upon the OESs are reasonable since considerable investments have been made in research and development facilities for developing the products. The DG noted that such an exemption is granted to certain categories of intellectual property rights holders to protect their intellectual property by imposing reasonable restrictions, as may be necessary to protect such intellectual property rights.

3.9.28 The DG while reviewing the documents evidencing the grant of the intellectual property right upon an OEM found that there were several issues relating to the fact whether the OEMs actually are in the possession of a particular intellectual property right. In some of the instances the OEMs could not provide sufficient documentary evidence linking the design of a particular spare part with the claimed intellectual right protection over such design. Some of the intellectual property rights claimed by the OEMs are actually held by their overseas parent corporation and such proprietary technology has been transferred to the OEMs through technology transfer agreements ("TTA"). However, such TTAs do not contain any specific details of the intellectual property rights that are being transferred to the OEMs. Thus, given the lack of adequate information, the DG could not verify the claim of such OEMs that they were in possession of a legally valid intellectual property right. The DG also noted that the intellectual property rights claimed by the OEMs were territorial in nature and the particular right is vested upon the holder of such intellectual property rights only in a given jurisdiction. Thus even if the parent corporation of the OEMs held such rights in the territories where such rights were originally granted, the same cannot be granted upon the OEMs operating in India by entering into a TTA. Thus, the OEMs pursuant to a TTA were holding a right to exploit a particular intellectual property right held by its parent corporation and not the intellectual property right itself. Consequently, the DG concluded that such OEMs could not avail of the exemption provided in section 3(5)(i) of the Act.

3.9.29 During investigation before the DG, OEMs also claimed protection in the form of copyrights over the drawings, designs, specifications etc. for every spare part manufactured on their behalf by the respective OESs. The DG after a thorough study of several judgments relating to the Indian copyright law has concluded that the copyright protection claimed by several of the OEMs over the designs, drawings and specifications of their respective spare parts are not available to the OEMs. The DG has come to this conclusion based upon the fact that though there are no requirements to register the copyright over a design of a spare part under the [Indian] Copyright Act, 1957, the right has been limited by the Copyright Act, which mandates that the copyright over the designs registered under the [Indian] Design Act, 1911 or such designs which are capable of being registered under the Designs Act, but not registered, shall cease to exists once the concerned design has been applied more than 50 times by industrial process by the owner of the copyright or his licensee. Given this background the DG has concluded that copyright may not subsist in the designs and drawings of all the spare parts, as claimed by the OEMs.

3.9.30 The OEMs have further contended that the knowhow provided by the OEMs to the OESs to enable the OESs to manufacture the spare parts for the OEMs is confidential in nature and is protected as a trade secret. The DG has rightly pointed out that confidential information must be in fact confidential and backed by an obligation/duty of confidence owed between the parties sharing such information. The DG has

concluded that the OEMs need to satisfy that the information provided to the OESs qualify to be protected as "trade secret". Additionally, the DG has further stated that trade secrets are not provided in section 3(5)(i) as one of the various forms of intellectual property rights whose holder can avail of an exemption from the provisions of section 3 of the Act.

3.9.31 The DG observed that even in cases which are covered in terms of section 3(5)(i) of the Act, only reasonable conditions, as may be necessary for protecting of rights under various legislations referred therein, can be imposed. Notwithstanding the fact that OEMs have not established that they possess valid intellectual property rights in India for being considered for the exemption under section 3(5)(i) of the Act, during the course of investigation it was examined whether based on available facts and circumstances, restrictions imposed by the OEMs could be termed as "reasonable". The DG after examining the agreements between the OEMs and the OESs have found that in most instances the OESs are restricted from selling spare parts to third parties without "prior consent". The DG has also revealed that not a single instance of such permission by any OEM has been confirmed. The DG has further stated that the reason for the OESs not approaching the OEMs could be either that OES do not expect to get the permission or are apprehensive that any such request would be viewed adversely by the OEMs. Hence, the DG is of the opinion that the requirement of "prior consent" before OESs can sell spare parts to third parties acts as a major deterrent and effectively amounts to prohibition on OESs from direct sales in the aftermarket.

3.9.32 The OEMs and their authorized dealers have entered into agreements/arrangements pursuant to which the authorized dealers of the OEMs sell cars and provide after sale services to the consumers of the OEMs. The DG reviewed such agreements and has made the following observations.

a) In certain cases, the agreements between the OEMs and their dealers specifically restricted the sale of spare parts over the counter which were in the nature of exclusive distribution agreements and such practices also amounted to refusal to deal under the terms of section 3(4)(c) and 3(4)(d) of the Act.

b) Certain agreements between the OEMs and the authorized dealers did not contain specific terms restricting the sale of spare parts in the open market, however, the DG gathered that there existed some kind of unwritten understanding or arrangement between such dealers and the respective OEMs pursuant to which the dealers in fact did not sell spare parts in the open market to prevent consumers from shifting to the independent repairers. Based on the factual situation, the DG has concluded that such practices are also in contravention of section 3(4)(c) and 3(4)(d) of the Act.

c) Most of the OEMs and the authorized dealers have clauses in their agreements requiring the authorized dealers to source spare parts only from the OEMs and their authorized vendors. The DG has concluded that such agreements are in the nature of exclusive supply agreements in terms of section 3(4)(b) of the Act.

d) The dealer agreements between the OEMs and their authorized dealers contain restrictions on dealing in competing brands of cars without seeking their consent in writing. Further, the investigation of the DG revealed that most of the OEMs could not confirm a single instance where such permission was granted to the authorized vendors. Further, the DG also discovered that certain

dealerships were cancelled on the basis that such dealers were attempting or proposing to seek dealerships of competing brands. The DG, therefore, found that the agreements entered by OEMs with their dealers are in nature of exclusive distribution agreement in terms of Section 3(4)(c) of the Act.

Assessment of AAEC

3.9.33 The DG has analyzed each set of vertical agreement/arrangement that the OEMs have with: a) local OESs who manufacture spare parts for the OEMs for their assembly lines or to be sold in the aftermarket through authorized dealers, (b) over-seas dealers who supply OEMs with spare parts and (c) dealers through whom the OEMs sell their cars and spare parts and provide their consumers with after sales service with respect to the factors listed under section 19(3) of the Act, which includes, inter alia, creation of barriers to entry, driving existing competitors out of the market, foreclosure of competition, accrual of benefit to consumers, improvement in production or distribution of goods or provision of services, promotion of technical, scientific and economic development.

3.9.34 The DG has analyzed the appreciable adverse effect on competition ("AAEC") on each of the secondary markets of spare parts and repair and maintenance services. The analysis of the DG with respect to the AAEC on each of the secondary markets (market for supply of spare parts and market for service, repair and maintenance) are summarized below.

a) AAEC in the secondary market of supply for spare parts

The DG had found during the course of its investigation that the OEMs are the only source of supply of genuine spare parts in the Indian automobile aftermarkets. The requirement on the authorized dealers to source spare parts only from the OEM or its authorized suppliers restricts the ability of the OESs to sell directly in the aftermarket. These restrictions therefore create entry barriers for the OES who could produce matching quality spare parts, eliminates direct access by OES to an OEM's aftermarket and in the process foreclose competition in the supply of genuine spare parts. Further the DG has also found out that there is a substantial mark up in most of the top 50 spare parts of each of the OEM from the price at which it has been sourced from the OESs and the price at which it is made available to the consumers. The ability of the OEMs to price the spare parts without being subject to any constraints does not safeguard the interests of the automobile consumer in the Indian automobile aftermarket. Based upon the above facts and circumstances, the DG opined that the agreements/arrangements of an OEM which have been analyzed foreclose competition in the market for supply of spare parts of that OEM, create entry barriers for OES to explore after market opportunities directly, driving existing competitors out of the market and have other implications such as ability of OEMs to price spare parts without being subject to competitive forces. Thus there is an AAEC on competition in terms of section 19(3) of the Act in market of spare parts of each OEM on account of the restrictions pursuant to agreements which are in the nature of exclusive supply agreements, refusal to deal and exclusive distribution agreements.

b) AAEC in the secondary market of repair and maintenance services

The DG's investigation revealed that during the warranty period the consumers of all OEMs are required to get their car repaired using the OEMs authorized

dealer network failing which the consumers lose their warranty over the car. Such restriction amounts to a blanket exclusion of independent repairers and denial of options to the consumers, especially for consumers who are not staying in cities where the authorized dealers are typically located. In the post warranty period the independent repairers continue to be foreclosed from the service and maintenance aftermarket since the OEMs ensure that the genuine spare parts and other diagnostic tools necessary for carrying out repair work are available only to authorized dealers. Thus, even in the post warranty period consumer choice remains limited and independent repairers remain excluded from the automobile aftermarket.

There are some limited exceptions where independent repairers can purchase spare parts from the authorized dealers. However, even in such cases the independent repairers lack the adequate training and do not have access to diagnostic tools, technical manuals and necessary software required to carry out repair work on sophisticated automobiles.

c) AAEC of restrictions of dealers in dealing in other brands of cars

The DG's review of the agreements/arrangements between the OEMs and their dealers revealed that the requirement of seeking permission from the OEMs before a dealer can deal in the cars of other OEMs create a major entry barrier for the dealers to enter into business of other brands of cars. DG has also noted that there are other unfair conditions in the dealership agreements and such restrictions/conditions prevent the dealers from exploring other business opportunities that are not detrimental to the business interests of the OEMs. During the course of the investigation it has been revealed by FADA that there would be many dealers who aspire to acquire additional dealerships of other brands for expansion of business and to hedge risks of continuing with a single OEM but are unable to pursue such opportunities because of the one sided nature of the relationship between the OEM and the exclusive dealers. The dealers have contended that there are huge sunk costs involved in exiting a dealership, e.g., the dealers would be left with a huge inventory which is not bought back, have guarantees deposited with the OEM which may not be refunded. Hence, the DG has concluded that the vertical agreements entered into between the OEMs and their authorized dealers cause AAEC based upon the conditions set forth in section 19(3) of the Act.

4. Findings of the DG with respect to Honda

Honda Siel Cars India Ltd. ("HSCIL") is engaged in the manufacturing and marketing of Honda branded cars in the territories of India, Sri Lanka, Bhutan, Nepal and Bangladesh and was incorporated on 5th December 1995. HMC presently holds around 95% of the shareholding of HSCIL. HSCIL is a joint venture between Honda Motors Co. Ltd. (Japan) ("HMC") and Usha International and HSCIL has technical collaboration agreement with HMC. HSCIL has a subsidiary in the name of Honda Motor India Ltd. ("HMI") which takes cars of spare parts business pertaining to Honda branded cars which are being sold in India. HSCIL has its manufacturing facilities at the Greater Noida Industrial Development Area, Uttar Pradesh. HSCIL has 128 authorized dealers and workshops across India.

4.1 The specific findings of the DG against the alleged anti-competitive practices of Honda are summarized below:

4.2 Honda has entered into a memorandum of supply of parts with overseas suppliers. Although, the DG did not discover the existence of any clause which restricts the ability of the overseas supplier from selling directly into the aftermarket in India, the DG has reported that considering the fact that the overseas suppliers are associates of Honda and HMI and they supply spare parts only to Honda in India, there may exist an arrangement between Honda and such overseas supplier for not supplying spare parts directly into the Indian aftermarket. Further, local OES's are restricted from accessing the aftermarket in the name of protecting the OEM's IPRs.

4.3 Based upon the submissions of multi-brand retailers and independent repairers, the DG has concluded that although the agreement between Honda and its authorized dealers does not contain any clause dealing with the right of the authorized dealers to sell spare parts over the counter, but in practice such sales are not permitted. Diagnostic tools are available only to authorized dealers of the OEM.

4.4 Warranty conditions are invalidated if a Honda branded car is repaired by independent repairers.

4.5 Ability of dealers to deal in competing brands is restricted. Honda's dealers are not permitted to deal with competing brands in any manner without seeking the prior permission of the OEM.

4.6 Price mark up for top 50 spare parts in terms of revenue generated is: 12.10%-984.73% and price mark-up of top 50 spare parts on the basis of consumption is: 77.20%-939.13%.

4.7 OP has failed to establish that Honda and HIL possess valid IPRs in India, with respect to all spare parts for which restrictions are being imposed upon OESs.

4.8 As per DG, denial to access diagnostic tools and spare parts amounts to denial of access to an "essential facility."

4.9 The DG has concluded that since (a) Honda has a policy of allowing over the counter sale of spare parts only to actual Honda customers and not to independent repairers; and (b) Honda restricts the availability of diagnostic tools to its authorized dealers, Honda imposes unfair terms and denies market access to the independent repairers as per section 4(2)(a)(i) and 4(2)(c) of the Act, respectively. Further, Honda is in violation of section 4(2)(a)(ii) for imposing unfair prices on the consumers.

4.10 Honda uses its dominance in one relevant market (i.e., supply of spare parts) to protect the other relevant market (i.e. market for repair services) which is violative of section 4(2)(e) of the Act.

4.11 The DG has also found Honda in violation of section 3(4)(c) and 3(4)(d) of the Act for not allowing its authorized dealers to deal in competing brands of car and for not allowing them to sell spare parts and diagnostic tools to the independent repairers.

4.12 Agreements with the authorized dealers have restrictive clauses requiring dealers to source the spare parts only from the Honda or its approved dealers. The DG has found these agreements in the nature of exclusive supply agreements in violation of section 3(4)(b) of the Act.

5. Findings of the DG with respect to Fiat

5.1 Fiat India Automobiles Ltd. ("Fiat India") was incorporated on 4th February, 1997

and is a 50:50 joint venture between Fiat Group Automobiles S.P.A. (Italy) ("FGA") and Tata Motors Limited ("TML"). Fiat is the licensed manufacturer of Fiat branded cars and engines in India. Fiat India has entered into a joint venture with MSIL to supply one lakh engines per annum. The company is authorized to manufacture motor cars, internal combustion piston engines and other parts and accessories N.E.C. for motor vehicles classified in this group and parts and accessories for transport equipment NEC. The company's manufacturing facilities is located within Ranjangaon M.I.D.C., Maharashtra. TML has entered into an agreement with Fiat India for acting as the sole distributor of Fiat branded cars and providing after sales service to the customers. Fiat India uses the distribution network of TML's approximately 171 dealerships and 198 authorized service stations at 130 cities across India for the sale of Fiat branded cars and providing after sale service. The DG has received information that the arrangement between TML and Fiat India stands discontinued and Fiat India is in the process of setting up its own distribution network.

5.2 The specific findings of the DG against the alleged anti-competitive practices of Fiat are summarized below:

5.2.1 Fiat imports spare parts from FGA Spa (a group company). DG did not find any restrictive clauses in Fiat's overseas supplier agreements. DG concluded that on account of the link between Fiat and SPAL there is a presumption of existence of an arrangement for not selling spare parts directly in Indian aftermarket.

5.2.2 OES's are restricted from accessing the aftermarket for protecting the OEM's IPRs.

5.2.3 The authorized dealer agreement of Fiat expressly restricts over the counter sale of spare parts of Fiat branded cars in the aftermarket.

5.2.4 Diagnostic tools are only available to authorized dealers of the OEM.

5.2.5 Warranty conditions are invalidated if a Fiat branded car is repaired by independent repairers.

5.2.6 Fiat does not have its own dealership network.

5.2.7 Price mark up for top 50 spare parts by revenue generated is: 33.60%-3020.29%. Price mark-up of top 50 spare parts on the basis of consumption is: 19.93%-4817.17%.

5.2.8 It does not stand established that Fiat possesses valid IPRs in India, with respect to all spare parts for which restrictions are being imposed upon OESs.

5.2.9 As per DG, denial to access diagnostic tools and spare parts amounts to denial of access to an "essential facility" and amounts to abuse of dominant position of Fiat.

5.2.10 Since Fiat does not allow over the counter sale of spare parts and since diagnostic tools are not available to the independent repairers, Fiat imposes unfair terms and denies market access to the independent repairers as per section 4(2)(a)(i) and 4(2)(c) of the Act, respectively. Further, Fiat is in violation of section 4(2)(a)(ii) for imposing unfair prices on consumers.

5.2.11 Fiat uses its dominance in one relevant market (i.e., supply of spare parts) to protect the other relevant market (i.e. market for repair services) which is violative of section 4(2)(e) of the Act.

5.2.12 Fiat is in violation of provisions of sections 3(4)(c) and 3(4)(d) of the Act

because of imposition of unreasonable restrictions with respect to its agreements with local OESs and agreements with authorized dealers.

5.2.13 Agreements with the authorized dealers have restrictive clauses requiring dealers to source the spare parts only from Fiat or its approved dealers. The DG has found these agreements in the nature of exclusive supply agreements in violation of section 3(4)(b) of the Act.

6. Findings of the DG with respect to Ford

6.1 Ford India Pvt. Ltd. ("FIPL") was incorporated in 1995 and is a 100% subsidiary of Ford Motor Company, U.S.A. FIPL is engaged in manufacturing of passenger cars and spare parts in India. FIPL has its manufacturing plant at Maraimalai Nagar, Chennai. FIPL has approximately 150 dealers through which it sells its cars. For after sale services, there are approximately 170 authorized service centers in about 100 cities/towns.

6.2 The specific findings of the DG against the alleged anti-competitive practices of Ford are summarized below:

6.2.1 Ford does not have any formal agreement with its overseas suppliers and imports spare parts from an associate company. DG did not find any restrictive clauses in Ford overseas supplier agreements. DG concluded that since the overseas supplier are associates of Ford and in-fact only supplies spare parts to Ford in India, there may exists an arrangement between Ford and such overseas supplier for not supplying spare parts in Indian aftermarket.

6.2.2 OES's are restricted from accessing the aftermarket for protecting the OEM's IPRs.

6.2.3 Based upon the submissions of multi-brand retailers and independent repairers, the DG has concluded that although the agreement between Ford and its authorized dealers does not contain any clause dealing with the right of the authorized dealers to sell spare parts over the counter, but in practice such sales are not permitted.

6.2.4 Diagnostic tools are only available to authorized dealers of the OEM.

6.2.5 Warranty conditions are invalidated if a Ford branded car is repaired by independent repairers.

6.2.6 Ability of dealers to deal in competing brands is restricted; however, Ford has submitted that 61 dealers have undertaken dealerships of competing brands.

6.2.7 Price mark up for top 50 spare parts by revenue generated is: 38.37%-1171.09% (Q1, 2010-11); 35.62%-1171.09% (Q2, 2010-11); 35.62%-1171.09%(Q3, 2010-11); Price mark-up of top 50 spare parts on the basis of consumption is: 64.1-1696.36 (Q1, 2010-11); 64.1-1696.36 (Q2, 2010-11); 58.68%-1696.36% (Q3, 2010-11); 64.1%-1696.36% (Q3, 2010-11).

6.2.8 Ford has submitted details of patents over 11 body parts which have been granted in India and applications for grant of patents over 30 body parts in India. However, Ford does not have patent rights over all the body parts over which restriction spare currently being imposed by Ford.

6.2.9 As per DG, denial to access diagnostic tools and spare parts amounts to denial of access to an "essential facility" and amounts to abuse of dominant position of Ford.

6.2.10 Since Ford does not allow over the counter sale of spare parts and since diagnostic tools are not available to the independent repairers, Ford imposes unfair terms and denies market access to the independent repairers as per section 4(2)(a)(i) and 4(2)(c) of the Act, respectively. Further, Ford is in violation of section 4(2)(a)(ii) for imposing unfair prices.

6.2.11 Ford uses its dominance in one relevant market (i.e., supply of spare parts) to protect the other relevant market (i.e. market for repair services) which is violative of section 4(2)(e) of the Act.

6.2.12 Ford is in violation of provisions of sections 3(4)(c) and 3(4)(d) of the Act with respect to its agreements with local OESs and agreements with authorized dealers for imposing absolute restrictive covenants and completely foreclosing the aftermarket for supply of spare parts and other diagnostic tools.

6.2.13 Agreements with the authorized dealers have restrictive clauses requiring dealers to source the spare parts only from Ford or its approved dealers. The DG has found these agreements in the nature of exclusive supply agreements in violation of section 3(4)(b) of the Act.

7. Findings of the DG with respect to BMW

7.1 BMW India (P) Ltd. ("BMW") was incorporated on August 26, 1997 and its manufacturing operations commenced on March 2007. It is a 100% subsidiary of the BMW Holdings B.V. Netherlands which in turn is held by BMW A.G., Germany. BMW is mainly concentrated in assembling and distributing various models of BMW cars in India. It imports: (a) constituent parts of BMW cars which it assembles at its plant in Chennai, Tamil Nadu, (b) completely built cars and (c) spare parts. BMW has a dealer network for it's after sale operations in 22 cities in India. These 22 BMW accredited service centers have been equipped and trained to handle the BMW products and to service such products.

7.2 The specific findings of the DG against the alleged anti-competitive practices of BMW are summarized below:

7.2.1 BMW imports spare parts from BMW AG which is its group company. The DG has not found any clause in such importer agreements dealing with the right of BMW's overseas suppliers, BMW AG, to sell spare parts in the open market in India. In practice BMW AG does not supply BMW spare parts in the Indian aftermarket. The DG contends that due to link between BMW AG and BMW, presumption of a possible arrangement can be drawn.

7.2.2 No clause in agreement with respect to OES's right to access the aftermarket.

7.2.3 Counter sale of spare parts are not permitted.

7.2.4 Warranty conditions honoured by BMW if defects do not arise directly from the defective performance of an independent repairer.

7.2.5 Ability of dealers to deal in competing brands is restricted.

7.2.6 Price mark up for top 50 spare parts by revenue generated is 101.38%-488.98%. Price mark-up of top 50 spare parts on the basis of consumption is 76.24%-484.04%.

7.2.7 Since BMW only procures seats for aftermarket purposes from BMW AG, hence no

substantial IPR issues have been raised.

7.2.8 As per DG, denial to access diagnostic tools and spare parts amounts to denial of access to an "essential facility" and amounts to abuse of dominant position of BMW.

7.2.9 Since BMW does not allow over the counter sale of spare parts and since diagnostic tools are not readily available to the independent repairers, BMW imposes unfair terms and also denies market access to the independent repairers as per section 4(2)(a)(i) and 4(2)(c) of the Act, respectively. Further, BMW is in violation of section 4(2)(a)(ii) for imposing unfair prices.

7.2.10 BMW uses its dominance in one relevant market (i.e., supply of spare parts) to protect the other relevant market (i.e. market for repair services) which is violative of section 4(2)(e) of the Act.

7.2.11 BMW is in violation of provisions of sections 3(4)(c) and (d) of the Act with respect to its agreements with local OESs and agreements with authorized dealers for imposing absolute restrictive covenants and completely foreclosing the aftermarket for supply of spare parts and other diagnostic tools.

7.2.12 Agreements with the authorized dealers have restrictive clauses requiring dealers to source the spare parts only from BMW or its approved dealers. The DG has found these agreements in the nature of exclusive supply agreements in violation of section 3(4)(b) of the Act.

8. Findings of the DG with respect to Mercedes Benz India Pvt. Ltd.

8.1 Mercedes-Benz India Pvt. ltd. ("MBPIL") was incorporated in India in the year 1994 and is a 100 % subsidiary of Daimler-Benz AG, Germany. MBIPL is engaged in assembling and selling of Mercedes-Benz brand of passenger and commercial vehicles. The manufacturing facilities for Mercedes branded cars and commercial vehicles are located at Chankan, Pune. MBIPL has 35 authorized dealers across 31 cities in India.

8.2 The specific findings of the DG against the alleged anti-competitive practices of Mercedes are summarized below:

8.2.1 Mercedes imports spare parts from Daimler AG and Daimler South Asia Pte Ltd., which are group companies. The DG has not found any clause in such importer agreements dealing with the right of Mercedes' overseas suppliers, Daimler AG, to sell spare parts in the open market in India. In practice Mercedes's overseas suppliers do not supply Mercedes spare parts in the Indian aftermarket. The DG contends that due to link between Mercedes and Daimler Group there can be a presumption of an arrangement.

8.2.2 OES's are restricted from accessing the aftermarket for protecting the OEM's IPRs.

8.2.3 Over the counter sale of spare parts are permitted.

8.2.4 Diagnostic tools are only available to authorized dealers of the OEM.

8.2.5 Warranty conditions are invalidated if a Mercedes branded car is repaired by independent repairers.

8.2.6 Ability of dealers to deal in competing brands is restricted.

8.2.7 Price mark up for top 50 spare parts by revenue generated is: 70.34-292.22% (Q1, 2010-11); 67.31-306.80% (Q2, 2010-11); 76.63-301.71%(Q3, 2010-11); 84.86-2150.69% (Q3, 2010-11). Price mark-up of top 50 spare parts on the basis of consumption is: 59.80-284.88% (Q1, 2010-11); 11.25-1206.15% (Q2, 2010-11); 76.63-1207.20 %(Q3, 2010-11); 71.78-1245.87% (Q3, 2010-11)

8.2.8 Technology transfer agreements between Mercedes and Dailmer Group do not specify the technologies and IPRs covered under such agreements. It does not stand established that Mercedes possesses valid IPRs in India, with respect to all spare parts for which restrictions are being imposed upon OESs.

8.2.9 As per DG, denial to access diagnostic tools and spare parts amounts to denial of access to an "essential facility" and amounts to abuse of dominant position of Mercedes.

8.2.10 Since Mercedes restricts the availability of diagnostic tools to its authorized dealers, it imposes unfair terms and denies market access to the independent repairers as per section 4(2)(a)(i) and 4(2)(c) of the Act, respectively. Further, Mercedes is in violation of section 4(2)(a)(ii) for imposing unfair prices.

8.2.11 Mercedes uses its dominance in one relevant market (i.e., supply of spare parts) to protect the other relevant market (i.e. market for repair services) which is violative of section 4(2)(e) of the Act.

8.2.12 Mercedes is in violation of provisions of sections 3(4)(c) and (d) of the Act with respect to its agreements with local OESs and agreements with authorized dealers for imposing absolute restrictive covenants and completely foreclosing the aftermarket for supply of spare parts and other diagnostic tools.

8.2.13 Agreements with the authorized dealers have restrictive clauses requiring dealers to source the spare parts only from Mercedes or its approved dealers. The DG has found these agreements in the nature of exclusive supply agreements in violation of section 3(4)(b) of the Act.

9. Findings of the DG with respect to General Motors India Pvt. Ltd. ("GMI")

9.1 GMI was incorporated in India in 1994. GMI is in the business of manufacturing Chevrolet brand of vehicles in India and sells its vehicles through its affiliate company Chevrolet Sales India Pvt. Ltd. ("CSIPL"). A group company of General Motors ("GM") General Motors Technical Center India Private Limited ("GMTCIPL"), is in the business of selling automotive parts and accessories of various GM branded cars under the trademark/trade name of AC Delco. GMI has further submitted that there is no direct linkage between GMTCIPL and GMI in terms of shareholding. GMI has submitted that SAIC General Motors India Private Limited (a joint venture of GM (Hong Kong) company Limited (GMHK) and SAIC Motor HK Investment Limited ("SAICHK") holds 100% share of GMI and CSIPL except for two shares, one of each is held by GMHK and SAICHK respectively. It has been informed that there are approximately 270 authorized dealers/workshops in 208 cities in India catering to various models of General Motor cars.

9.2 The specific findings of the DG against the alleged anti-competitive practices of GMI are summarized below:

9.2.1 GMI imports spare parts from GM Korea, which is a group company. The DG has not found any clause in such importer agreements dealing with the right of GMI's

overseas suppliers, to sell spare parts in the open market in India. In practice GM Korea only supply GMI spare parts to CSIPL. The DG contends that due to link between GM Korea and GMI there can be presumption of an arrangement.

9.2.2 OES's are restricted from accessing the aftermarket for protecting the OEM's IPRs.

9.2.3 Over the counter sale of spare parts are permitted to only actual GMI customers.

9.2.4 Diagnostic tools are only available to authorized dealers of the OEM.

9.2.5 Warranty conditions are invalidated if a GMI branded car is repaired by independent repairers.

9.2.6 Ability of dealers to deal in competing brands is restricted, however, GMI has submitted that several dealers have undertaken dealerships of competing brands.

9.2.7 Price mark up for top 50 spare parts by revenue generated is: 1.66%-871.56% (Q1, 2010-11); (-)0.23%-871.56% (Q2, 2010-11); 3.39%-871.56%(Q3, 2010-11); 66.92%-871.56% (Q3, 2010-11). Price mark-up of top 50 spare parts on the basis of consumption is: (-)18.82%-545.16% (Q1, 2010-11); (-)20.33%-764.08% (Q2, 2010-11); 3.39%-764.08% (Q3, 2010-11); 28.64%-545.16% (Q3, 2010-11)

9.2.8 Technology transfer agreements between GM Korea and GMI do not specify the technologies and IPRs covered under such agreements. It does not stand established that GMI possesses valid IPRs in India, with respect to all spare parts for which restrictions are being imposed upon OESs.

9.2.9 As per DG, denial to access diagnostic tools and spare parts amounts to denial of access to an "essential facility" and amounts to abuse of dominant position of GMI.

9.2.10 Since: (a) GMI allows over the counter sale of spare parts only to actual GMI customers and not to independent repairers and (b) GMI restricts the availability of diagnostic tools to its authorized dealers only, GMI imposes unfair terms and denies market access to the independent repairers as per section 4(2)(a)(i) and 4(2)(c) of the Act, respectively. Further, GMI is in violation of section 4(2)(a)(ii) for imposing unfair prices.

9.2.11 GMI uses its dominance in one relevant market (i.e., supply of spare parts) to protect the other relevant market (i.e. market for repair services) which is violative of section 4(2)(e) of the Act.

9.2.12 GMI is in violation of provisions of sections 3(4)(c) and (d) of the Act with respect to its agreements with local OESs and agreements with authorized dealer for imposing absolute restrictive covenants and completely foreclosing the aftermarket for supply of spare parts and other diagnostic tools.

9.2.13 Agreements with the authorized dealers have restrictive clauses requiring dealers to source the spare parts only from GMI or its approved dealers. The DG has found these agreements in the nature of exclusive supply agreements in violation of section 3(4)(b) of the Act.

10. Findings of the DG with respect to Maruti Suzuki India Ltd. ("MSIL")

10.1 MSIL was incorporated as a joint venture between the government of India and Suzuki Motor Corporation ("Suzuki"), Japan in the year 1981. Suzuki is the majority

shareholder of MSIL with 54.2% equity stake in MSIL and MSIL is a subsidiary of Suzuki. MSIL is primarily engaged in the business of manufacture/sales of automobiles/motor vehicles and automotive parts in India. It also oversees a network of authorized dealers and service providers that cater to the maintenance and servicing requirements of automobiles manufactured by MSIL. MSIL manufactures automobiles in India through its manufacturing plants in Manesar, Haryana with a combined manufacturing facility of over 1 million cars per annum. MSIL operates its servicing segment through a network of 1058 authorized dealers, 1838 Maruti Authorized Service Stations and 50 Maruti Service Zones, collectively called MSIL Authorized Service Stations. MSIL has submitted that it has service workshops in 1,433 cities across India.

10.2 The specific findings of the DG against the alleged anti-competitive practices of MSIL are summarized below:

10.2.1 MSIL does not enter into importer agreements with its overseas suppliers. MSIL's importer-purchase orders do not contain any clauses with respect to the rights of the overseas suppliers to supply spare parts in Indian aftermarket. DG has claimed that there may be an arrangement between MSIL and its overseas suppliers for not selling spare parts in Indian aftermarket.

10.2.2 OES's are restricted from accessing the aftermarket for protecting the OEM's IPRs.

10.2.3 The DG on reviewing the agreement entered into between the OEM and its authorized dealers did not find any clauses dealing with the rights of the authorized dealers to undertake over the counter sales of spare parts in the open market in India. The submissions of the company, the authorized dealers and the independent repairers indicate that spare parts of MSIL brand are readily available in the market.

10.2.4 Diagnostic tools are only available to authorized dealers of the OEM. However, Maruti has contended that independent repairers can repair about 99.5% of Maruti branded cars without the help of Maruti's diagnostic tools, manual etc.

10.2.5 Warranty conditions are invalidated if a Maruti branded car is repaired by independent repairers.

10.2.6 There are no restrictions on the ability of Maruti's dealers to deal in other brands of cars.

10.2.7 Price mark up for top 50 spare parts by revenue generated is:-77.98%-433.59%. Price mark-up of top 50 spare parts on the basis of consumption is:-16.94%-650%.

10.2.8 Technology transfer agreements between MSIL and Suzuki do not specify the technologies and IPRs covered under such agreements. It does not stand established that MSIL possesses valid IPRs in India, with respect to all spare parts for which restrictions are being imposed upon OESs.

10.2.9 As per DG, denial to access diagnostic tools and spare parts amounts to denial of access to an "essential facility" and amounts to abuse of dominant position of MSIL for imposing absolute restrictive covenants and completely foreclosing the aftermarket for supply of spare parts and other diagnostic tools.

10.2.10 Since, as per the investigation of the DG, the Commission is of the opinion

that Maruti restricts the availability of diagnostic tools to its authorized dealers, Maruti imposes unfair terms and denies market access to the independent repairers as per section 4(2)(a)(i) and 4(2)(c) of the Act, respectively.

10.2.11 Maruti uses its dominance in one relevant market (i.e., supply of spare parts) to protect the other relevant market (i.e. market for repair services) which is violative of section 4(2)(e) of the Act.

10.2.12 Agreements with the authorized dealers have restrictive clauses requiring dealers to source the spare parts only from MSIL or its approved dealers. The DG has found these agreements in the nature of exclusive supply agreements in violation of section 3(4)(b) of the Act.

11. Findings of the DG with respect to Mahindra and Mahindra (P) Limited ("M & M")

11.1 M & M is a flagship company of the US$ 7.1 billion, Mahindra Group of companies which consists of 105 companies and has business interests across the world. In the automobile sector the M & M business comprises of manufacturing of the cars, passenger vehicles, utility vehicles, commercial vehicles, light commercial vehicles, three wheelers and two wheelers. M & M has been also dealing in farm equipment like tractor and Powergen (electricity generator). M & M has manufacturing facilities at Kandivali (Mumbai), Chakan, Nasik, Zaheerabad and Haridwar. M & M has a network of around 290 authorized dealers, 320 authorized dealer workshops and more than 72 authorized service stations in India to take care of the maintenance, service and repair requirements of M & M branded vehicles.

11.2 The specific findings of the DG against the alleged anti-competitive practices of M & M are summarized below:

11.2.1 M & M does not have an overseas supplier arrangement in place.

11.2.2 OES's are restricted from accessing the aftermarket for protecting the OEM's IPRs.

11.2.3 The authorized dealer agreement of M & M expressly restricts over the counter sale of spare parts of M & M branded cars in the aftermarket.

11.2.4 Diagnostic tools are only available to authorized dealers of the OEM.

11.2.5 Warranty conditions are invalidated if an M & M branded car is repaired by independent repairers.

11.2.6 Ability of M & M's authorized dealers to deal in competing brands is restricted. However, M & M has submitted that certain M & M dealers have been dealing in competing brands.

11.2.7 Price mark up for top 50 spare parts by revenue generated is: 65.80%-462.50%. Price mark-up of top 50 spare parts on the basis of consumption is:-108.58%-890.99%

11.2.8 M & M's dealers are not permitted to deal in competing products in any manner without prior permission of M & M. It does not stand established that M & M possesses valid IPRs with respect to its top 50 spare parts.

11.2.9 As per DG, denial to access diagnostic tools and spare parts amounts to denial

of access to an "essential facility" and amounts to abuse of dominant position of M & M.

11.2.10 Since M & M does not allow over the counter sale of spare parts and since diagnostic tools are not available to the independent repairers, the DG concluded that M & M imposes unfair terms and denies market access to the independent repairers as per section 4(2)(a)(i) and 4(2)(c) of the Act, respectively. Further, M & M is in violation of section 4(2)(a)(ii) for imposing unfair prices.

11.2.11 M & M uses its dominance in one relevant market (i.e., supply of spare parts) to protect the other relevant market (i.e. market for repair services) which is violative of section 4(2)(e) of the Act.

11.2.12 M & M is in violation of provisions of sections 3(4)(c) and (d) of the Act with respect to its agreements with local OESs and agreements with authorized dealers for imposing absolute restrictive covenants and completely foreclosing the aftermarket for supply of spare parts and other diagnostic tools.

11.2.13 Agreements with the authorized dealers have restrictive clauses requiring dealers to source the spare parts only from M & M or its approved dealers. The DG has found these agreements in the nature of exclusive supply agreements in violation of section 3(4)(b) of the Act.

12. Findings of the DG with respect to Nissan Motor India (P) Limited ("Nissan")

12.1 Nissan is a 100% subsidiary of Nissan Motor Ltd., Japan ("NML Japan") through Nissan International Holdings Netherlands and Nissan Asia Pacific Pvt. Ltd., Nissan was incorporated on February 7, 2005. Nissan is engaged in the design, manufacture, assembly and/or sale of certain motor vehicles and motor vehicle components. Further, it caters to the after sales service of the vehicles which are sold and manufactured by Nissan. It has been informed to the DG, that the company has recently commenced the export of vehicle components and trial parts to its group companies. Nissan has manufacturing facility at the SIPCOT Industrial Park at the Kancheepuram district of Tamil Nadu and is in the process of setting up an automobile manufacturing plant in Oragadam, Chennai. Nissan has a network of approximately 40 dealers throughout India in around 25 cities. The distribution network for spare parts of Nissan branded cars is stated to be managed through such authorized dealer network.

12.2 The specific findings of the DG against the alleged anti-competitive practices of Nissan are summarized below:

12.2.1 Nissan does not have an overseas supplier arrangement in place.

12.2.2 OES's are restricted from accessing the aftermarket for protecting the OEM's IPRs.

12.2.3 The authorized dealer agreement of Nissan expressly restricts over the counter sale of spare parts of Nissan branded cars in the aftermarket.

12.2.4 Diagnostic tools are only available to authorized dealers of the OEM.

12.2.5 Warranty conditions are invalidated if a Nissan branded car is repaired by independent repairers.

12.2.6 Ability of Nissan's authorized dealers to deal in competing brands is restricted. However, Nissan has submitted that certain Nissan dealers have been dealing in

competing brands.

12.2.7 Price mark up for top 50 spare parts by revenue generated is: 84.96%-201.98%. Price mark-up of top 50 spare parts on the basis of consumption is: 85.81%-258.78%.

12.2.8 The Manufacturing License Agreement between NML Japan and Nissan does not grant any license to Nissan to use any of the registered IPRs of NML Japan. Nissan has contended before the DG that it does not have any IPRs registered in India.

12.2.9 As per DG, denial to access diagnostic tools and spare parts amounts to denial of access to an "essential facility" and amounts to abuse of dominant position of Nissan.

12.2.10 Since Nissan does not allow over the counter sale of spare parts and since diagnostic tools are not available to the independent repairers, Nissan imposes unfair terms and denies market access to the independent repairers as per section 4(2)(a)(i) and 4(2)(c) of the Act, respectively. Further, Nissan is in violation of section 4(2)(a)(ii) for imposing unfair prices.

12.2.11 Nissan uses its dominance in one relevant market (i.e., supply of spare parts) to protect the other relevant market (i.e. market for repair services) which is violative of section 4(2)(e) of the Act.

12.2.12 Nissan is in violation of provisions of sections 3(4)(c) and (d) of the Act with respect to its agreements with local OESs and agreements with authorized dealers for imposing absolute restrictive covenants and completely foreclosing the aftermarket for supply of spare parts and other diagnostic tools.

12.2.13 Agreements with the authorized dealers have restrictive clauses requiring dealers to source the spare parts only from Nissan or its approved dealers. The DG has found these agreements in the nature of exclusive supply agreements in violation of section 3(4)(b) of the Act.

13. Findings of the DG with respect to Skoda Auto India (P) Limited ("Skoda")

13.1 Skoda is a wholly owned subsidiary of Skoda Auto a.s. ("Skoda Auto"), with its headquarters at Czech Republic and was incorporated in India on 23rd December 1999. Both Skoda and Skoda Auto are part of the Volkswagen group of companies. Skoda manufacturers/assembles and sells automobiles under the brand name "Skoda", "Volkswagen" and "Audi". The company is also engaged in the business of after sales service for all such Skoda branded cars. The cars manufactured by Skoda under the brand name 'Skoda' are sold by the company to its authorized dealers and the cars manufactured under the brand name "Audi" and "Volkswagen" are sold to the Volkswagen Group Sales India Private Limited. Skoda has its manufacturing plant located at Shendra Industrial Area, Maharashtra and the company uses the Volkswagen India Pvt. Ltd., plant at Chakan, Maharashtra to manufacture some specific models of Skoda cars. Skoda currently has 81 dealerships across 56 cities in 18 states and 2 union territories of India for the retail sales, marketing and after sale services of Skoda branded cars.

13.2 The specific findings of the DG against the alleged anti-competitive practices of Skoda are summarized below:

13.2.1 Skoda imports spare parts from Skoda Auto a.s. (a group company). Importer

agreement of Skoda expressly restricts its overseas suppliers from accessing the Indian automobile aftermarket. As per DG since Skoda's overseas suppliers is a part of the Volkswagen group and in-fact does not supply to the Indian aftermarket.

13.2.2 OES's are restricted from accessing the aftermarket for protecting the OEM's IPRs.

13.2.3 The authorized dealer agreement of Skoda expressly restricts over the counter sale of spare parts of Skoda branded cars in the aftermarket.

13.2.4 Diagnostic tools are only available to authorized dealers of the OEM.

13.2.5 Warranty conditions are invalidated if a Skoda branded car is repaired by independent repairers.

13.2.6 Ability of Skoda's authorized dealers to deal in competing brands is restricted. However, Skoda has submitted that certain Skoda dealers have been dealing in competing brands.

13.2.7 Price mark up for top 50 spare parts by revenue generated is: 85.06-265.88% (Q1, 2010-11); 79.15-280.75% (Q2, 2010-11); 76.29-248.54%(Q3, 2010-11);-0.92-260.40% (Q3, 2010-11). Price mark-up of top 50 spare parts on the basis of consumption is:-31.6-230.83% (Q1, 2010-11);-33.78-254.18% (Q2, 2010-11);-34.84-248.54%(Q3, 2010-11);-35.81-218.42% (Q3, 2010-11)

13.2.8 The Technology transfer Agreement and the Trademark Agreement between Skoda Auto a.s., and Skoda does not specify the technologies and IPRs granted to Skoda for its Indian operations. It does not stand established that Skoda possesses valid IPRs in India, with respect to all spare parts for which restrictions are being imposed upon OESs.

13.2.9 As per DG, denial to access diagnostic tools and spare parts amounts to denial of access to an "essential facility" and amounts to abuse of dominant position of Skoda.

13.2.10 Since Skoda does not allow over the counter sale of spare parts and since diagnostic tools are not available to the independent repairers, Skoda imposes unfair terms and denies market access to the independent repairers as per section 4(2)(a)(i) and 4(2)(c) of the Act, respectively. Further, Skoda is in violation of section 4(2)(a)(ii) for imposing unfair prices.

13.2.11 Skoda uses its dominance in one relevant market (i.e., supply of spare parts) to protect the other relevant market (i.e. market for repair services) which is violative of section 4(2)(e) of the Act.

13.2.12 Skoda is in violation of provisions of sections 3(4)(c) and (d) of the Act with respect to its agreements with local OESs and agreements with authorized dealers for imposing absolute restrictive covenants and completely foreclosing the aftermarket for supply of spare parts and other diagnostic tools.

13.2.13 Agreements with the authorized dealers have restrictive clauses requiring dealers to source the spare parts only from Skoda or its approved dealers. The DG has found these agreements in the nature of exclusive supply agreements in violation of section 3(4)(b) of the Act.

14. Findings of the DG with respect to Tata Motors Limited ("Tata")

14.1 Tata was incorporated on 1st September, 1945 under the Indian Companies Act of 1913. Tata entered the passenger car segment in 1998 and since then it has introduced various models of passenger cars and utility vehicles in the Indian automobile market. Tata has informed that it is a majority stakeholder in the company's holdings in Jaguar Land Rover. Tata is in the business of manufacturing of commercial and passenger vehicles. Through its subsidiaries, the company is engaged in engineering and automotive solutions, manufacturing of construction equipment and automotive vehicle components, supply chain activities, machine tools and factory automation solutions, high precision tooling and plastic and electronic components for automotive and computer applications and automotive retailing and service operations. Tata also conducts after sale services and distribution of spare parts through its authorized dealers, authorized distributors and authorized service centers. Tata also has a joint venture with Fiat India Automobiles (P) Ltd. for selling and providing after sale services of Fiat branded cars. Tata exports its Indica, Safari. Indigo and Sumo models of cars to Sri Lanka, Nepal, Italy, Spain, Poland, Turkey, South Africa, Ghana, Nigeria, Congo, Tanzania and Bhutan etc. Tata has manufacturing facilities at Sanand (Gujrat), Pune (Maharashtra) and Pantnagar (Uttarakhand) for manufacturing passenger cars. Tata has approximately 800 service centers under various models to cater to the company brand of vehicles. Further the company has 250 dealers and 22 whole sale distributors catering to approximately 2000 retailers.

14.2 The specific findings of the DG against the alleged anti-competitive practices of Tata are summarized below:

14.2.1 Tata does not have an overseas supplier agreement in place.

14.2.2 OES's are restricted from accessing the aftermarket for protecting the OEM's IPRs.

14.2.3 Based upon the submissions of multi-brand retailers and independent repairers, the DG has concluded that although the agreement between Tata and its authorized dealers does not contain any clause dealing with the right of the authorized dealers to sell spare parts over the counter, but in practice the sale of such spare parts are not permitted.

14.2.4 Diagnostic tools are only available to authorized dealers of the OEM.

14.2.5 Warranty conditions are invalidated if a Tata branded car is repaired by independent repairers.

14.2.6 Ability of dealers to deal in competing brands is restricted.

14.2.7 Price mark up for top 50 spare parts by revenue generated is:-60.76%-658.80%. Price mark-up of top 50 spare parts on the basis of consumption is: 64.60%-858.90%

14.2.8 Although Tata has some registered IPRs (Trademarks) in India, it does not stand established that Tata possesses valid IPRs in India, with respect to all spare parts for which restrictions are being imposed upon OESs.

14.2.9 As per DG, denial to access diagnostic tools and spare parts amounts to denial of access to an "essential facility" and amounts to abuse of dominant position of Tata.

14.2.10 Since Tata restricts the availability of spare parts and diagnostic tools to its

authorized dealers, it imposes unfair terms and denies market access to the independent repairers as per section 4(2)(a)(i) and 4(2)(c) of the Act, respectively. Further, Tata is in violation of section 4(2)(a)(ii) for imposing unfair prices.

14.2.11 Tata uses its dominance in one relevant market (i.e., supply of spare parts) to protect the other relevant market (i.e. market for repair services) which is violative of section 4(2)(e) of the Act.

14.2.12 Tata is in violation of provisions of sections 3(4)(c) and (d) of the Act with respect to its agreements with local OESs and agreements with authorized dealers for imposing absolute restrictive covenants and completely foreclosing the aftermarket for supply of spare parts and other diagnostic tools.

14.2.13 Agreements with the authorized dealers have restrictive clauses requiring dealers to source the spare parts only from Tata or its approved dealers. The DG has found these agreements in the nature of exclusive supply agreements in violation of section 3(4)(b) of the Act.

15. Findings of the DG with respect to Volkswagen India Private Limited ("Volkswagen")

15.1 Volkswagen is a fully owned subsidiary of the Volkswagen a.g., Germany. Volkswagen was incorporated in India on 6th February 2007. Volkswagen is engaged in the manufacturing activity of the 'Volkswagen' and 'Skoda' brand of cars. Volkswagen Group Sales India Pvt. Ltd. ("VGSIL") is also a fully owned subsidiary company of the Volkswagen e.g., Germany. VGSIL was incorporated in India on 7th March 2007. VGSIL is in the business of sales, marketing and after sales services of both Volkswagen and Audi branded cars. VGSIL through various contracts purchases cars (Passat and Jetta models of Volkswagen branded cars and certain models of Audi brand of cars) from Skoda Auto India Pvt. Ltd. ("SAIPL") and (Polo and Vento models of Volkswagen) from Volkswagen. VGSIL has entered into contracts with dealers from both the brands across India for the sales and servicing of cars. The manufacturing activities of Volkswagen are being undertaken from its plant located at MIDC Industrial Area, Chakan, Pune. VWIPL has submitted that there are 95 authorized dealers across India. Further there are 15 other workshops dealing with Audi branded cars across India.

15.2 The specific findings of the DG against the alleged anti-competitive practices of Volkswagen are summarized below:

15.2.1 During the course of the DG's investigation, Volkswagen has informed the DG that it does not import spare parts for aftermarket use but procures them from SAIPL. The DG has reviewed an agreement between SAIPL and VGSIL (for supply of Volkswagen and Audi brand spare parts) and could not find any clauses regarding the ability of SAIPL to directly sell spare parts in the open market with respect to Volkswagen branded cars.

15.2.2 DG claims that since overseas suppliers of Volkswagen are its affiliate companies and does not as a matter of fact supply spare parts directly into the Indian aftermarket, an arrangement between them can be inferred.

15.2.3 OES's are restricted from accessing the aftermarket for protecting the OEM's IPRs.

15.2.4 Based upon the submissions of multi-brand retailers and independent repairers,

the DG has concluded that although the agreement between Volkswagen and its authorized dealers does not contain any clause dealing with the right of the authorized dealers to sell spare parts over the counter, but in practice such sales are not permitted.

15.2.5 Diagnostic tools are only available to authorized dealers of the OEM.

15.2.6 Warranty conditions are invalidated if a Volkswagen branded car is repaired by independent repairers.

15.2.7 Ability of dealers to deal in competing brands is restricted, however, Volkswagen has submitted that certain dealers of Volkswagen are dealing in competing brands.

15.2.8 Price mark up for top 50 spare parts by revenue generated is: 54.36%-995.55 (Q1, 2010-11); 61.41%-995.55% (Q2, 2010-11); 58.17%-995.55% (Q3, 2010-11); 58.17%-995.55% (Q3, 2010-11). Price mark-up of top 50 spare parts on the basis of consumption is: 62.27%-995.55% (Q1, 2010-11); 62.27%-995.55% (Q2, 2010-11); 22.54%-995.55% (Q3; 2010-11); 62.27%-995.55% (Q4, 2010-11).

15.2.9 Neither VWIPL nor VGSIPL confirmed that they have any valid IPRs registered ir India. The license agreement does not specify the technologies and IPRs granted to Volkswagen for its business operations in India.

15.2.10 As per DG, denial to access diagnostic tools and spare parts amounts to denial of access to an "essential facility" and amounts to abuse of dominant position of Volkswagen.

15.2.11 Since Volkswagen restricts the availability of spare parts and diagnostic tools to its authorized dealers, it imposes unfair terms and denies market access to the independent repairers as per section 4(2)(a)(i) and 4(2)(c) of the Act, respectively. Further, Volkswagen is in violation of section 4(2)(a)(ii) for imposing unfair prices.

15.2.12 Volkswagen uses its dominance in one relevant market (i.e., supply of spare parts) to protect the other relevant market (i.e. market for repair services) which is violative of section 4(2)(e) of the Act.

15.2.13 Volkswagen is in violation of provisions of sections 3(4)(c) and (d) of the Act with respect to its agreements with local OESs and agreements with authorized dealers for imposing absolute restrictive covenants and completely foreclosing the aftermarket for supply of spare parts and other diagnostic tools.

15.2.14 Agreements with the authorized dealers have restrictive clauses requiring dealers to source the spare parts only from Volkswagen or its approved dealers. The DG has found these agreements in the nature of exclusive supply agreements in violation of section 3(4)(b) of the Act.

16. Findings of the DG with respect to Toyota Kirloskar Motors Private Limited ("Toyota")

16.1 Toyota is a subsidiary and an authorized distributor of Toyota Corporation, Japan ("TMC") with 89% of Toyota's shares held by TMC and 11% held by Kirloskar Group, India. Toyota was incorporated on 6th October, 1997. Toyota manufactures 'Toyota' brand of cars in India with the help of technical assistance received from TMC. Toyota Motor Asia Pacific Pvt. Ltd. in Singapore ("TMAP") is a wholly owned subsidiary of TMC. The role of TMAP is to support and guide the planning and implementation of

distribution, sales and marketing strategies in India, where required. Toyota is involved in manufacturing, importing, marketing and sales and service of Toyota brand automobiles in India. The company has its manufacturing plant in Bidad, Karnataka. Toyota has three (3) categories of dealership networks. The first model is for dealers which are dealing exclusively with sales of motor vehicles (1S model), second kind of dealership is the 2S model, where dealers cater to both sale of various models of Toyota cars as well as provide aftersale services of particular brands of Toyota cars and the third model of Toyota dealers is the 3S model, where the dealer conducts the sale of Toyota cars, provides aftersale services of TKM cars and sell spare parts of various models of Toyota branded cars. Toyota has 173 dealers in its various models of dealership networks. The 2S and 3S models are stated to be spread over in 102 cities/towns in India. Toyota has submitted that it has plans to reach a network of 330 authorized dealerships by 2015.

16.2 The specific findings of the DG against the alleged anti-competitive practices of Toyota are summarized below:

16.2.1 Toyota sources several parts from overseas suppliers which include the Toyota Motor Corporation in Japan ("TMC"), Toyota affiliates in other countries and other overseas companies approved by Toyota. No clause in such overseas supplier agreements could be discovered that restricted the rights of such suppliers from accessing the Indian aftermarket. Since Toyota's overseas suppliers are its affiliates and they do not as a matter of fact supply spare parts in the Indian aftermarket, an arrangement could be presumed.

16.2.2 OES' are restricted from accessing the aftermarket for protecting the OEM's IPRs.

16.2.3 Based upon the submissions of multi-brand retailers and independent repairers, the DG has concluded that although the agreement between Toyota and its authorized dealers does not contain any clause dealing with the right of the authorized dealers to sell spare parts over the counter, but in practice the sale of such spare parts are not permitted.

16.2.4 Diagnostic tools are only available to authorized dealers of the OEM.

16.2.5 Warranty conditions are invalidated if a Toyota branded car is repaired by independent repairers.

16.2.6 Ability of dealers to deal in competing brands is restricted.

16.2.7 Price mark up for top 50 spare parts by revenue generated is: 79.61%-1305.85% Price mark-up of top 50 spare parts on the basis of consumption is: 38.26%-510.43%.

16.2.8 It does not stand established that Toyota possesses valid IPRs in India, with respect to all spare parts for which restrictions are being imposed upon OESs.

16.2.9 As per DG, denial to access diagnostic tools and spare parts amounts to denial of access to an "essential facility" and amounts to abuse of dominant position of Toyota.

16.2.10 Since Toyota restricts the availability of spare parts and diagnostic tools to its authorized dealers, it imposes unfair terms and denies market access to the independent repairers as per section 4(2)(a)(i) and 4(2)(c) of the Act, respectively. Further, Toyota

is in violation of section 4(2)(a)(ii) for imposing unfair prices.

16.2.11 Toyota uses its dominance in one relevant market (i.e., supply of spare parts) to protect the other relevant market (i.e. market for repair services) which is violative of section 4(2)(e) of the Act.

16.2.12 Toyota is in violation of provisions of sections 3(4)(c) and (d) of the Act with respect to its agreements with local OESs and agreements with authorized dealers for imposing absolute restrictive covenants and completely foreclosing the aftermarket for supply of spare parts and other diagnostic tools.

16.2.13 Agreements with the authorized dealers have restrictive clauses requiring dealers to source the spare parts only from Toyota or its approved dealers. The DG has found these agreements in the nature of exclusive supply agreements in violation of section 3(4)(b) of the Act.

17. Findings of the DG with respect to Hindustan Motors Limited ("HML")

17.1 HML was incorporated on 11th February, 1942 and was promoted by M/s. National Bearing Co. (Jaipur) Ltd., M/s. National Engineering Industries Ltd., M/s. Soorya Vanijya and Investment Ltd., and M/s. Central India Industries Ltd. The company is engaged in the business of assembling and manufacturing of Ambassador and Mitsubishi brands of cars, and providing after sales services etc., for the various HML brands of cars. For the Mitsubishi brand of vehicles, the company has technical assistance arrangement with Mitsubishi Motors Corporation ("MMC"), Japan. The company imports technology from MMC after paying the requisite fees. Components for Mitsubishi branded vehicles are imported from MMC and Shandong Shifeng, China. The company has three plants located at Uttarpara, West Bengal, Thiravallur, Tamilnadu and Pithampur, Madhya Pradesh. HML has submitted that for Ambassador branded cars manufactured at HML's Uttarpara plant, it has 101 authorized vehicle dealers, 17 authorized service dealers and 28 authorized spare parts dealers. No such similar information was provided by HML for its Tamilnadu and Madhya Pradesh plants.

17.2 The specific findings of the DG against the alleged anti-competitive practices of HML are summarized below:

17.2.1 HML imports parts for its Mitsubishi branded cars from MMC, a technical collaborator under a license agreement. HML does not import any parts for its Ambassador brand of cars. The license agreement between MMC and HML does not contain any clauses dealing with the rights of MMC to supply spare parts directly to Indian aftermarket. Since MMC is also in a license agreement with HML, the DG drew presumption of a restrictive arrangement between them.

17.2.2 OESs dealing in HML's Mitsubishi branded cars are restricted from accessing the aftermarket for protecting the OEM's IPRs. OES agreements for Ambassador branded cars were not provided to the DG for review.

17.2.3 Based upon the submissions of multi-brand retailers and independent repairers, the DG has concluded that although the agreement between HML and its authorized dealers does not contain any clause dealing with the right of the authorized dealers to sell spare parts over the counter, but in practice the sale of the spare parts of Mitsubishi branded cars of HML are not permitted. HML has not provided the required information for its Ambassador branded cars.

17.2.4 Diagnostic tools are only available to authorized dealers of the OEM.

17.2.5 Warranty conditions are invalidated if a Mitsubishi branded car of HML is repaired by independent repairers.

17.2.6 Ability of dealers to deal in competing brands is restricted, and the OEM has submitted that such actions are discouraged.

17.2.7 The DG has concluded that it has not come across any instance of AAEC of the policies of HML with respect to its ambassador brand vehicles in the aftermarket for repair and maintenance.

17.2.8 Price mark up for top 50 spare parts by revenue generated (for Ambassador branded cars): 79.25%-133.32%. Price mark-up of top 50 spare parts on the basis of consumption (for Ambassador branded cars): 86.47%-206.25%.

17.2.9 HML has confirmed that they do not have any valid IPRs registered in India.

17.2.10 As per DG, denial to access diagnostic tools and spare parts amounts to denial of access to an "essential facility" and amounts to abuse of dominant position of HML.

17.2.11 Since HML restricts the availability of spare parts and diagnostic tools to its authorized dealers, it imposes unfair terms and denies market access to the independent repairers as per section 4(2)(a)(i) and 4(2)(c) of the Act, respectively. Further, HML is in violation of section 4(2)(a)(ii) for imposing unfair prices.

17.2.12 HML uses its dominance in one relevant market (i.e., supply of spare parts) to protect the other relevant market (i.e. market for repair services) which is violative of section 4(2)(e) of the Act.

17.2.13 HML is in violation of provisions of sections 3(4)(c) and (d) of the Act with respect to its agreements with local OESs and agreements with authorized dealers for imposing absolute restrictive covenants and completely foreclosing the aftermarket for supply of spare parts and other diagnostic tools.

17.2.14 Agreements with the authorized dealers have restrictive clauses requiring dealers to source the spare parts only from HML or its approved dealers. The DG has found these agreements in the nature of exclusive supply agreements in violation of section 3(4)(b) of the Act.

18. Replies of the Parties

18.1 The Commission, after considering the investigation report submitted by the DG, decided to forward copies thereof to all the concerned parties for filing their replies/objections thereto vide its order dated September 4, 2012.

18.2 All OPs filed their replies/objections to findings of the DG and appeared before the Commission for making oral submissions. The counsel for the Informant also made oral submissions before the Commission.

18.3 The Commission also sought additional replies/submission from the parties, with respect to certain specific questions/issues; vide orders dated March 5, 2013 and May 28, 2013. OPs provided additional submissions/replies to the queries raised by the Commission.

18.4 The replies of such parties have been summarized in the following paragraphs. The Commission notes that 14 OPs have made detailed submissions. Although, the Commission has considered in detail the submissions/replies of OEM, only the relevant common and specific submissions of the OPs have been summarized below.

18.5 Common Replies of all OEMs

18.6 The OPs have taken following common pleas in their submissions before the Commission:

(i) The relevant market is a 'systems market'

18.7 The OEMs have submitted that the DG has completely misunderstood the relevant market in which the OEMs operate and has erred by defining the relevant product market on two levels: i) The primary market has been defined as the market for manufacture and sale of cars; and ii) The secondary market consisting of the aftermarket for cars i.e. (i) for spare parts, diagnostic tools and manuals; and (ii) the repair, servicing and maintenance.

18.8 In contrast to what has been held by the DG, the OEMs submitted that there is no separate relevant market for spare parts distinct from the primary market for sale of cars. The OEMs have submitted that the relevant market in the instant case is that of an indivisible, unified 'systems market'. As per the OEMs that complementary products (like a car and its spare parts) cannot function without the use of the other and the consumers of cars, buy the primary product and the secondary products at the same time (purchasing as a system), i.e., a 'systems market'. Since by their very nature, complementary products can function only when used in tandem, competitive constraints that apply to the primary product would necessarily apply to the secondary product.

18.9 The OEMs have further submitted that for durable products like cars, a 'systems market' for complementary products is appropriate since customers, typically engage in 'whole-life costing', i.e., compute life-cycle cost of a car at the time of purchasing the car and the customers anticipate the future costs of ownership of the primary product by taking into account probable expenditure on aftermarket products. Such life-cycle costs include the purchase price, relationship between vehicle age and depreciation rate, insurance cost, driving patterns including mileage etc. Where the customers undertake a life-cycle cost analysis, at the time of purchasing the primary product, the relevant markets of the primary and the secondary consists of a unified 'systems market' and cannot be divided in the manner undertaken by the DG. The OEMs have submitted that due to significant increase in publications (both print and online) dealing with automobiles, substantial information about aftermarket cost of vehicles is available with customers and these resources enable prospective car buyers to assess life-cycle costs of the various OEM branded cars and compare these costs with those of rival brands.

18.10 Further, the OEMs have submitted that for durable products like cars, where 'reputation effects' mean that setting a supra-competitive price for the secondary product would significantly harm a OEM's profits on future sales of the primary product, it would not be economically prudent for the OEMs to set such supra-competitive prices for spare-parts and repair services in the aftermarket and hamper their reputation in the robust primary market for the sale of cars. Further, there is a high probability that an increase in prices in the aftermarket for cars i.e., the market for spare parts will be accompanied by a decrease in profits in the primary market i.e. the market for sale of cars. Hence, a unified market consisting of both the primary product as well as its

aftermarket may be considered as one unified systems market.

18.11 OEMs further submitted that the aftermarket i.e. the market for spare parts cannot be separated from the primary market i.e. the sale of cars and that applying the test of interchangeability and substitutability as the DG has done, will lead to absurd results where every unique nut and bolt of a car will constitute a separate product market and manufacturer of even one piece of equipment will qualify as an absolute monopolist in the market.

18.12 OEMs have submitted that the DG's conclusion about customers in India being 'locked in' and not being able to shift to alternate OEMs is misconceived, as the customers makes his choice to buy the OEM branded cars, being fully aware of the expenditure he may have to incur on after sales service, repairs and maintenance etc. Also, due to booming used car/second-hand car market for the OEM cars, existing owners can easily sell of their cars and switch to alternate OEM branded cars, without incurring substantial switching costs. OEMs have therefore stated that the relevant product market is the "market for sale of cars and its spare parts".

(ii) Submissions of OEMs that they are not dominant in the relevant systems market and their business practices are not abusive under section 4(2) of the Competition Act

18.13 OEMs have submitted that the DG's definition of the relevant market is incorrect. Thus, given the incorrect identification of the relevant market by the DG, its claim that the OEMs are dominant also fails. OEMs have stated that the relevant market in which they operate is the systems market for sale of cars and spare parts in India. Thus, the OEMs position of strength must be assessed in the relevant market for sale of cars and its spare parts in India.

18.14 OEMs have submitted that in the unified relevant market of sale of cars and its spare parts, they are not in a dominant position and that such market is robust with several competitors. The OEMs have submitted that due to the limited market share of each such OEM and the combined relative size and resources of their competitors and the level of competition in the unified systems markets, each OEM is unable to operate independently of the competitive forces prevailing in the relevant market and consequently, cannot be dominant in the unified "systems market". The OEMs have further submitted that the lack of market power in the primary market for the manufacture and sale of cars gives them little market power in the inter-related secondary market for spare parts and after sales repair services.

18.15 The OEMs have also reiterated that their relative position in the unified systems market, as identified above, in light of the factors (market share, market structure and market size, size and importance of competitors, dependence of consumers on the enterprise and countervailing buying power) laid out in Section 19(4) of the Competition Act, makes it abundantly clear that the OEMs are not in a dominant position in the relevant systems market. Thus, the OEMs' conduct and business practices cannot be considered as an abuse of dominant position, since dominance is a sine qua non to establish an infringement of section 4 of the Competition Act. OEMs have further supported their submissions with past decisions of the CCI in cases like Consumer Online Foundation and Automobile Dealers Association to support the proposition that if an enterprise is not dominant in the primary market, it cannot be held as a dominant player in the aftermarket.

18.16 OEMs have also submitted that they encourage their respective customers to only purchase genuine parts from the respective OEM authorized dealers and that such a

requirement is entirely in consumer interest and cannot be said to result in imposition of unfair or discriminatory conditions in the sale of goods and services under Section 4(2)(a)(i) of the Competition Act.

18.17 OEMs have submitted that the DG's analysis of their pricing structure is grossly incorrect. As per the OEMs, the DG has only taken into consideration the absolute cost difference between the cost at which the OEMs buy its spare parts from its OESs and the cost at which the end consumer gets the product. OEMs have submitted that the DG has failed to take into consideration the various statutory levies and other costs incurred by OEMs in facilitating the sale of its spare parts. As per the OEMs, the DG, has failed to consider the factors which are necessary for assessing the 'economic value' of a product and has not understood the concept of what may constitute as 'excessive' and hence an 'unfair price' within the meaning of section 4(2)(a) of the Act.

18.18 OEMs have submitted that no infringement under section 4(2)(e) of the Competition Act can be made out in the present case. Under section 4(2)(e) of the Competition Act a dominant enterprise is prohibited from using its dominant position in one relevant market to enter into or protect other relevant market. The DG has held that the users of the OEM branded cars intending to purchase spare parts and after sales service, repairs and maintenance have to necessarily avail the services of authorized dealers which amounts to such OEMs using its dominant position in one relevant market i.e. in the supply of spare parts of to enter and protect the other relevant market i.e. the market for after sales service, repair and maintenance of cars which in violation of section 4(2)(e) of the Competition Act. The OEMs have contended that since they are not dominant in their individual unified systems market for sale of cars and spare parts, such OEMs, cannot be held to be liable for violating the provisions of section 4(2)(e) of the Act.

(iii) Submission of OEMs on the applicability of the Essential Facilities Doctrine to their business practices

18.19 OEMs have submitted that, contrary to DG's findings the conditions necessary for invoking the 'essential facility doctrine' are not fulfilled in the present case. As per the OEMs, firstly, the OEMs are not in a dominant position, in a unified systems market for cars and spare parts/repair services. The second condition requires that the competitors of the enterprise who is in control of the essential facility will be incapable of practically or reasonably duplicating the essential facility. OEMs have submitted that it does not prevent anyone from developing spare parts and tools which are compliant with the spare parts of their respective branded cars and the only restriction is imposed upon OESs who use OEM's proprietary information to manufacture the spare parts. Thirdly, it needs to be shown that the monopolist has denied the access to the essential facility. OEMs have submitted that it does not deny access of spare parts to any independent repairers. Finally, it needs to be shown that it is feasible for the monopolist to make the essential facility available to competitors. OEMs have submitted that it is not feasible for it to make spare parts available in the open market through other distribution channels. Therefore, as per the OEMs in the light of the above submission, the DG's analysis regarding the applicability of the 'essential facility doctrine' to the OEMs business practices is completely baseless.

(iv) Submissions of the OEMs with respect to their agreements with overseas supplier

18.20 OEMs have relied upon a decision of the Commission in Exclusive Motors case (Case No: 52/2012) concerning an alleged anti-competitive agreement between a

foreign company and its Indian group company. The Commission in Exclusive Motors case has held that an agreement between entities constituting one enterprise cannot be assessed under the provisions of the Competition Act, in accordance with the internationally accepted doctrine of 'single economic entity'. OEMs have submitted that in light of the above decision, it is clear that an agreement between OEMs and its overseas suppliers, which are its group/associate companies, cannot be construed as an agreement for the purposes of scrutiny under section 3 of the Competition Act. OEMs have submitted that the DG has therefore erred in establishing the existence of an agreement between OEMs and its overseas suppliers of spare parts for the purpose of section 3(4) of the Act.

(v) Submissions of OEMs regarding their agreements with OESs and Authorized Dealers

18.21 OEMs have further submitted that vertical agreements are considered anti-competitive under section 3(4) of the Competition Act, only if they cause an AAEC in India. OEMs have submitted that in order for the DG to adjudge such adverse effect on the market, an investigation has to be made, whether such OEMs possesses significant market power or not. OEMs have further submitted that under the 'rule of reason' adopted under section 3(4) of the Competition Act, the DG is required to consider the various factors listed in section 19(3) of the Competition Act to determine if the alleged agreement causes or is likely to cause an AAEC on competition within India. OEMs have stated that a plain reading of section 19(3) of the Competition Act as well as established case laws, suggest that while assessing whether an agreement causes an AAEC on competition, it is incumbent upon the DG to consider and evaluate the likely anti-competitive and the pro-competitive effects arising out of an agreement before arriving at a finding of net impact on competition. OEMs have submitted that, in the present case, the DG has failed to carry out a meaningful analysis of AAEC on competition in line with the requirement under section 3(4) of the Competition Act, read with the provisions of section 3(4) of the Competition Act.

18.22 OEMs have submitted that even if one were to assume that the agreements between the OEMs on one hand and the OESs and the OEMs' authorized dealers, on the other, impose exclusivity conditions or are in the nature of refusal to deal, such agreements, based upon the factors mentioned in section 3(4) of the Competition Act, do not cause an AAEC on competition within India. The aftermarket of cars in India is flooded with cheap and spurious spare parts and there are no 'matching quality' legislations in India, unlike in other developed jurisdictions which regulate the standard and quality of spare parts to be used by independent repairers. Thus, OEMs by imposing certain reasonable restrictions in its agreements with OESs and authorized dealers ensure that spare parts that carry its trademark are procured only from its authorized dealers, are genuine, have passed rigorous safety checks to ensure the safety of their customers and the reputation of their brands. As per the OEMs, restrictions imposed in their respective OESs and authorized dealer agreements ensure customer safety by restricting the ability of unskilled independent repairers, to repair such OEM branded cars, without being aware of the sophisticated technology used in manufacturing such cars. The OEMs have claimed that the DG has failed to take into account such benefits accruing to the automobile customers under section 3(4) of the Competition Act.

18.23 As per the OEMs, the imposition of restrictions in their agreements with the OESs and authorized dealer is justified on the following grounds: (a) the technologically advanced vehicles require specialized skills, infrastructure, regular training which is available only at the authorized centers; (b) the restrictions improve the distribution mechanism for the OEM branded cars, as such OEMs can reach a larger

customer base through authorized dealers and such market penetration allows consumers more choice of various brands of cars, (c) training service personnel is not a one time job, but a continuous process as new vehicles models are launched and more advanced technologies are employed by OEMs on a regular basis; (d) the independent repairers do not possess the expertise and any mishandling of cars would be a hazard to public safety and environment; and (e) lack of law or regulation requiring road side mechanics or garages to register themselves with the government or to get any license to operate.

18.24 Additionally, OEMs have referred to past decisions of the Commission to reiterate that for a vertical restraint to adversely affect the competitive conditions at different levels of production-supply chain, under section 3(4) of the Competition Act, it is imperative for the parties to the agreement to possess some market power in their respective market spheres. The OEMs have contended that they have miniscule market shares in India's automobile market and have no ability to cause any anti-competitive harm to the Indian automotive industry.

(vi) Submissions with respect to Intellectual Property Rights of the OEMs and exemption under section 3(5) of the Competition Act

18.25 OEMs have submitted that the DG in its reports, has failed to appreciate that the various OESs, manufacture the spare parts of the respective OEMs with the aid of design, drawings, technical specification, technology, know-how, tooling, quality parameters etc., provided by the OEMs. Consequently, the proprietary interest in the product will lie solely with the OEMs and their respective OESs are precluded in law to deal in any other manner in terms of contract/agreement inter se the parties. OEMs have submitted that section 3(5)(i) of the Competition Act, expressly permits a person or enterprise to impose reasonable restrictions as may be necessary for protecting any of his IPRs which have been or may be conferred upon him under the provisions of the statutes specified in the section. As per the OEMs, the restrictions imposed in their contracts with their respective OESs and authorized dealers are permissible under Section 3(5) of the Competition Act, wherein a person may be allowed to impose conditions that are reasonable and necessary for protecting its IPRs in its commercial dealings with other enterprises. OEMs have submitted that such restrictions are further justified under the provisions of section 3(5) of the Competition Act inter alia, to: (a) safeguard the buyers from purchasing spurious and counterfeit spares; (b) to maintain the quality of the spare parts; (c) to ensure that the spare parts meet the quality standards through quality and safety tests carried out by the OEM; (d) to ensure organized system of warranty support to end consumers.

18.26 OEMs have stated that even if they are not the actual owner of certain IPRs, their respective parent company are the owners of the same and they are entitled to protect the IPRs through their subsidiaries in India pursuant to the various technology agreements entered into between the overseas parent company and the Indian subsidiary company. OEMs have stated that such technology agreements need not mention each spare part but it gives the right to their Indian subsidiary to use and regulate the IPRs in India for the benefit of the parent company. Further, OEMs have stated that even by assuming that the IPRs of its parent companies are territorial, the same by virtue of the provisions of the Copyright Act, 1957, can be enforced and regulated by their subsidiaries in India and that the OEMs are entitled, under section 3(5) of the Competition Act to impose reasonable contractual restrictions to protect the IPRs held by their parent overseas companies, in India.

18.27 OEMs have submitted that the DG has patently erred in its analysis of the restrictions placed by section 15 of the [Indian] Copyright Act. While the OEMs admit that certain spare parts of their branded cars enjoy design protection in India, not all spare parts are protected as designs, since spare parts are not a homogeneous group of mechanical parts. Such spare parts range from complex mechanical and electronic items to simple mechanical products, hence, all spare parts cannot be protected under the [Indian] Designs Act. OEMs have submitted that for all such spare parts, copyright protection is available and the restriction of section 15(2) of the Copyright Act is not applicable in such instances. Hence, the OEMs have submitted that the decision of the DG that the OEMs may not secure IPR protection for all its spare parts, under India's copyright laws is incorrect. OEMs have argued that the designs of their respective spare parts are protected either under the Designs Act or under the Copyright Act and further, since such spare parts are manufactured using the OEM's trade secrets and confidential information, OEMs would still be entitled to protection under the established common law principles.

(vii) Submissions of OEMs on 'Single Branding' clauses of their agreements with authorized dealers

18.28 OEMs have denied the DG's assertion that they have placed restrictions on their respective authorized dealers from taking up dealerships of other OEMs and that such restrictions violate the provisions of the Competition Act. As per the OEMs, they have authorized dealers whose promoters have dealerships of competing OEMs and that the restrictions placed on the authorized dealers are only of taking prior approval. OEMs have submitted that such restrictions are reasonable and allow the OEMs to assess the risk appetite of the dealer and to protect the brand of the OEM from being diluted. OEMs have stated that in situations where the same dealer is dealing in multiple brands, it is difficult for an OEM to assess the performance of the dealer and also assess the demand in relation to each vehicle as well as the sale of spares and repair and maintenance. Therefore, as per the OEMs, the single branding clauses of their authorized dealer agreements are merely reducing the risk of brand erosion and losses in the existing dealership structure. As per the OEMs prior consent requirement for competing dealerships is necessary to prevent other OEMs from free-riding on the significant investments made to develop an authorized dealer network.

(viii) Distinctness of the Indian automobile market has not been considered by the DG

18.29 OEMs have submitted that the DG while preparing its report(s) have erroneously compared the Indian market (developing market) vis-Ã -vis the European market and the U.S. market (developed markets) and the DG has relied upon the statutory provisions as prevalent in such advanced economies to reach the conclusion that the OEMs are acting in violation of the provisions of the Competition Act. OEMs have submitted that the DG has failed to consider the distinctive factors between the developed and the developing countries, such as the market share of passenger vehicles, awareness of an automobile product (such as safety, effect of use of genuine parts, etc) amongst consumers, certification authorities to certify the quality of a repairer, service skill sets available to independent repairers, legislative and regulatory framework etc. OEMs have submitted that while considering the practice prevalent in the developed countries, it was incumbent upon the DG to ascertain the practices of the OEMs operating in these countries; the nature of agreements entered into by them with their dealers, suppliers etc. OEMs have submitted that where the DG's report(s) admittedly lacks such statistical and analytical data, any comparison with the practices in such developed countries will create an adverse effect on the country's economy.

18.30 Specific Replies of OPs

Reply of M & M

18.30.1 M & M has further stated that the DG has incorrectly and selectively relied on international developments (legislative and judicial precedents of foreign courts) without adequately assessing the state of the market in India and the market realities that distinguish the Indian market place from the rest of the world's automobile sector. In doing so, M & M claims, the DG has pre-empted the state of development and growth of the automobile market in India and has wrongly found M & M in violations of the provisions of the Competition Act. M & M claims that the DG has not been able to make out a case of consumer benefit that would mandate an intervention by the Commission given the state of development of the automobile sector of India.

18.30.2 Pursuant to the Commission's order dated May 28, 2013, M & M has submitted additional information in response to certain queries raised by the Commission. The Commission had asked M & M to indicate which of its cars fall under the following categories: low-end (price below Rs. 5 lakhs), medium range (Rs. 5-10 lakhs), executive (Rs. 10-20 lakhs) and luxury (Rs. 20 lakhs and above). M & M categorized its various models in the abovementioned categories and has submitted that most of its cars (based on ex-showroom price in Delhi) would fall primarily under the category of Medium-range (Rs. 5-10 lakhs). Some variants of M & M cars, such as "Scorpio VLX" and "XyloE9", XUV 500 (F12) and "Rexton" fall within the executive-range (Rs. 10-20 lakhs). Another variant of "Rexton" would fall under the luxury range (above Rs. 20 Lakhs).

18.30.3 M & M provided its response to the queries raised by the Commission in the course of hearing. Such queries related to broad customer profile of M & M car owners, based upon educational background, occupation, income level, age and gender. The M & M also submitted its response regarding percentage of customers who seek M & M services in the post warranty period in each of the abovementioned segments. It was claimed that M & M invests regularly in the growth of its service network ensuring that its customers are largely satisfied and that M & M has not received any complaints about the inadequacy of its service network.

18.30.4 Further, M & M during their oral submissions before the Commission on 04.02.2013 submitted that 100% of M & M's spare parts are available through its distribution network and 85% of such spare parts are also available in the open market (bazaar channels) and the remaining 15% can be accessed through authorized dealers. M & M further submitted that switching costs of cars can be ascertained only after the expiry of the warranty period, i.e., four years later, taking into account the depreciated value of the vehicle. It was pointed out that after the warranty period, the consumer can sell the car in the thriving second hand market.

Reply of MSIL

18.30.5 MSIL has submitted that the Informant has not raised any allegations against MSIL of any violation of the provisions of the Act. Further, MSIL has submitted that the supplementary information filed by the Informant on 28th January 2012 specifically alleges a contravention of the Act by Honda, Toyota, Skoda, General Motors, Ford, Volkswagen, Nissan and "premium brand cars like Mercedes, BMW, Audi etc." MSIL has further submitted in paragraph 5 of the information that "he was previously the owner of a Maruti vehicle and was easily able to take it to independent repair workshops or the authorized dealers as he deemed fit." MSIL has further stated that the Informant was so

satisfied with MSIL's after sale services that he had used MSIL's practices as the benchmark to assess the practices adopted by the Original Respondents (Honda, Volkswagen and Fiat) in the aftermarket. MSIL has further stated that, neither the DG nor the Commission has provided any reasons for expanding the scope of the investigation to include MSIL. Therefore, MSIL has maintained that the scope of investigation is not sustainable and the proceedings against MSIL should be closed.

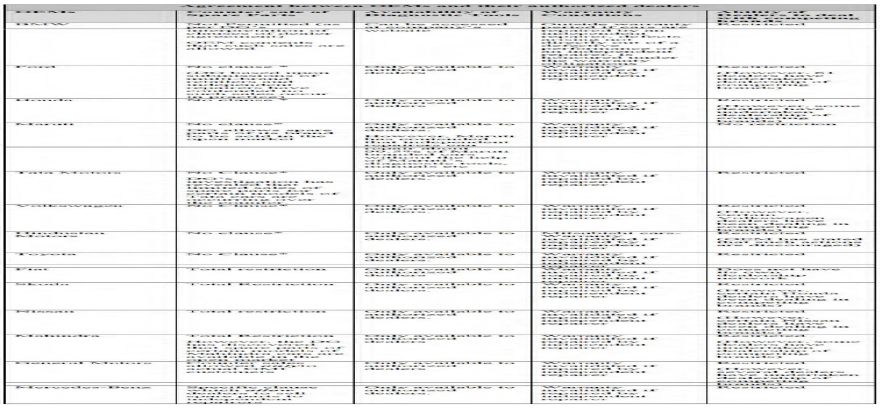
18.30.6 MSIL has submitted that the Commission has not passed a valid prima facie order against MSIL and that the DG was not empowered to enquire into MSIL's conduct in the first place. MSIL maintains that the order of the Commission, dated April 26, 2011 expanding the scope of the investigation beyond the Original Respondents is not a reasoned order as required by the Supreme Court in Competition Commission of India v. Steel Authority of India & Ors. In MSIL's view, it is only the Commission that has the power to initiate an investigation and by stating that the DG shall have the power to unilaterally expand the scope of the investigation with the prior permission of the Commission is an instance of 'excessive delegation', which is ultra vires to the provisions of the Act and in violation to the principles of natural justice.

18.30.7 MSIL has submitted that the DG has fundamentally misconstrued the nature of MSIL's relationship with its OESs. MSIL's agreements with its OESs are 'subcontracting arrangements. Such sub-contracting agreements have created a new industry and have inherent pro-competitive efficiencies. MSIL further stated that the DG has failed to appreciate that, in absence of such exclusivity; MSIL would either shift the production of spare parts in-house or cease its investments in developing OESs which would result in the OESs having to make these investments themselves. Either scenario would result in higher prices of spare parts.

18.30.8 MSIL has further stated that in the absence of any regulatory regime for matching quality certification for spare parts in India, in contrast with the European Union, there is no positive duty to allow OESs to sell spare parts in the open market. Such a lacuna, as per MSIL, can only be remedied through legislative change and the DG is wrong to find a violation of the Act on this basis.

18.30.9 MSIL has further submitted that the non-availability of MSIL diagnostic tools and technical manuals does not affect the ability of independent repairers to diagnose faults on MSIL vehicles because third party diagnostic tools are available for almost all repair jobs on MSIL vehicles. Further, as per MSIL, independent repairers can carry out 99.5% of all repair jobs on MSIL branded cars without the use of any specialized diagnostic or technical tools. Therefore, the present allegations of the Informant are not applicable to MSIL's business practices.

18.30.10 Further, pursuant to the Commission's order dated May 28, 2013, MSIL has submitted additional information in response to certain queries raised by the Commission. The Commission had asked MSIL to indicate which of its cars fall under the following categories: low-end (price below Rs. 5 lakhs), medium range (Rs. 5-0 lakhs), executive (Rs. 10-20 lakhs) and luxury (Rs. 20 lakhs and above). MSIL categorized its various models in the abovementioned categories, as follows:



MSIL has further submitted that the abovementioned segmentation set by the Commission is based purely on the basis of price and does not accurately reflect the actual segmentation of MSIL cars. MSIL has submitted that this was because different models of MSIL cars may fall in the same price range but are targeted at different customer groups, are based on different expectations and are meant for different uses.

18.30.11 The Commission asked MSIL to provide its customer profile in each segment based upon educational qualifications, occupation, income level, age and gender. Commission had further asked MSIL to submit details of what percentage of its customers seek its services post warranty period. MSIL has submitted such details regarding MSIL vehicles out of the warranty period for the years 2010-11, 2011-12 and 2012-13. However, MSIL has claimed confidentiality over the contents of such submissions. Regarding the question if the current service network was adequate to handle all aftermarket requirements (service/repairs) of the car owners, MSIL has submitted that 99.5% of all repair/maintenance functions on an MSIL vehicle can be carried out by third-party manufactured diagnostic tools and as a result independent repairers could easily repair an MSIL branded vehicle. Consequently, MSIL has submitted that its current service network for all MSIL cars is more than adequate to meet the aftermarket requirements.

Reply of GMI

18.30.12 Pursuant to the Commission's order dated May 28, 2013, GMI has submitted additional information in response to certain queries raised by the Commission. The Commission had asked GMI to indicate which of its cars fall under the following categories: low-end (price below Rs. 5 lakhs), medium range (Rs. 5-10 lakhs), executive (Rs. 10-20 lakhs) and luxury (Rs. 20 lakhs and above). GMI has categorized its various models in the abovementioned categories, in the following manner:

Segmentation of Products	Name of Model
Low end (price below Rs.5 lakhs)	Spark, Beat, Sail UVA Petrol
Medium range	Sail UVA Diesel, Sail Petrol, Sail Diesel, Enjoy, Tavera
Executive (Rs.10 -20 lakhs)	Cruze
Luxury (above Rs.20 lakhs)	Captiva

GMI was further asked to provide a broad profile of its car owners in each segment, based upon educational qualifications, occupation, income level age and gender. GMI has submitted such information; however, since the Commission has not relied upon such information in order to reach its decision in the present case, the same has not been reproduced in this order.

18.30.13 GMI was further asked by the Commission to submit details regarding what percentage of GMI's customers seek the services of its authorized dealers post warranty and what percentage of its customers are repeat customers. GMI has submitted that the percentage of repeat customers in the category of cars (3-4 years) is 78% and in the category of cars (4-5 years) is 62%. The Commission has further asked GMI if its current service network is adequate to handle all its aftermarket requirements (service/spares) of car owners. GMI has submitted that its current service network is adequate to handle all after market requirements (service and spares) of cars owners.

Reply of Volkswagen

18.30.14 Further, pursuant to the Commission's order dated May 28, 2013, VWIPL has submitted, through the affidavit of Mr. Puneet Sabharwal, Chief General Manager and Head of Accounting, Taxation and Legal, additional information in response to certain queries raised by the Commission. The Commission had asked VWIPL to indicate which of its cars fall under the following categories: low-end (price below Rs. 5 lakhs), medium range (Rs. 5-10 lakhs), executive (Rs. 10-20 lakhs) and luxury (Rs. 20 lakhs and above). VWIPL has categorized its various models in the abovementioned categories, in the following manner:

Audi brand:

Segmentation of Products	Name of Model
Low end (price below Rs.5 lakhs)	No car
Medium range	No car
Executive (Rs.10 -20 lakhs)	No car
Luxury (above Rs.20 lakhs)	Audi A4, A6, A7, A8 Audi Q3, Q5, Q7 Audi RS5, TT, R8,S4 S6

Volkswagen brand:

Segmentation of Products	Name of Model
Low end (price below Rs.5 lakhs)	Polo TL Petrol
Medium range	Polo CL Petrol, Polo HL Petrol, Polo TL Diesel, Polo CL Diesel, Polo HL Diesel, Vento TL Petrol, Vento CL Petrol, Vento HL Petrol AT & MT, Vento TL Diesel, Vento CL Diesel & Vento HL Diesel.
Executive (Rs.10 -20 lakhs)	Jetta (all models)
Luxury (above Rs.20 lakhs)	Passat

VWIPL was further asked to provide a broad profile of its car owners in each segment, based upon educational qualifications, occupation, income level age and gender. VWIPL has submitted such information, but VWIPL has claimed confidentiality over the contents of such information.

18.30.15 VWIPL was further asked by the Commission to submit details regarding what percentage of Volkswagen's customers seek the services of its authorized dealers post warranty and what percentage of its customers are repeat customers. VWIPL has submitted such information but has claimed confidentiality over such disclosures. The Commission has further asked VWIPL if its current service network is adequate to handle all its aftermarket requirements (service/spares) of car owners. VWIPL has submitted that its current service network is adequate to handle all after market requirements (service and spares) of cars owners.

Reply of Fiat

18.30.16 Pursuant to the Commission's order dated May 28, 2013, Fiat has submitted additional information in response to certain queries raised by the Commission. The Commission had asked Fiat to indicate which of its cars fall under the following categories: low-end (price below Rs. 5 lakhs), medium range (Rs. 5-10 lakhs), executive (Rs. 10-20 lakhs) and luxury (Rs. 20 lakhs and above). Fiat categorized its various models in the abovementioned categories, in the following manner. Models of Fiat cars falling in the medium range vehicles (Rs. 5-10 lakhs) include, Punto and Linea. Fiat was further asked to provide a broad profile of its car owners in each segment, based upon educational qualifications, occupation, income level age and gender. Fiat has submitted a profile of its customers based upon occupation, average age and gender. However, since the Commission has not relied upon such information in order to reach its decision in the present case, the same has not been reproduced in this order.

18.30.17 Fiat was further asked by the Commission to submit details regarding what percentage of Fiat's customers seek the services of its authorized dealers post warranty and what percentage of its customers are repeat customers. Fiat has submitted that about 42% of its customers use its authorized service centres in the post warranty period. The Commission has further asked Fiat if its current service network is adequate to handle all its aftermarket requirements (service/spares) of car owners. Fiat has submitted that, keeping in view the small number of Fiat cars sold, its current service network is adequate enough to handle all after market requirements (service and spares) of cars owners.

Reply of Nissan

18.30.18 Nissan has submitted that it had started commercial production in May 2010 and all of its cars are under the warranty period. Nissan has further submitted that since April 1, 2012, it is engaged only in distribution of cars and sale of spare parts (after sale services) and from the aforementioned date Nissan is no longer acting as an OEM or car manufacturer, it should not be treated at par with the other OEMs.

18.30.19 Further, pursuant to the Commission's order dated May 28, 2013, Nissan has submitted additional information in response to certain queries raised by the Commission. The Commission had asked Nissan to indicate which of its cars fall under the following categories: low-end (price below Rs. 5 lakhs), medium range (Rs. 5-10 lakhs), executive (Rs. 10-20 lakhs) and luxury (Rs. 20 lakhs and above). Nissan categorized its various models in the abovementioned categories, in the following

manner. Models of Nissan cars falling in the range of low end vehicles include few models of Micra, those under the medium range vehicles (Rs. 5-10 lakhs) include, some models of Micra, Sunny and Evalia. Those models of Nissan cars falling under the executive class (Rs. 10-20 lakhs) include one model of Evalia. Nissan was further asked to provide a broad profile of its car owners in each segment, based upon educational qualifications, occupation, income level age and gender. Nissan has submitted that it does not maintain any such data in the above categories. Nissan has submitted results of a sample survey of 355 of its customers which was conducted by New Car Buyer Survey (owned by International Research Consultants Limited). Since the Commission has not relied upon such information in order to reach its decision in the present case, the same has not been reproduced in this order.

18.30.20 Nissan was further asked by the Commission to submit details regarding what percentage of Nissan's customers seek the services of its authorized dealers post warranty and what percentage of its customers are repeat customers. Nissan has submitted that it does not have such data at present. Nissan has submitted that it has started selling cars in India only in July 2010 and most of the owners of Nissan cars are first time owners. The Commission has further asked Nissan if its current service network is adequate to handle all its aftermarket requirements (service/spares) of car owners. Nissan has submitted that its current service network is adequate enough to handle all after market requirements (service and spares) of cars owners keeping in view number of cars sold by it so far.

Reply of BMW

18.30.21 Pursuant to the Commission's order dated May 28, 2013, BMW has submitted additional information in response to certain queries raised by the Commission. The Commission had asked BMW to indicate which of its cars fall under the following categories: low-end (price below Rs. 5 lakhs), medium range (Rs. 5-10 lakhs), executive (Rs. 10-20 lakhs) and luxury (Rs. 20 lakhs and above). BMW has submitted that all BMW branded automobiles fall under the 'luxury' segment. BMW was further asked to provide a broad profile of its car owners in each segment, based upon educational qualifications, occupation, income level age and gender. BMW has submitted a profile of its customers, however, since the Commission has not relied upon such information in order to reach its decision in the present case, the same has not been reproduced in this order.

18.30.22 BMW was further asked by the Commission to submit details regarding what percentage of BMW's customers seek the services of its authorized dealers post warranty and what percentage of its customers are repeat customers. BMW has submitted that such data is not available, however, approximately 78% of BMW branded automobiles have availed post warranty services from BMW authorized workshops. BMW has submitted that no separate data is available regarding repeat customers. The Commission has further asked BMW if its current service network is adequate to handle all its aftermarket requirements (service/spares) of car owners. BMW has submitted that its current service network is adequate enough to handle all after market requirements (service and spares) of cars owners.

Reply of Hindustan Motors

18.30.23 Pursuant to the Commission's order dated May 28, 2013, Hindustan Motors has submitted additional information in response to certain queries raised by the Commission. The Commission had asked Hindustan Motors to indicate which of its cars

fall under the following categories: low-end (price below Rs. 5 lakhs), medium range (Rs. 5-10 lakhs), executive (Rs. 10-20 lakhs) and luxury (Rs. 20 lakhs and above). Hindustan Motors categorized its various models in the abovementioned categories, in the following manner. Models of Hindustan Motors cars falling in the range of low end and medium range vehicles include different models of Ambassador. Those models of Hindustan Motors cars falling under the luxury class (above Rs. 20 lakhs) include Pajero Sports vehicles. Hindustan Motors was further asked to provide a broad profile of its car owners in each segment, based upon educational qualifications, occupation, income level age and gender. Hindustan Motors has submitted such information, however, since the Commission has not relied upon such information in order to reach its decision in the present case, the same has not been reproduced in this order.

18.30.24 Hindustan Motors was further asked by the Commission to submit details regarding what percentage of Hindustan Motor's customers seek the services of its authorized dealers post warranty and what percentage of its customers are repeat customers. Hindustan Motors has submitted that about 27% of its customers use the services of its authorized workshops post warranty period. The Commission has further asked Hindustan Motors if its current service network is adequate to handle all its aftermarket requirements (service/spares) of car owners. Hindustan Motors has submitted that its current service network is adequate to handle all after market requirements (service and spares) of cars owners for both Ambassador and Pajero models of cars.

Reply of Tata Motors Limited

18.30.25 Tata has submitted that even those spare parts which are used only in Tata branded cars are also available from different sources, other than Tata's authorized outlets. Tata has stated that there are large number of parts which are known as 'proprietary parts' which are manufactured by various manufacturers of parts who supply such parts to Tata and who are also referred to as OESs. In respect of such proprietary parts there is no condition in the OES agreement to obtain 'prior consent' of Tata before selling them to any party and such spare parts are freely supplied to the aftermarket without obtaining prior consent from Tata. Further, Tata has submitted that such OESs which supply 'build to print' spare parts to Tata and who are required to obtain consent before selling the same directly to any other party, also supply a large number of such part directly to the aftermarket. Tata has submitted that most of the spare parts that are supplied by OESs to Tata are also supplied directly by OESs to the aftermarket and are available in abundance in the aftermarket.

18.30.26 Pursuant to the Commission's order dated May 28, 2013, Tata has submitted additional information in response to certain queries raised by the Commission. The Commission had asked Tata to indicate which of its cars fall under the following categories: low-end (price below Rs. 5 lakhs), medium range (Rs. 5-10 lakhs), executive (Rs. 10-20 lakhs) and luxury (Rs. 20 lakhs and above). Tata has categorized its various models in the abovementioned categories, in the following manner.

Price range	Segment referred to in the query	Cars falling under the respective price ranges
Price below Rs. 5.00 lakhs	Low End	Nano, Indica and Venture
Price (Rs.5 laks-10 lakhs)	Medium range	Indica, Vista, Indigo, CS, Indigo, Manza, Sumo, Sumo Grande, Safari
Price (Rs.10 lakhs-20 lakhs)	Executive range	Xenon, Aria
Price (above 20 lakhs)	Nil	Nil

18.30.27 Tata was further asked to provide a broad profile of its car owners in each segment, based upon educational qualifications, occupation, income level age and gender. Tata has submitted a profile of its customers based upon occupation, average age and gender. However, since the Commission has not relied upon such information in order to reach its decision in the present case, the same has not been reproduced in this order. Tata was further asked by the Commission to submit details regarding what percentage of Tata's customers seek the services of its authorized dealers post warranty and what percentage of its customers are repeat customers. Tata has submitted that about 41% of its customers use its authorized service centres in the post warranty period. The Commission has further asked Tata if its current service network is adequate to handle all its aftermarket requirements (service/spares) of car owners. Tata has submitted that its current service network is adequate enough to handle all after market requirements (service and spares) of cars owners.

Reply of Skoda

18.30.28 Pursuant to the Commission's order dated May 28, 2013, Skoda has, through the affidavit of Ms. Swapna Jain, company secretary of Skoda, has submitted additional information in response to certain queries raised by the Commission. The Commission had asked Skoda to indicate which of its cars fall under the following categories: low-end (price below Rs. 5 lakhs), medium range (Rs. 5-10 lakhs), executive (Rs. 10-20 lakhs) and luxury (Rs. 20 lakhs and above). Skoda has categorized its various models in the abovementioned categories, in the following manner:

(a) Fabia falls into "Low end" and "Medium range"

(b) Rapid falls into "Medium range"

(c) Laura and Yeti falls into "Executive" category

(d) Superb falls into "Luxury" category

Skoda was further asked to provide a broad profile of its car owners in each segment, based upon educational qualifications, occupation, income level age and gender. Skoda has submitted such information; however, since the Commission has not relied upon such information in order to reach its decision in the present case, the same has not been reproduced in this order.

18.30.29 Skoda was further asked by the Commission to submit details regarding what percentage of Skoda's customers seek the services of its authorized dealers post warranty and what percentage of its customers are repeat customers. Skoda has submitted that:

Group	Customer Retention
Segment 1 (0-4 years from the date of sale)	68%
Segment 2 (5-7 years from the date of sale)	34%
Segment 3 (8 and above years from the date of sale)	14%

18.30.30 The Commission has further asked Skoda if its current service network is adequate to handle all its aftermarket requirements (service/spares) of car owners. Skoda has submitted that its current service network is adequate to handle all after market requirements (service and spares) of cars owners. Regarding the scope of bringing the informal sectors into the fold of authorized network, Skoda has submitted that presently the informal sector is not regulated by any legislation, rules, regulations or guidelines. The cars are technologically advanced and it is not in the interest and safety of consumers to allow the informal sector to cater to the after-market needs without necessary regulations or guidelines being in place.

Reply of Ford

18.30.31 Ford has submitted that the Reports as submitted by the DG is in excess of the authority; is against the provisions of the Act and is contrary to the facts. Ford has referred to the sections 16, 19, 26, 36 and 41 of the Act to establish that the duty of the DG is only to assist the Commission in inquiry and that the Act does not contemplate a delegation of the power of the Commission to the DG. Ford has submitted that in the present case the DG has transgressed its power under the Act by submitting the Report which is not only in nature of an inquiry but also in the nature of adjudication. Ford has submitted that it is settled principle of law that if the authority constituted under a statute transgresses its powers then a report submitted on the basis of the same is bad in law and is liable to be rejected. Further, Ford has stated that if a report in the nature of adjudication is submitted before any authority, it is bound to create bias and cause prejudice to a party. Ford therefore has submitted that since the DG Reports are adjudicatory in nature would cause bias in the mind of the authority and thus such a Report is liable to be rejected.

18.30.32 Ford has submitted that the DG Reports as submitted have given an erroneous interpretation of section 3(4) and 3(4) of the Act. Ford has submitted that the differences in the language used in section 3(3) and section 3(4) have not been appreciated by the DG. As per Ford, the use of the words 'between' in section 3(3) and 'amongst' in section 3(4) of the Act is a conscious act of the legislature. Ford has submitted that there is no finding by the DG that any agreement entered into by Ford with its OESs or its authorized dealers or with suppliers, is amongst more than two enterprises or there is consensus as-idem amongst more than two entities. Ford has submitted that all such agreements are bipartite agreements and as such they cannot fall within the ambit of section 3(4) of the Act and as such the very foundation/basis on which the DG has proceeded is erroneous and its Reports are liable to be rejected.

18.30.33 Ford has submitted that there has been complete non-compliance of the principles of natural justice by DG while conducting the investigation. Ford has noted

that during the course of investigation, the DG had collected material and other alleged evidences, which are indicative from the Report of the DG. Ford has submitted that the material collected by the DG has not been provided to Ford that any such material/evidences is being obtained or recorded against the Ford. Ford has submitted that for the purpose of investigation, it was the duty of the DG to provide/furnish all such material/evidences, which the DG has obtained against Ford, if the same was to be relied upon and used against Ford. Ford has submitted that no material has been shared and only the factum of there being such evidence is recorded in the DG's Reports and that no opportunity has been provided to Ford to clarify/rebut the said material or evidences collected by the DG during its investigation.

18.30.34 Further, pursuant to the Commission's order dated May 28, 2013, Ford, through the affidavit of Mr. Dushyanth Jayakumar, authorized signatory of Ford, has submitted additional information in response to certain queries raised by the Commission. The Commission had asked Ford to indicate which of its cars fall under the following categories: low-end (price below Rs. 5 lakhs), medium range (Rs. 5-10 lakhs), executive (Rs. 10-20 lakhs) and luxury (Rs. 20 lakhs and above). Ford categorized its various models in the abovementioned categories, in the following manner. Models of Ford cars falling in the range of low end vehicles include Figo, those under the medium range vehicles (Rs. 5-10 lakhs) include, various models of Figo and Fiesta Classic. Those models of Ford cars falling under the executive class (Rs. 10-20 lakhs) and luxury class (above Rs. 20 lakhs) include various models of Endeavour. Ford was further asked to provide a broad profile of its car owners in each segment, based upon educational qualifications, occupation, income level age and gender. Ford has submitted that it does not maintain any such data in the above categories.

18.30.35 Ford was further asked by the Commission to submit details regarding what percentage of Ford's customers seek the services of its authorized dealers post warranty and what percentage of its customers are repeat customers. Ford has submitted that approximately 50 per cent of the consumers of Ford availed its services post expiry of the warrant period. Further, Ford has submitted that it does not maintain any specific data with respect to repeat customers. The Commission has further asked Ford if its current service network is adequate to handle all its aftermarket requirements (service/spares) of car owners. Ford has submitted that its current service network is adequate to support the needs of Ford's consumers.

Reply of Honda

18.30.36 Pursuant to the Commission's order dated May 28, 2013, Honda has submitted additional information in response to certain queries raised by the Commission. The Commission had asked Honda to indicate which of its cars fall under the following categories: low-end (price below Rs. 5 lakhs), medium range (Rs. 5-10 lakhs), executive (Rs. 10-20 lakhs) and luxury (Rs. 20 lakhs and above). Honda categorized its various models in the abovementioned categories, but has claimed confidentiality regarding the contents of such submissions. Honda, has further submitted that the relevant market determination on the basis of the categories identified above, is without any basis in the eyes of law, since the abovementioned categorization has been adopted without taking into account consumer preferences, characteristics of the cars etc. Honda was further asked to provide a broad profile of its car owners in each segment, based upon educational qualifications, occupation, income level age and gender. Honda has submitted such details, but has claimed confidentiality over the contents of such submissions.

18.30.37 Honda was further asked by the Commission to submit details regarding what percentage of Honda's customers seek the services of its authorized dealers post warranty and what percentage of its customers are repeat customers. Honda has submitted such details but has claimed confidentiality on the contents of such submissions. The Commission has further asked Honda if its current service network is adequate to handle all its aftermarket requirements (service/spares) of car owners. Honda has submitted that its current service network is sufficient in terms of quality, space, infrastructure and customer satisfaction to handle all after market requirements.

Reply of Mercedes

18.30.38 Pursuant to the Commission's order dated May 28, 2013, Mercedes has submitted additional information in response to certain queries raised by the Commission. The Commission had asked Mercedes to indicate which of its cars fall under the following categories: low-end (price below Rs. 5 lakhs), medium range (Rs. 5-10 lakhs), executive (Rs. 10-20 lakhs) and luxury (Rs. 20 lakhs and above). Mercedes has submitted that all cars currently being offered for sale BY MBPIL in the Indian market are priced above Rs. 20 lakhs and is in the 'Luxury' category. Mercedes was further asked to provide a broad profile of its car owners in each segment, based upon educational qualifications, occupation, income level age and gender. Mercedes has submitted such information for the consideration of the Commission.

18.30.39 Mercedes was further asked by the Commission to submit details regarding what percentage of Mercedes customers seek the services of its authorized dealers post warranty and what percentage of its customers are repeat customers. Mercedes has submitted such information for the consideration of the Commission but has claimed confidentiality over the contents of such information. Further, Mercedes has submitted data with respect to its repeat customers but has claimed confidentiality over such information. The Commission has further asked Mercedes if its current service network is adequate to handle all its aftermarket requirements (service/spares) of car owners. Mercedes has submitted that its current service network is adequate to support the needs of its consumers.

18.30.40 Mercedes further submitted during oral hearing before the Commission on 07.02.2013 that 4% of its branded spare parts are sold over the counter and that in such sales retail buyers as well as multi-brad repairers like Carnation can buy such spare parts.

Reply of Toyota

18.30.41 Pursuant to the Commission's order dated May 28, 2013, Toyota has submitted additional information in response to certain queries raised by the Commission. The Commission had asked Toyota to indicate which of its cars fall under the following categories: low-end (price below Rs. 5 lakhs), medium range (Rs. 5-10 lakhs), executive (Rs. 10-20 lakhs) and luxury (Rs. 20 lakhs and above). Toyota has categorized its various models in the abovementioned categories, but has claimed confidentiality over the contents of such disclosures. Toyota was further asked to provide a broad profile of its car owners in each segment, based upon educational qualifications, occupation, income level age and gender. Toyota has submitted such information; but has claimed confidentiality over the contents of such disclosures.

18.30.42 Toyota was further asked by the Commission to submit details regarding what percentage of Toyota's customers seek the services of its authorized dealers post warranty and what percentage of its customers are repeat customers. Toyota has

submitted such information but has claimed confidentiality over the contents of such disclosures. The Commission has further asked Toyota if its current service network is adequate to handle all its aftermarket requirements (service/spares) of car owners. Toyota has submitted such information; but has claimed confidentiality over the contents of such disclosures.

19. Oral Submissions of the Informant

19.1 The counsel to the Informant submitted that about 95% of workshops (over 3 lakhs) are operating in Indian automobile aftermarket which work outside the authorized dealer network and spare parts/diagnostic tools are not made available to such independent repairers in the aftermarkets. This has resulted in the development of an industry of spurious spare parts in aftermarkets, which cause death/injuries besides causing revenue and employment loss. The counsel to the Informant though conceded that TATA/Maruti/M & M make available some spare parts in aftermarkets in respect of some of their car models, but that the consumers do not have a choice or right in this regard.

19.2 The counsel to the Informant submitted that none of the OEMs provide life cycle expenditure/cost to the customers. Neither such information is available on the website of any of the OEMs. Had it been so, the OPs would not have relied upon materials available publicly or through third party research reports, to argue the availability of such information to their respective customers. Further, the counsel argued that OEMs do not provide lifetime warranties. The counsel also refuted the submissions of the OPs made on the basis of reputational damage and argued that, on the contrary, availability of spare parts in aftermarkets would strengthen the reputation of OEMs. It was further argued that the profit margins in secondary markets are substantially higher than primary markets. It was urged that none of the OPs submitted evidence to support their theory that higher prices in aftermarkets affected the prices of their products in the primary market.

19.3 The counsel to the Informant suggested that even if a customer of an OEM is desirous of calculating the life cycle costs, no price list of spare parts is made available to the customers and was made available only to the dealers. It was contended that due to frequent and random changes in the prices of spare parts in the aftermarket, the consumers cannot work out the lifetime costing of the product.

19.4 The counsel supported the findings of the DG and submitted that the secondary market would not be different from the primary market only in the following two cases:

(i) If the consumers are able to switch spare parts or

(ii) If it is possible for the consumers to switch product in the primary market.

The counsel argued that none of the aforesaid conditions were met in the present matter as switching costs are too high and referred to various case laws to support his submissions.

19.5 On the issue of relevant market, the counsel to the Informant argued that there are two relevant markets. The primary market is for sale of car and the secondary market is for spares/services. In the context of determining the 'relevant market' the counsel reiterated his earlier submission that since life cycle costing of a car could not be effectively worked out by the car users, therefore, the submissions of the OPs suggesting a unified systems market do not stand.

19.6 Lastly, the counsel argued that IPRs do not have absolute overriding effect on competition law. In this regard, it was also highlighted that the OPs have already admitted before the Commission that their agreements contain restrictions and have tried to justify such restrictions under section 3(5) of the Competition Act.

20. Decision of the Commission

20.1 The Commission has carefully gone through information, report of the DG and averments of the parties in the present case. The Commission notes that in addition to substantive issues involved in the matter, some of the Opposite Parties have also raised objections regarding jurisdiction of the Commission to inquire the conduct of those OPs which were not named specifically in the information filed by the Informant.

20.2 Before determination of the substantive issues, therefore, the Commission deems it proper to deal first with the objections raised by the OPs regarding jurisdiction of the Commission in the present matter.

20.3 Issue of Jurisdiction

20.3.1 A plea has been advanced by some of the OEMs like MSIL and Nissan that the Commission does not have the jurisdiction to investigate and proceed against any other OP other than the three OPs, viz., Honda, Volkswagen and Fiat, named in the information. The OPs have argued that as the Informant had named only above 3 parties, the directions under section 26(1) should be construed to have been given to investigate the entities named in the information. The DG had no power to investigate other OPs and as such the proceedings against those OEMs who were not named in the information is vitiated. It has also been contended on behalf of MSIL that Informant has not raised any allegations against it for any violation of the provisions of the Act.

20.3.2 In view of the Commission, the plea taken by the OPs is wholly misconceived. The Commission is a statutory body, established under the Act with the legislative mandate inter alia to prevent the practices having adverse effect on competition, to promote and sustain competition in the markets, to protect the interests of consumers and to ensure freedom of trade carried on by other participants in the markets, in India. To perform the above mentioned functions, under the scheme of the Act, the Commission is vested with inquisitorial, investigative, regulatory, adjudicatory and advisory jurisdiction. The Commission is entitled to evolve its own procedure under section 36(1) of the Act for conducting inquiry as contemplated under the provisions of the Act. Further, the said inquiry is set into motion before the Commission in accordance with the provisions of section 19 of the Act, which is to be conducted by the Commission as per the procedure provided under section 26 of the Act. Under section 26(1) of the Act, the Commission has to form only a prima facie opinion as to the existence of contravention of any provision of the Act and pass a direction to the DG to cause an investigation to be made into the matter and submit its report. The direction under section 26(1) is an administrative direction to the DG for investigation of contravention of provisions of the Act, without entering upon any adjudicatory or determinative process. It does not effectively determine or affect rights or obligation of the parties.

20.3.3 Placing reliance on the order of the Hon'ble Supreme Court passed in CCI v. Sail case (2010 Comp LR 0061 (Supreme Court)), the Commission has held in number of cases that considering the nature of the proceedings before the Commission (largely inquisitorial in nature), the Commission is not required to confine the scope of inquiry to the parties whose names figure in the information. The purpose of filing information

before the Commission is only to set the ball rolling as per the provisions of the Competition Act, 2002. The scope of inquiry is much broader and the Commission is not restricted in its inquiry to consider the material placed by the parties only. Even if the informant subsequently does not participate in the proceedings or does not furnish any evidence during investigation or inquiry or seeks to withdraw the matter it is not the requirement of law that proceedings should be dropped or closed and the Commission may continue with the proceedings to take it to logical conclusion. This is so because being an expert body clothed with a duty to prevent practices having adverse effect on competition in the markets, the Commission is mandated by law to examine the issues in a holistic and not in a piecemeal manner. For example, if any information regarding cartelization is filed before the Commission or the Commission takes suo moto cognizance of such matter and at the stage of forming prima facie opinion name of only two entities participating in the cartel is known and matter is referred to the DG for investigation. During investigation the DG may come to know that not only the parties named in the direction of the Commission but other players in the same industry are also involved in the alleged cartelization. In such a case to hold that the Commission cannot direct the DG to investigate the conduct of other parties would render the inquiry inchoate and not only the Commission will be deprived of doing complete justice in the matter but it will also lead to multiplicity of proceedings, though emanating from same series of conduct, which the law always seeks to avoid.

20.3.4 Even when tested on the touchstone of facts, this case stands on stronger footing. As is evident from the prayer of the Informant reproduced in paragraph 1.14, he has requested the Commission to hold an enquiry into the anticompetitive practices of the named OPs (viz., Honda, Volkswagen and Fiat) and all motor vehicle manufacturers found to be engaging in similar activities. It is pertinent to note that although only 3 OPs were named in the information but the information and additional information disclosed that the allegations were confined to the named OPs and the Informant had requested the Commission to inquire into alleged anti-competitive conduct of other OEMs also.

20.3.5 Further, the Commission also considered the additional information filed by the Informant on January 27, 2011, alleging certain restrictive practices by the OPs named in the information and by other vehicle manufacturers in violation of the provisions of the Act. The Commission on consideration of the facts of the case and averments made in the information formed its prima facie opinion under section 26(1) of the Act and gave directions, vide order dated February 24, 2011, to the DG to investigate the matter.

20.3.6 The direction of the Commission was with respect to alleged anti-competitive conduct by the said industry in general and not specifically qua the car manufacturers named in the information. This is apparent from the order of the Commission dated April 26, 2011 which was passed after considering the request of the DG when he found, at that stage that alleged anticompetitive conduct was not confined to the named entities in the information but was prevalent across the industry. Further, while directing the DG to investigate against those car manufacturers also who were not specifically named in the information, the Commission treated the almost similar conduct of all car manufacturers equally and gave mandate to the DG that he can investigate the matter against not only the named car manufacturers but against other car manufacturers as well.

20.3.7 In the present case the DG brought the matter to the Commission and thereafter exercising its power under the Act, the Commission allowed the request in order to

achieve the objectives of the Act, as mentioned in the preamble and in discharge of its functions under section 18 of the Act. The Commission, therefore, cannot be said to have committed any irregularity by allowing the request of DG for doing thorough and complete investigation as mandated under the Act for achieving its objectives. It is also noted that all OPs were given ample opportunity by the DG to present their case and without exception all of them have indeed taken that opportunity to make detailed submissions. Further, all OPs have not only submitted their detailed objections to the report of the DG but they have been heard at length by the Commission and they were further allowed to submit written arguments. All these facts demonstrate that principles of natural justice were followed by the Commission at every stage of inquiry and none of the OPs has claimed that DG has drawn findings against it without affording sufficient opportunity of hearing.

20.3.8 The Commission is of the opinion that the objections taken by the OPs regarding jurisdiction of the Commission are not only contrary to the scheme of that but also do not capture the factual position in the correct perspective. Based on above discussion the contention raised by the OPs has no force and is liable to be rejected.

20.4 The Commission notes that the following substantive issues arise for determination in the case.

Issue 1: Whether the Opposite Parties have violated the provisions of section 4 of the Act as has been alleged?

Issue 2: Whether the Opposite Parties have violated the provisions of section 3 of the Act as has been alleged?

20.5 Determination of Issue No. 1

The determination of this issue involves determination of following three sub issues:

i. What is the relevant market?

ii. Whether OPs are dominant in the relevant market?

iii. If yes, whether the OPs have abused their dominance in violation of section 4 of the Act?

Determination of Relevant Market

20.5.1 Relevant market has been defined in sub-sections (r), (s) and (t) of section 2 of the Act in the following manner:

Section 2

...

(r) "relevant market" means 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;

(s) "relevant geographic market" means a market comprising the area in which the conditions of competition for supply of goods or provision of services or demand of goods or services are distinctly homogenous and can be distinguished from the conditions prevailing in the

neighbouring areas;

(t) "relevant product market" means 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;

The conditions to determine relevant market have been elaborately dealt in subsection (5) (6) and (7) of section 19 of the Act, are reproduced below:

Section 19

...

19(5) For determining whether a market constitutes a "relevant market" for the purposes of this Act, the Commission shall have due regard to the "relevant geographic market'' and "relevant product market".

19(6) The Commission shall, while determining the "relevant geographic market", have due regard to all or any of the following factors, namely:

(a) regulatory trade barriers;

(b) local specification requirements;

(c) national procurement policies;

(d) adequate distribution facilities;

(e) transport costs;

(f) language;

(g) consumer preferences;

(h) need for secure or regular supplies or rapid after-sales services.

19(7) The Commission shall, while determining the "relevant product market", have due regard to all or any of the following factors, namely:

(a) physical characteristics or end-use of goods;

(b) price of goods or service;

(c) consumer preferences;

(d) exclusion of in-house production;

(e) existence of specialised producers;

(f) classification of industrial products.

(a) Relevant Product Market

20.5.2 As per the definition under section 2(t) of the Act, the "relevant product market"

comprises 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. The DG, during the course of its investigation, considered the nature of the business and conduct of the OEMs and concluded that the product market in the automobile sector can be categorized under the following heads:

1) The Primary Market: consisting of the manufacturing and the sale of the passenger vehicles; and

2) The Secondary Market or the aftermarket: comprising of the complimentary or secondary products and services which are complimentary to and follow on from the primary product.

Therefore, the DG has considered three product/service markets for the purpose of investigation in this case. The first relevant market is the primary market for the "sale of cars in India" as determined by the DG, based on the factors given in section 19(7) of the Act. The second relevant market, i.e., the aftermarket, is divided into two separate segments, as follows:

a) Supply of spare parts, including the diagnostic tools, technical manuals, catalogues etc for the aftermarket usage; and

b) Provision of after sale services, including servicing of vehicles, repair and maintenance services.

20.5.3 The DG has gathered, during the course of its investigation, that due to the specific technical features of the spare parts of each brand of cars manufactured by the OEMs, there are limitations on the possibility for a consumer (owner of the car of a brand) to switch to the secondary product of another OEM (spare parts of other brands of cars). In fact, the DG has discovered that even intra-brand substitutability of spare parts is greatly limited. The DG has concluded that once the primary product has been purchased, consumer choice is confined to those aftermarket products or services compatible with that primary product.

In other words, consumers are to a greater or lesser extent locked into certain aftermarket suppliers.

20.5.4 Before discussing the issue further on facts, we would want to provide a conceptual framework relating the issues of "aftermarkets" and "systems market" as concepts of competition law, which shall help in a better understanding of our analysis of the related issues in this case.

20.5.5 In the first instance it is important to discuss the two "relevant market" concepts: (a) a unified systems market and (b) aftermarket. An aftermarket is a special kind of antitrust market consisting of unique replacement parts, post warranty service or other "consumables" specific to some primary product. The term, therefore, refers to markets for complementary goods and services such as maintenance, upgrades, and replacement parts that may be needed after the consumer has purchased a durable good.

20.5.6 A typical allegation is that the durable goods producer (i.e. the OEM or the car manufacturer in the present case) behaves in a fashion that stops alternative producers from offering the complementary good (restrictions imposed on the OESs) or service with the result that the original durable goods producer monopolizes the aftermarket.

This is the core allegation of the Informant in this case. This monopoly behavior and the concomitant abuse of such monopoly market power allow the monopolist in the primary market to charge supra-competitive prices and impose other restraints in the aftermarket.

20.5.7 OEMs have submitted that the correct "relevant market" in the present case is a unified 'systems market' comprising a set of products or services, which cannot be distinguished into two different antitrust markets, since the consumers demand the primary and the secondary products as a 'system' and determining inter-changeability and substitutability of such products when distinguished into different markets are an inefficient determination of competitive market behavior for such complex durable goods where the competition for the sale of the products exists at the "point of sale of primary goods" (even if consumers are uninformed, have high switching costs and become locked in ex post).

20.5.8 One of the main contentions of the OEMs who have supported the theory of a 'systems market' is that the consumers who buy a 'durable product' like a car, engage in a whole-life cost analysis, at the "point of sale of the primary product" and even if the consumers become locked in after they make their equipment purchase, the OEMs will not charge supra-competitive rates in the aftermarket as a result of "reputational effects" of the OEMs in the primary product market.

20.5.9 The Commission disagrees with such submissions of the OEMs and is of the opinion that the 'relevant market' for cars and that of spare parts consists of multiple markets, i.e., a market for primary products and separate markets for the secondary product(s) associated with each primary product (e.g. one market for all cars, individual markets for spare parts and repair and maintenance services. The Commission is of the view that the primary basis for determination of the existence of a 'systems market', as argued by the OEMs, do not exist in the present case. The Commission is of the opinion that based upon the investigation of the DG and submissions of the Informant about the automobile sector in India:

(a) customers do not engage in whole life costing; or

(b) reputation effects do not deter the OEMs from setting supra competitive price for the secondary product.

20.5.10 We have provided detailed analysis of our conclusions in the relevant parts of the order. At the same point, the Commission is of the opinion that an aftermarket does not exist in every instance where a primary and a secondary product are involved. For example, a Gillette razor and its blades, a printer and its cartridge an apartment and its maintenance costs, may not necessarily be in an aftermarket market structure.

20.5.11 For example, if Gillette increases the price of the blades of a particular razor and a Gillette consumer cannot use any other brand of blades with the particular Gillette razor, the question we need to ask is if the razor owner can switch to another razor brand, say Phillips, without incurring substantial switching costs. The Commission is of the view that one of the criteria in deciding whether the primary and secondary products form part of one systems market or two separate markets is the cost of the primary product. If the owner of the primary product can easily switch to another competing primary product, the primary product and secondary product may be clubbed to form a systems market. Since this is not so the case in automobile sector, the Commission is of the opinion that 'sale of cars' and 'sale of spare-parts' and 'repair and maintenance services' do not form part of a systems market.

20.5.12 As per the Commission, one of the key factors in choosing one product rather than another (and, therefore, the associated level of utility) depends, among other things, on the 'product price'. Therefore, where it may be easier for a consumer to shift to a different razor (where an average Gillette razor may be priced at Rs. 500) than for the same consumer to shift to a separate car (average price of a car would be Rs. 3 lakh or more), consumer will shift to another primary product than to pay incrementally exploitative prices for the secondary product(s).

20.5.13 Another relevant factor, that the Commission should consider is whether a consumer can shift to another primary market product, i.e., another competing seller, without bearing substantial switching costs or financial burden. In the opinion of the Commission, one cannot disregard the fact that once a consumer purchases an automobile, post registration, its price depreciates and therefore an automobile owner will usually incur a loss if he needs to sell his existing car and switch to another brand of car. Therefore, in the present case if an owner of an automobile needs to switch to another automobile of a competing OEM, he will have to bear a high switching cost.

20.5.14 We now turn to our substantial analysis of the relevant market for the present case.

20.5.15 The Commission is in agreement with the DG's findings that there exists a primary market for "sale of cars in India" and two aftermarkets for "sale of spare parts" and "repair and maintenance services" respectively. An aftermarket is a market for a secondary product, that is, a product which is purchased only as a result of buying a primary product. For example, replacement heads for razors (the secondary product) and razors (the primary product). The primary product and the secondary product are complementary. Competition issues in the aftersales market usually emerge in cases where the firm, the supplier, is also able to control the aftersales markets. The common allegation of competition infringements in such markets is that the producer of durable goods prevents other aftermarket firms from offering complementary goods or services, thereby abusing its dominant position in the aftermarket. The allegation of infringing competition resulting from a conduct that affects both primary market and aftermarket of specific durable consumer goods is different from competition issues at other markets. Therefore, it is pertinent to understand if the durable goods and the related consumable goods form a part of the same relevant market.

20.5.16 It is observed that one of the parameters to consider the issue of interchangeability/substitutability is to determine the compatibility between the secondary products vis-Ã -vis the various brands of primary products. From the point of view of the present case in order to gauge compatibility/substitutability between the primary markets and the secondary markets it needs to be ascertained whether the owner of a particular brand of car is capable of substituting the use of the spare parts of his brand of car with that of another brand of car, manufactured by a different OEM or is his choice of spare parts limited to that of his own brand of car. Therefore, a consumer of the automobile market in India, e.g., the owner of a Maruti Alto cannot switch to using the spare parts of a Honda Brio. Further, the Maruti Alto owner has very limited ability to use the spare parts of Maruti Ertiga. Such limited interchangeability, is primarily due to technical differences between the various primary products, which often mean that the choice of complementary products or services compatible with the primary product is limited. If the owner of a brand of car needs necessarily the spare parts of that brand of car, then it would imply that there is no supply side substitutability and the primary market for cars for each brand of car and their respective secondary market (aftermarket) are distinct relevant product markets.

20.5.17 The Commission notes that although the DG, based upon its investigation, has categorized the secondary relevant market (the automobile aftermarket) into two separate segments, consisting of "sale of spare parts" and "repair and maintenance services", in the opinion of the Commission the two segments of the automobile aftermarket are different, yet inter-linked and inter-connected. An automobile is a highly technical product, using superior electrical and engineering features, and an owner of a car to fit the spare parts into the machine often requires the services of a specialized technician. However, at the same time minor repairs could be carried out by the owner himself or where the owner buys the branded spare part(s) from the OEM's authorized dealer and then separately hires a local, trusted technician to fit such spare parts into his car, besides carrying out other repair jobs. Additionally, the servicing of a car, whether at the authorized dealer workshop or otherwise, may not always require new spare parts to be fitted in and could chiefly require the technicians to repair or fine-tune existing spare parts. Therefore, the owner of an automobile in most parts do not operate in the market as purchasers of spare parts but require the service of individuals or firms engaged in maintenance and repair work, however as mentioned above, in some cases could operate on each segment of the automobile aftermarket.

20.5.18 However, spare parts and diagnostic tools are not demanded in the market in itself, but can be only consumed as part of the repair and maintenance services, whether such repair work is being provided concurrent to the purchase of the spare part on the floor of the OEM authorized dealer's workshop or separately arranged by the owner. No consumer demands a spare part, e.g., a clutch (which control whether automobiles transmit engine power to the wheels) or a carburetor (a device that blends air and fuel for an internal combustion engine) without the services of a technician, capable of effectively fitting or repairing the existing engine of an automobile with the new spare parts. In the same way, the repair services of an automobile technician are of no use unless such technician is provided with the applicable spare parts or diagnostic tools to conduct the repair job, except in a few instances where the repair work does not require replacement of depreciated or work-out spare parts. Therefore, spare parts and repair services may be demanded simultaneously or concurrently and in a few instances car owners may only access one segment of the aftermarket, where they either themselves provide the repair services or where repair services do not involve replacement of spare parts. Therefore, in view of the Commission the two segments of the Indian automobile aftermarket are different, yet inter-linked and inter-connected.

20.5.19 In the context of defining markets in the present case, a reference may also be made to the European Union's Notice on the Definition of the Relevant Market. Relevant extract of Point 56 of the Notice is reproduced below:

> ".... when considering primary and secondary markets, in particular, when the behaviour of undertakings at a point in time has to be analysed pursuant to Article [82 EC]. The method of defining markets in these cases is the same, i.e. assessing the responses of customers based on their purchasing decisions to relative price changes, but taking into account as well, constraints on substitution imposed by conditions in the connected markets. *A narrow definition of market for secondary products, for instance, spare parts, may result when compatibility with the primary product is important. Problems of finding compatible secondary products together with the existence of high prices and a long lifetime of the primary products may render relative price increases of secondary products profitable.* A different market definition may result if significant substitution between secondary products is possible or if the characteristics of the primary products make quick and direct consumer

responses to relative price increases of the secondary products feasible."

(Emphasis added)

20.5.20 The Commission is of the view that in the current case compatibility between the primary market products and secondary market products are of primary importance. The basic element of the definition of the "relevant product market" under section 2(t) of the Act is that it constitutes of the product at issue as well as all economic substitutes for the product. The U.S. Supreme Court held in Brown Shoe v. United States, MANU/USSC/0144/1962 : 370 U.S. 294, 325 (1962), that the "The outer boundaries of a product market are determined by the reasonable interchangeability of use or the cross-elasticity of demand between the product itself and substitutes for it." In the given case, due to the technical specifications and the complex engineering used to manufacture each brand of cars by the OEMs, the spare parts of one brand is not compatible with that of another and therefore the products in the secondary market for spare parts are not interchangeable with those of the primary market and, under section 2(t), they constitute distinct relevant product markets.

20.5.21 Some of the OEMs (e.g. M & M, Ford, Volkswagen) in their written submissions have stated that in determining the "relevant product market", the Commission should not only consider the inter-changeability or substitutability of a particular model of an automobile, buts its intended use, characteristics and price, under section 2(t) and 19 of the Act. The OEMs have submitted that a luxury car cannot meant to be interchangeable or substitutable with any other automobile model in the mid segment cars as the characteristics, features, price, etc., of such luxury automobiles would be different from those in the mid market or the economy segment of automobiles. The OEMs have submitted that the relevant product market would be various product markets in the Indian automotive sector based on various segments of automobiles, viz., small or economy car segment, mid market car segment and the luxury car segment. Keeping in view of such submissions, the Commission in an order dated May 28, 2013, had asked the OEMs to indicate which of its cars fall under the following categories: low-end (price below Rs. 5 lakhs), medium range (Rs. 5-10 lakhs), executive (Rs. 10-20 lakhs) and luxury (Rs. 20 lakhs and above). OPs have submitted their response to the aforesaid query of the Commission and have divided their various models of cars as per the abovementioned categories. Their submissions have been reproduced in the relevant part of this order.

20.5.22 However, the Commission, after the perusal of such submissions, is of the opinion that such a determination of the relevant product market is unnecessary for determining the present case on its merits. As it will be evident from the following paragraphs of the order that the Commission is of the opinion that a 'systems market' does not exist in the present case and that the relevant product market consists of the primary market for the sale of automobiles and the secondary markets for the sale of spare parts and repair and maintenance services. The Commission is of the opinion that for the purpose of this case, in order to correctly determine the relevant product market, the delineation of the primary market into separate automobile segments is not necessary. The primary market, consisting of sale of cars in India can be segmented based upon the price of such automobiles, as demonstrated by the order of the Commission, dated May 28, 2013. Further, the primary market can be segmented based upon the characteristics and intended use of the automobiles. As is evident from the submissions of some of the OEMs, (e.g. Honda and MSIL), the primary market can consists of cars that fall under the same price range, for example, low-end (price below Rs. 5 lakhs), but may have different characteristics or intended use. For example, MSIL

has submitted that two of its models "Eeco" and "Alto" fall under the same price range, i.e., low end (below Rs. 5 lakhs), however, while the former is intended to be a dual purpose vehicle (both for commercial and family use), the latter is mainly intended to be used as a passenger car. Therefore, the segmentation of the primary market, without adequate considerations to the characteristics of intended use of such cars would not be appropriate.

20.5.23 However, as discussed above, the Commission is of the opinion that a segmented primary market has no bearing over the determination of the relevant market for this case, as per the provisions of section 2(r) read with section 2(s) and (t) of the Act. The determination of the relevant market is not an end by itself but is a means to analyze the position of strength, enjoyed by an enterprise in such a market, as per the provisions of explanation (a) to section 4(2) of the Act, to determine if such an enterprise is in a dominant position in such a relevant market. Therefore, the task of the Commission is to identify that relevant market where the dominance of the enterprise is being felt. As per the allegations of the Informant and the investigation of the DG, the OEMs are restricting the sale and supply of spare parts and technical information, diagnostic equipments and tools to independent automobile service providers and indirectly determining the purchase or sale prices of both the price of automobile spare parts as well as the price of repair and maintenance costs due to the monopoly maintained by the OEMs in the supply of their respective brand of spare parts, diagnostic tools and technical information. Therefore, it is in the aftermarket of spare parts, diagnostic tools and technical manuals and not in the primary market of sale of cars where the alleged dominance of the OEMs is being felt. It is in the aftermarket for automobile spare parts and repair services, where each OEM are being alleged to operate independently of competitive constraints allowing them to affect their competitors, i.e., independent repairers and their customers. Consequently the aftermarket thus constituted by the market of the OEMs' spare parts, diagnostic tools and technical manuals, required by the independent repairers must be regarded as the relevant market for the purposes of the application of section 4 of the Act. It is in fact the market on which the alleged abuse was committed.

20.5.24 According to the E.U. Notice on Market Definition:

> "Market definition is a tool to identify and define the boundaries of competition between firms. It serves to establish the framework within which competition policy is applied by the Commission. The main purpose of market definition is to identify in a *systematic way the competitive constraints that the undertakings involved face.* The objective of defining a market in both its product and geographic dimension is to identify those actual competitors of the undertakings involved that are capable of constraining those undertakings' behaviour and of preventing them from behaving independently of *effective competitive pressure.*"
>
> (Italics added)

The Commission is of the opinion that the effective competitive constraints that needs to be analyzed in the current case is not in the context of the primary market for the sale of cars, but the aftermarket for the sale of automobile spare parts and repair and maintenance services. Therefore, even if the primary market is subdivided into various segments the competitive constraints or effective competitive pressure in the aftermarket remains unchanged. As has been shown in the paragraphs below, the market power that each of the OEMs enjoys over its customers and competitors is due to the lock-in effect in the aftermarket for sale of spare parts and maintenance services.

In this context it is irrelevant whether the primary market is considered to be a single monolith relevant market for a particular brand of car or is divided in separate relevant markets depending upon characteristics of a particular model of a brand of car, its price or its intended use.

20.5.25 To illustrate the situation with an example, if the contention of the OEMs is accepted and the primary market for the sale of automobiles is divided into various segments, e.g., luxury, mid-level or economy segments, Honda's Brio, Honda City and Honda CRV will belong to different relevant product markets, since the price and characteristics of each of such Honda models are different. However, a consumer of a Honda brand car, irrespective of the model of car he owns is locked in the same aftermarket. Therefore, if a Honda consumer needs to repair or service his car, he will have to avail the services provided by Honda's authorized dealers irrespective of the brand of car he owns. Therefore, the competitive constraints which a Honda car owner faces is in the aftermarket where he is locked in and is forced to avail the services and the spare parts specific to Honda branded cars. Therefore, the assessment of the boundaries within which the competitive constraints needs to be analysed in the Indian automobile sector is in the automobile aftermarket and not the primary market for the sale of cars. Consequently, the need to delineate the primary market into separate car segments based upon each car's characteristics, price or intended use is unnecessary to determine the issues raised in the current case.

20.5.26 The OEMs have submitted that the relevant market is the unified market for the sale of cars and that there is no separate market for the sale of spare parts or the provision of after sale services. The OEMs have submitted that the car market is in fact a complete 'systems market' which consists of a durable primary product and on-going supply of spare parts and maintenance and repair services. As per the OEMs a system market is likely to be appropriate "where customers engage in whole life costing'...or where effective primary market competition ensures that the overall price is not excessive, or where reputation effects mean that setting a supra competitive price for the secondary product would significantly harm a supplier's profits on future sales of its primary product" (Maher Dabbah, EC and UK Competition, pp. 47). Where by necessary implication, neither of the conditions set out above applies, a multiple markets definition may be appropriate. The Commission is of the view that for the below mentioned reasons, none of the above conditions have been met in the current scenario.

20.5.27 The "systems market" approach is based on the concept of 'life cycle costing' or 'whole life' cost analysis which suggests that consumers preference for a make and model locks him into that car system market where pricing, and availability of spares and service facilities do not impact the basic decision as regards the primary product. The underlying assumption is that in a differentiated market consumers are well informed of prices in both the markets and are capable of rational decision making process. Once a decision is made on the primary market the scope afforded for exercise of monopoly power of OEMs in the spares and services market comes under scrutiny.

Whole life cost analysis:

20.5.28 The Commission is of the opinion that a significant proportion of buyers in the primary market do not take into account the life cost of motor vehicles before purchasing such products. The DG, during the course of its investigation has asked the OEMs to confirm the after sale services and maintenance cost of their vehicles. Several OEMs have expressed an inability to provide such information and has contended that it is difficult to estimate the repair and maintenance costs as the same are dependent on

several factors including the driving expertise, geographical conditions, road conditions etc. As per the DG's Report, many of the OEMs have even contended that such data is confidential in nature thereby indicating that the same is not shared and made available to the consumers at the time of sale of the cars. The replies of each OEM regarding the estimated cost of after sale services of users of their respective brands of cars have been summarized in the table below:

Table 1

Name of OEMs	Summary of Response
BMW	The Company vide reply dated February 6, 2012, submitted that the cost of after sale service for any car user depends upon various factors such as age, mileage, driving habits of the user etc. Hence it is difficult to indicate maintenance cost figure of car.
Fiat	The company expressed inability to furnishing such details stating that the after sales activity of Fiat cars are handled by Tata Motors Limited.
Ford	The company stated that this data is not available to them.
General Motors	The company vide letter dated February 13, 2012, submitted a list containing estimate of annual cost of routine aftersale services on kilometer basis.
Hindustan Motors	Hindustan Motors stated that most of the cars come to their dealers/services center during the warranty period. They do not have data outside the warranty period.
Mahindra and Mahindra	Although Mahindra did submit an estimate of aftersale service of Mahindra branded cars, they consider such information as commercially sensitive and confidential in nature.
Reva	The company has not furnished any information on the issue.
Maruti	Maruti vide letter dated February 22, 2012 have submitted that it does not maintain records for the estimated annual cost and /or lifetime cost of after sales service for all automobiles manufactured by it.
Mercedes-Benz	Mercedes vide letter dated March 1, 2012, have submitted that a very large number of models and variants based on different options for driveline and other system components and hence, the cost of service
	varies for car to car, depending upon its age and mileage etc.
Nissan	The company submitted that they do not have data on annual basis.
Premier	The company has stated that they do not have an estimate of annual cost of aftersale service over the life cycle of their brand of vehicles.
Skoda	Skoda has submitted an estimate of the aftersale service and other maintenance costs of Skoda branded cars, however, such data is treated confidential by the company.
Tata Motors	The company, vide its letter dated February 28, 2012, has submitted that such cost will vary from model to model, usage of car, age of the car, terrain on which such cars are driven, driving habits etc and therefore the company is unable to generalize to furnish details.
Toyota	The company has submitted the cost of service of only Toyota-Innova (Diesel) vehicle (about Rs.0.50 per Km) and that the annual cost has to derived by multiplying this figure with average running of the car.
Volkswagen	The company vide letter dated January 27, 2012 has submitted periodic maintenance/service cost of some of the Volkswagen and Audi branded cars. However, such data is claimed to be confidential by the company.

20.5.29 In Eastman Kodak Company v. Image Technical Services Inc., [MANU/USSC/0148/1992 : 504 U.S. 451 (1992), at p. 473-474] the U.S. Supreme

Court held that:

> "Lifecycle pricing of complex, durable equipment is difficult and costly. In order to arrive at an accurate price, a consumer must acquire a substantial amount of raw data and undertake sophisticated analysis. The necessary information would include data on price, quality, and availability of products needed to operate, upgrade, or enhance the initial equipment, as well as service and repair costs, including estimates of breakdown frequency, nature of repairs, price of service and parts, ...Much of this information is difficult--some of it impossible--to acquire at the time of purchase..."

As is evident from the paragraph above, the more complex equipment becomes, the more difficult it would be for a consumer to undertake a life-cost analysis. For example, in the case of a razor and blades; where the razor is the primary product and the blades the secondary consumable product; the only information that the consumer require is about the blade. There is no need to collect any raw data and no need to perform any analysis. Such a consumer knows how many times he needs to shave a week and by inquiring the current price of the blades, he is able to determine his approximately weekly expense of using the particular brand of razor. However, the same is not true for complex durable machines. For example an automobile, a photocopy machine, an industrial equipment or other complex machinery has several parts and for an unsophisticated consumer to make equipment purchasing decisions based on accurate assessment of the total cost of equipment, service, spare parts over the lifetime of the machine is often impossible. This is because, such decisions would require the consumer to have knowledge of a large number of variables, such as, frequency of breakdown, degrees of equipment use, future fluctuations of price of spare parts, development of advances features of the existing primary equipment, a decrease in the ability to repair outdated models of the primary equipment etc.

20.5.30 Some OEMs have submitted that they provide their consumers with a price-list of the spare parts. The price-list is the raw data, based upon which the consumers need to undertake a sophisticated analysis to determine the actual life cycle of a car. As discussed above, such analysis for a prospective car owner is based upon several variables, including frequency of break-downs, conditions of road, proposed distance to be travelled, average run of the vehicle, make and model, age of the vehicle, road condition, owners attitude towards maintenance of vehicle, driving habits and profile of the workshop where repairs are undertaken etc. Therefore, to be able to successfully undertake a life-cost analysis, it is crucial that the following conditions are met:

> a) the raw data required to perform such life-cost analysis is available with the purchasers of the primary product; and
>
> b) the purchasers, at the time of purchasing the primary product, is capable of analyzing such data to determine the cost likely to be incurred by them during the life-span of the primary product.

20.5.31 The Commission is of the opinion that both the above conditions are not met in the context of a consumer of an automobile. Apart from a price catalogue, no other data is available with the purchasers at the time of purchasing a car in the primary market. For example, he does not know, the number of frequency with which his car may break-down, the driving conditions of the roads on which he intends to travel etc. Even if he had such data, given the complex nature of the primary market product and the number of variables that one would need to consider to undertake a life cost analysis, the

Commission is of the view that a prospective car owner is incapable of performing such analysis.

20.5.32 The U.S. Supreme Court in the Kodak case held that lifetime costing by the consumer was not a feasible test as, given the high cost of information gathering and the possibility that a seller could discriminate between a sophisticated and unsophisticated consumers; it made little sense to assume that equipment purchasing decisions were based on an accurate assessment of total cost of equipment, service and parts over the life time of the machine [Eastman Kodak, p. 473-474]. It is pertinent to note that if the consumer of the secondary product is a sophisticated consumer, for example, if the consumer of the secondary product is an industrial consumer which regularly makes bulk purchases of such consumable products for the primary market equipment, the analysis of life-cost by such sophisticated industrial user would have been different from that of a unsophisticated car owner. The industrial user would have more effective means of information gathering and better ability to analyze such data than that of a car owner, who often would be the first time purchaser of a particular brand of automobile.

20.5.33 Further, several empirical studies on life cycle costs seem to suggest that consumers of durable goods do not undertake whole life cost analysis before purchasing the equipment in the primary market. Empirical studies conducted by Dermot Gately, Jerry A. Hausman and Paul L. Joskow analyzing purchase choices of household appliances for which energy consumption represent a significant proportion of lifecycle costs, concluded, that observed consumer choices imply that consumers put much more weight on the upfront cost of the appliance than on its aftermarket cost (i.e. energy consumption) (see: Dermot Gately, Individual Discount Rates and the Purchase and Utilization of Energy-using Durables: Comment, 11 Bell J. Econ. 373 (1980), Jerry A. Hausman, Individual Discount Rates and the Purchase and Utilization of Energy-using Durables, 10 Bell J. Econ. 33 (1979), Jerry A. Hausman and Paul L. Joskow, Evaluating the Costs and benefits of Appliance Efficiency Standards, 72 Am. Econ. Rev. 220 (1982)). In other words, consumers tend to buy cheaper models with higher operating costs than those that would be efficient in terms of lifecycle costs, and therefore end up paying higher lifecycle costs. The implication of such empirical research shows that consumers do not properly account for lifecycle costs when purchasing durable goods, but rather focus on the immediate cost of the capital purchase. Therefore, even though most of the theoretical economic literature, assumes that consumers are perfectly rational and "farsighted" in their choices, the empirical and experimental economic literature shows that in fact consumers display myopic behavior when faced with life cycle cost decisions of complicated durable goods.

20.5.34 Following are the excerpts from the additional submissions of some of the OEMs, in reply to certain specific queries raised by the Commission, pursuant to its order dated March 5, 2013. The OEMs have admitted in their submissions that calculation of life cycle costs of automobiles are: (a) either extremely difficult or (b) includes factoring of multiple variables, like average running of the vehicle per year, time period, anticipated cost of scheduled maintenance, standard of driving, road conditions, driving patterns including mileage etc. The submissions of the OEMs themselves reiterate the understanding of the Commission that consumers do not properly account for lifecycle costs when purchasing and automobile and even if they are desirous of performing such an analysis, the amount of variable information that they will need to consider are either impossible to obtain or are simply not available.

Name of OEMs	Excerpts of Submissions of OEMs on Life Cycle Cost Analysis of automobiles
MSIL	MSIL has submitted *that even if the exact life cycle costs cannot be calculated*, the information available in the public domain enables a sufficient number of Indian consumers to make a broad estimate and rough comparison between the life-cycle costs of different models of cars.
BMW	With respect to the query relating to the calculation of the life cycle cost of an automobile, BMW has submitted that the life cycle cost of a car is calculated by *dividing the cost of ownership by the ownership period*. Where cost of ownership comprises of the capital cost of the car of the car, interest on *finance, fuel, insurance costs, maintenance, tyres, driver salary, incidental costs/parking charges etc.* Further, BMW has submitted that the ownership period is a *variable factor and may differ between segments*.
Skoda	With respect to the question regarding the methodology of calculating the life cycle cost of a car, Skoda has submitted that it is *extremely difficult to ascertain the life cycle costs of a car*, considering the negligible size of available car park in the country further makes it challenging to have a pre estimate of the life cycle costs of these cars. The costs of maintenance of a car can also differ are wise based on different terrain in India. Skoda has submitted that the life cycle cost of the car is dependent on number of factors, e.g., *average running of the vehicle per year, time period, anticipated cost of scheduled maintenance etc*. Skoda has further submitted that the *information relating to life cost of the vehicle is not released in the public domain on a regular basis*.
Ford	The life cycle cost depends on various *external factors such as standard of driving, maintenance of cars, road condition and others*. Since the manufacturer is *not in control of a particular car in question, the life cycle cost cannot be calculated*.
Mercedes	Mercedes has submitted that the factors taken into consideration to compute life cycle cost of a car are: *purchase price, relationship between vehicle age and depreciation rate, insurance cost, driving patterns including mileage etc*.
Toyota	Toyota submitted that the actual life cycle cost of an automobile may be defined as the cost of a car throughout its lifetime which would include not only the initial purchase price of a car but also the *costs involved during the lifetime of the automobile*. Such costs included *fixed costs, like, depreciation costs, cost of finance, insurance etc., and variable costs like fuel, maintenance, tyres, oil and other miscellaneous expenses*. Further, Toyota submitted that in order to accurately calculate a life cycle cost, one needs an estimate of the *annual mileage a person will drive as well as having actual information relating to maintenance and repair costs*.

20.5.35 Based upon the above submissions of the OEM (as summarized in the table above), the Commission is of the view that in most instances even the OEMs themselves

do not have the data regarding the future maintenance/service costs of their own brand of vehicles. Even in instances where the OEM does possess such internal estimates, the same is considered confidential and is not shared with the consumers. If the OEMs are themselves not in possession of the basic data, to expect that an average prospective owner of a car will be able to overcome the hurdle of the high cost of information gathering and thereafter successfully engage in analyzing such data, given the various future variables to successfully undertake a whole life cost analysis would be unreasonable. Therefore, the whole life costing theory is not a feasible test for an average unsophisticated consumer in the Indian automobile market. Therefore, the Commission is not in agreement with the submissions of the OEMs that the average car owner undertakes a life cycle cost analysis before purchasing a car in the primary market.

20.5.36 The OEMs have submitted that a large number of websites, automobile magazines and various other television programmes enable consumers to make an informed choice in the primary automobile market in India. However, the growth in automobile related magazines/websites cannot by any standards be considered by the Commission as a factor to decide whether Indian consumers make informed decisions with regards to overall costs of motor vehicle ownership in advance. Most of these automobile related magazines/websites provide either promotional advertisements by OEMs or comparative information regarding price/features of different automobiles which are mostly relied upon by prospective car purchasers. A majority of the consumers of the Indian automobile market are private individuals who generally do not possess the sophistication required to analyze the data even if it is available publicly.

Reputation Effects:

20.5.37 The OEMs have argued that in determining the relevant product market in the given fact scenario, a systems market may be appropriate, since the OEMs will be dissuaded from charging supra-competitive prices in the aftermarkets since such pricing strategy shall significantly affect the supplier's profits on future sales of its primary product. The OEMs have submitted that it would make less economic sense to adopt such pricing tactics in markets which has greater growth rates, greater prospects of higher market shares, greater margins and greater future sales prospects. OEMs in such markets will be careful in sustaining their reputation to facilitate future growth prospects and shall not undertake such pricing tactics.

20.5.38 The Commission, however, believes that reputational effects will not be enough to deter an OEM in the primary market from increasing prices in the secondary market if the consumers of the OEM are "locked in" the aftermarket. The lock-in effect occurs when customers are unable to substitute competing aftermarket products for the aftermarket products produced by the manufacture of the primary product without incurring substantial switching costs. The customers are typically locked in when they are required to purchase another primary market product in order to use competing aftermarket products (e.g., customers are "locked in" the aftermarket for their existing printer if they have to buy a new printer in order to use competing cartridges). Such lock-in effect allows the manufacture of the primary market product with the ability to monopolize the corresponding aftermarket, thus incentivizing the primary market manufacture to exploit its consumers in the locked-in aftermarket. In such instances the possibility of a loss of reputation in aftermarket (with the corresponding diminution of the manufacturer's profits on future sales in the primary product market) does not deter the primary market manufacturer from setting a supra competitive price for the products in the secondary market. This is specifically true in a situation (as in the present case)

where due to information asymmetry (lack of whole life cost analysis) and high switching costs (discussed below), the demand from potential customers in the primary market does not decrease and the existing locked-in consumers of the primary product are unable to switch to competing products in the aftermarket.

20.5.39 In order to analyze if the consumer of an automobile in the primary automobile market is locked in the aftermarket for spares and repair services, we need to analyze, if:

> a) it is possible for a consumer to switch to spare parts manufactured by another OEM.
>
> b) it is possible for the consumer to switch to another primary product to avoid a price increase on the aftermarket for spare parts.

Regarding the first question, whether a consumer could switch to the spare parts produced by another OEM, the DG has rightly concluded that, based upon the submissions of most of the OEMs, it has emerged that most of the spare parts other than a few generic spare parts like tyres, batteries etc., were manufactured specifically for the respective models of the cars and therefore inter-brand interchangeability is drastically diminished. The DG has concluded that even intra-brand substitutability of spare parts, i.e., interchangeability of spare parts between various models manufactured by the same OEM is greatly limited. Therefore, the Commission is of the view that a consumer of a particular model of car manufactured by an OEM cannot switch to the spare parts manufactured by another OEM.

With respect to the second question, as to the possibility of the consumers to switch to another primary product (to avoid a price increase on the spare parts aftermarket), the DG concluded that due to high switching costs and the fact that the residual value of a new car, post registration in the name of the new owner, is lower than the price of a pre-registration new car, the owner of a car may only shift to another product in the primary market after incurring substantial financial loss. Thus, in the opinion of the Commission, a purchaser of a product in the primary market is to a great extent locked in with the primary product and the feasibility of switching to another primary product to avoid a price increase in the secondary market of spare parts or repair services is greatly limited.

20.5.40 The Commission is of the view, that the higher is the price of the installed base, i.e., the cost of the primary market equipment, the more difficult it is to switch to another product for incremental rise in the price of the consumable parts in the secondary market. The European Commission in PO Video Games, PO Nintendo Distribution, Omega-Nintendo [2003] OJ L255/33]; while holding that game cartridges and game consoles are not a part of the system's market, stated that:

> "...., in the event of a small, permanent increase in the price of a particular game cartridge, a user of a given game console is unlikely to switch to a game cartridge compatible with a different console. This is due to the fact that the user has to bear the cost not only of the new cartridge, but also that of buying a new console able to interoperate with that cartridge." (para 37)

20.5.41 Therefore, the likelihood of a car owner to switch to another car in the primary market due to a rise in the price of spare parts or service costs is even more remote, given the substantial financial burden of purchasing a car in the primary market and thereafter paying for spare parts and repair services compatible for such brand of car in

the secondary market. The Commission also notes that due to certain characteristics of an automobile, as a durable consumer product, any attempt to switch to another automobile, necessarily involves the incurring of substantial switching costs. Automobile is an example of a consumer product whose price necessarily depreciates post registration of the vehicle. Therefore, anytime post registration of an automobile, the selling price of such an automobile shall be lower than that at which it had been bought in the primary market. Therefore, a locked in automobile owner cannot switch to another primary market product, i.e., another automobile from a competing OEM, without bearing substantial switching costs or financial burden.

20.5.42 The OEMs have submitted that since an automobile consumer of India has an option of switching to another car from the second hand market, it is possible for a car consumer to switch to another primary market product without incurring substantial switching costs. The OEMs have maintained that the ability of an automobile consumer to switch to another primary market product (i.e., another car in the second hand car market) without incurring switching costs would establish that such consumers are not locked in and therefore cannot be exploited by the OEMs by charging high aftermarket prices for spare parts and other repair services. However, the Commission is of the opinion that such submissions are incorrect. Whenever a consumer, who is being exploited in the aftermarket, would want to switch to another car, whether it is a firsthand car or a second hand car, such a consumer usually incurs a switching cost. This is primarily because an automobile always depreciates in value post-registration. Therefore, if an owner of a Maruti Dezire wants to shift to another car, he necessarily would have to sell his existing car at a price which would be less than the price at which he had bought the car. Further, usually a consumer of a lower end car would purchase a used car of a higher end brand of automobile. Hence a Maruti Wagon-R owner may purchase a second hand Toyota Innova. A second time automobile consumer, purchasing from the second hand market, usually ascribes to scale up the purchase of his second car from a brand perspective. Therefore, a Toyota Innova car owner usually does not sell his Innova to purchase a Maruti Wagon-R. Thus, even when a consumer is selling his existing car in order to purchase a car from the second hand car market, he typically purchases a car of a superior model. Therefore, even when he is purchasing in the second hand car market, he is incurring switching costs.

20.5.43 Moreover, the submissions of the OEMs that competition in the primary market makes possible anticompetitive effect very unlikely in the aftermarket does not hold ground when the DG, during the course of its investigation, has discovered that across the board that the OEMs have substantially hiked up the price of the spare parts (usually more than 100% and in certain cases approx. 5000%). Therefore, the assumption of the theoretical economic literature that OEMs would not charge high prices in the aftermarket due to reputational concerns in the primary market stands rebutted in the light of the evidence tabularized below and is not acceptable.

Table 2

OEM	Price Mark-up of top 50 spare parts based on Revenue Generated	Price mark-up of top 50 spare parts on the basis of Consumption
Nissan	84.96% - 201.98%	85.81%-258.78%
Reva	-66.74% - 797.33% (38 out of top 50 spare parts)	-66.74%-1180.42% (42 out of 50 spare parts)
Maruti	-77.98% - 433.59%	-16.94% - 650%
Mahindra	65.80%- 462.50%	108.58%-890.99%
Volkswagen	54.36% -995.55 (Q1, 2010-11); 61.41% - 995.55% (Q2, 2010-11); 58.17%-995.55% (Q3, 2010-11);	62.27%-995.55% (Q1,2010-11); 62.27%-995.55% (Q2, 2010-11); 22.54%-995.55% (Q3; 2010-11); 62.27%-995.55% (Q4, 2010-11)
	58.17%-995.55% (Q3, 2010-11)	
Toyota	79.61%-1305.85%	38.26% -510.43%
BMW	101.38% - 458.98%	76.24% - 484.04%
Ford	38.37% -1171.09% (Q1, 2010-11); 35.62% - 1171.09% (Q2, 2010-11); 35.62% – 1171.09%(Q3, 2010-11); 35.62% -1171.09% (Q3, 2010-11)	64.1 – 1696.36 (Q1, 2010-11); 64.1 – 1696.36 (Q2, 2010-11); 58.68% - 1696.36% (Q3, 2010-11); 64.1% – 1696.36% (Q3, 2010-11)
Mercedes-Benz	70.34 – 292.22% (Q1, 2010-11); 67.31- 306.80% (Q2, 2010-11); 76.63- 301.71%(Q3, 2010-11); 84.86-2150.69% (Q3, 2010-11)	59.80- 284.88% (Q1, 2010-11); 11.25-1206.15% (Q2, 2010-11); 76.63- 1207.20 %(Q3, 2010-11); 71.78 – 1245.87% (Q3, 2010-11)
Skoda	85.06- 265.88% (Q1, 2010-11); 79.15- 280.75% (Q2, 2010-11); 76.29 – 248.54%(Q3, 2010-11); -0.92-260.40% (Q3, 2010-11)	-31.6 – 230.83% (Q1, 2010-11); -33.78 – 254.18% (Q2, 2010-11); -34.84- 248.54%(Q3, 2010-11); -35.81 – 218.42% (Q3, 2010-11)
Tata	60.76% - 658.80%	64.60%- 858.90%
Fiat	33.60% - 3020.29%	19.93% - 4817.17%
Honda	(-)12.10% - 984.73%	(-)77.20% - 939.13%
General Motors	1.66% – 871.56% (Q1, 2010-11); (-)0.23% -871.56% (Q2, 2010-11); 3.39%- 871.56%(Q3, 2010-11); 66.92% -871.56% (Q3, 2010-11)	(-)18.82% - 545.16% (Q1, 2010-11); (-)20.33% - 764.08% (Q2, 2010-11); 3.39%- 764.08% (Q3, 2010-11); 28.64%-545.16% (Q3, 2010-11)
Hindustan Motors	79.25% - 133.32% (Ambassador brand)	86.47% - 206.25% (Ambassador brand)
Premier	OEM could not provide the price data relating to the top 50 spare parts	

20.5.44 Based upon the findings of the DG, it is evident that the OEMs not only have the incentive, but have in practice, raised prices of the spare parts in the locked-in

automobile aftermarket of India. Therefore, it is no longer a theoretical possibility whether consumers may be subjected to exploitative price abuse in the aftermarkets. Given the above mentioned findings of the DG, the submissions of the OEMs that they are disincentivized from charging higher prices in the aftermarket due to reputational concerns in the primary market are moot. Further, the high ratio of locked-in to new customers reduces the penalty in the primary product market of increasing aftermarket prices. As per the Road Transport Year Book, July 2012, the total number of existing cars, jeeps and taxis stood at 192.3 lakhs as on March 31, 2011, while the total production of passenger motor vehicles (cars and multi-utility vehicles) in India for the year 2010-11 is approx 30 lakh vehicles. Therefore, the number of exiting locked in consumers for the year 2010-11 (who have already bought a car in the primary market) was 192.3 lakh vehicles, while the number of prospective consumers in the primary market for the year 2010-11 is a mere 30 lakh cars. The average life span of a consumer car being 13 years (ACMA Report) it would be an incentive to the OEMs to charge exploitative aftermarket prices to approximately 192.3 lakh consumers than securing the reputation of its brand for 30 lakh new customers. Therefore, reputational concerns in the primary automobile market may not be sufficient to dissuade the OEMs from charging supra-competitive prices in the automobile aftermarket.

20.5.45 Further, the Commission has observed, that consumers usually do not undertake whole life cost analysis before purchasing durable consumer goods, including automobiles in the primary market. The Commission has relied upon certain empirical studies on life cycle costs (Gately, Hausman and Jaskow) to establish that consumers have a high sensitivity to immediate and lump upfront costs as opposed to future and diffuse running costs, such that, consumers do not properly account for life cycle costs when purchasing durable consumer goods. In other words, consumes tend to buy cheaper models with high operating costs than those that would be efficient in terms of maintenance and after sale service costs. The producers of the primary market are able to exploit such consumer behavior by lowering the price of the primary market product and recoup such losses by exploiting the consumers in the locked in aftermarket. In fact, the DG has discovered that many OEMs are making losses in the primary market and recouping the profits in the aftermarket from the sale of its brand of spare parts. A CII-Mckinsey Report (referred in the ACMA report) states that that, on average, 55 per cent of profits of the OEMS are derived from the spare parts business.

20.5.46 A sample of the margin of revenue (detailed data on the revenue generated from the sale of spare parts and from the sale of automobiles of the OEMs have been provided in Table 9 of this order) made by OEMs in the automotive business and the spare parts business are provided below:

Table 3

OEMs	Margin (%) from Automotive business	Margin (%) from spare parts business	Comments
Maruti	4.4% (2008-09); 8.7% (2009-10); 4.7% (2010-11)	20.0% (2008-09); 21.0% (2009-10); 21.0% (2010-11)	Maruti's margins from sale of vehicles are substantially lower than those derived from sale of spare parts
Volkswagen	(-)23.70% (2008-09); (-)7.15% (2009-10); 0.40% (2010-2011)	49.37%	Volkswagen is making substantial losses from sale of cars and has made nominal profit only in FY 2010-2011. However, it is making significant profits from sale of spare parts.

Therefore, even if we assume the economic theories put forward by the OEMs with respect to the existence of a systems market in the Indian automobile sector, the DG has discovered instances in case of each OEM, where the OEM have increased the price in the aftermarkets. Therefore, it is no longer a theoretical possibility whether consumers may be subjected to exploitative price abuse in the aftermarkets.

Cluster Markets

20.5.47 One of the arguments that have been submitted by the OEMs is that section 2(t) of the Act provides that the "relevant product market" means a market comprising of all those products or services which are regarded as interchangeable or substitutable by the consumer, by reason of characteristics of the products, their prices and intended use. The OEMs have submitted that each automobile consists of thousands of spare parts and each spare part is not interchangeable or substitutable with another. For example a gear box is not substitutable for the clutch-plate of the same brand of car. The OEMs have argued that under section 2(t) of the Act, the clutch-plate and the gear box will be in different relevant product markets and consequently, there would be thousands of separate relevant product markets for each car. The Commission is of the view that such submissions of the OEMs are misleading and erroneous. This is because markets where several goods are jointly demanded and supplied are referred to as cluster markets. Cluster markets are characterized by transaction complementarities between various components of a bundle of products or services. The relevant unit with respect to market definition is the bundle of goods or services that is demanded by consumers and supplied by the producers and not the individual units of such bundle although such units may not be interchangeable or substitutable with each other. In this context, the concept of substitutability or exchangeability applies to the bundle rather than to its separate components where a bundle of products or services serves as a first candidate market. Thus, the fact that bundles of goods or services are demanded and supplied in a market does not affect the basic principle of market definition, i.e., interchangeability or substitutability between competing products.

20.5.48 The U.S. Supreme Court articulated the concept of cluster markets in United States v. Phila. Nat'l. Bank, 374 U.S. 321 (1963), where the Court found that the group of products and services provided by commercial banks; e.g., check writing privileges,

savings accounts, credit, trust administration, etc., constituted one market even though the individual products and services are not substitutes for one another. This is because, the Court found, customers typically demand the full range of services from commercial banks. Similarly, the U.S. courts have held that with respect to medical services offered by hospitals, there exists a cluster market since such medical services (consisting of a bundle of products/services which are not interchangeable with each other) are demanded together and are supplied together by such hospitals. (See, e.g., FTC v. Freeman Hasp., 69 F. 3d 260, 268 (8th Cir. 1995) ; FTC v. Univ. Health Inc. 938 F. 2d 1206, 1210-12 (11th Cir. 1991); United States v., RocliordMem 'I Corp., 898 F. 2d 1278, 1284 (7th Cir. 1990)).

20.5.49 The concept of cluster markets was applied to spare parts by the U.S. Ninth Circuit court in Image Technical Serves v. Eastman Kodak Co., 125F. 3d 1195, 1203 (9th Cir. 1997). The circuit court held that there could be a relevant market for Kodak photocopier replacement parts, notwithstanding lack of substitutability, because both independent service organizations and customers needed "all parts" in order to service or use their image machines. The court held that:

> "The "commercial reality" faced by service providers and equipment owners is that a service provider must have ready access to all parts to compete in the service market. As the relevant market for service "from the Kodak equipment owner's perspective is composed of only those companies that service Kodak machines," id., the relevant market for parts from the equipment owners' and service providers' perspective is composed of "all parts" that are designed to meet Kodak photocopier and micrographics equipment specifications."

Therefore, if a Honda customer's car meets with a road accident and such a customer is desirous of repairing such a Honda car, he would just take the car to a repair shop to get the car repaired. So the service that she requires from the repair shop (authorized dealer or independent repairer) is the service to repair her Honda car. Further, in order to repair her car the repairer may require a gear box, a clutch plate, a wind-screen, navigation systems, anti-lock brakes, ignition systems etc., and repairing tools to complete the repairing job on the Honda car. So though, the gear box and the nut/screw that is used to fix the gear box are not interchangeable but both are simultaneously required to complete the service that the consumer wants; which is to get the Honda car repaired and fully functional.

20.5.50 Further, under section 2(t) of the Act; the interchangeability of the products constituting the same relevant product market must be viewed from the perspective of the consumer's understanding of the characteristics of the products. A consumer in the automobile aftermarket does not differentiate between a gear-box and other ancillary spare parts that might be necessary to repair her car. From the consumer's perspective the technical differentiation between a gear box and an anti-lock system does not necessarily put such spare parts in different relevant product markets; since from the perspective of the consumer; "commercial reality" requires that she focuses on the aggregation of such products in order to service and use her Honda car. Therefore, under section 2(t); such aggregated class of products would be the appropriate relevant product market.

20.5.51 It has been further submitted that every spare part is not required for a particular repair service. So even using the "commercial reality" doctrine of the U.S. Ninth Circuit Court, some may argue that if one is repairing a gear box of a Honda car, the repairer may need a nut, bolt etc., however, the repairer would not need an anti-

lock brake. Hence, OEMs have submitted that a gear-box and an anti-lock system should not be aggregated into the same relevant product market definition since they are not part of the same "cluster market", i.e., a Honda consumer does not demand such products together. In opinion of the Commission such a myopic delineation of the secondary product market would be antithetical to the purpose of understanding the competitive issues of the automobile aftermarket in India. Commentary on the U.S. Horizontal Merger Guidelines (2006) at (para 8-9) provides that:

> "when the analysis is identical across products or geographic areas that could each be defined as separate relevant markets using the smallest market principle, the Agencies may elect to employ a broader market definition that encompasses many products or geographic areas to avoid redundancy in presentation".

Therefore, when the Commission is analyzing the anti-competitive issues of the entire automobile industry, it should not define the relevant market using the smallest market principle. The U.S. Horizontal Merger Guidelines provide that in the case of a merger analysis, where the anti-competitive effect of a proposed combination has to be reviewed from the perspective of an entire wider industry, a broader relevant market definition should be employed to better understand the anti-competitive effects of the proposed merger. In the same way, in the present case, the Commission needs to understand the alleged anti-competitive behavior of the OEMs at the level of the macro automobile industry of India. Employing a narrow market definition would lead to redundancy and hamper the Commission's effective analysis of the competitive constrains faced by the Indian automobile industry.

20.5.52 For example, an average car has approximately 25,000 spare parts. Each repair job on a Honda car may require multiple spare parts and often more than a single set of repair jobs may be required for a car to be serviced properly. For example, a Honda car meets with an accident, and in this accident: (a) the dash board of the car gets damaged, (b) the air bags gets released, (c) part of the engine gets damaged and (d) certain body parts of the car-gets dented. If such a car needs to be repaired, then both from the perspective of the Honda consumer and the repairer, a different set of spare parts are required to effectively repair each of the four above mentioned repair job. The spare parts used to repair the dash board will not be same for repairing parts of the Honda engine. Yet the entire set of spare parts for all the repair jobs are being demanded by the consumer in aggregate and are being supplied by the repairer together and hence all such spare parts are part of the same relevant cluster market. Furthermore, as provided by the Commentary to the U.S. Horizontal Merger Guidelines (2006); where the "analysis is identical across products or geographic areas that could each be defined as separate relevant markets using the smallest market principle a broader market definition that encompasses many products or geographic areas to avoid redundancy in presentation ".

20.5.53 Further, the definition of the relevant product market under the Act and that under the E.U. Notice on Market Definition are pari materia.

Commission Notice on the definition of relevant market for the purposes of Community competition Law (97/C 372/03)	Section 2(t) of the Act
A relevant product market comprises all those products and/or services which are regarded as interchangeable or substitutable by the consumer, by reason of the products' characteristics, their prices, and their intended use.	"relevant product market" means 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.

Therefore, the definition of the relevant product market is identical under both the E.U. and Indian competition law. Yet, in all spare parts related cases in E.U., including Hugin Kassaregister AB v. Commission of the European Communities (C-22/78) [1979] ECR 1869, Volvo AB v. Erik Veng (UK) Ltd. (C-238/87) [1988] ECR 6211; CEAHR v. European Commission (Case T-427/08); the Commission has treated all spare parts of a cash register; an automobile and Swiss watches as part of the same relevant product market; even though various spare parts of a cash register or a watch are technically not interchangeable with each other, yet a consumer and a repairer requires such spare parts together in order to effectively repair or service the primary market product. The Commission is of the view that since the definition of relevant product market; under which the abovementioned case have been decided is exactly the same as under section 2(t) of the Act; a similar interpretation of "cluster market" may be possible constituting of all the spare parts for each brand of cars manufactured by the OEMs in the Indian automobile aftermarket.

20.5.54 Therefore, the Commission concludes that the automobile primary market and the aftermarket for spare parts and repair services does not consist of a unified systems market since: (a) the consumers in the primary market (manufacture and sale of cars) do not undertake whole life cost analysis when buying the automobile in the primary market and (b) in-spite of reputational factors each OEM has in practice substantially hiked up the price of the spare parts (usually more than 100% and in certain cases approx 5000%); therefore rebutting the theory that reputational concerns in the primary market usually dissuade the manufacture of the primary market product from charging exploitative prices in the aftermarket. The Commission is of the opinion that there exist three separate relevant markets; one for manufacture and sale of cars, another for sale of spare parts and another for 'sale of repair services'; although the market for 'sale of spare parts' and 'sale of repair services' are inter-connected. Further the Commission is of the opinion that a 'clusters market' exists for all the spare parts for each brand of cars, manufactured by the OEMs, in the Indian automobile market.

(b) Relevant Geographic Market

20.5.55 Section 2(s) of the Act defines "relevant geographic market" as "a market comprising the area in which the conditions of competition for supply of goods or provision of services or demand of goods or services are distinctly homogenous and can be distinguished from the conditions prevailing in the neighbouring areas." The DG's investigation has revealed that the spare parts are available for a particular brand of automobile from the authorized dealers of the OEM in any part of India. Further, a

perusal of the dealer agreements between the OEMs and the authorized dealers suggest that such dealers are required to provide service requirements to an OEM's customer irrespective of the State in which the vehicle is registered. The DG based on such findings has concluded that the relevant geographical market would be India.

20.5.56 The Commission is in agreement with the findings of the DG. An owner of any brand of automobile, manufactured by an OEM, can get his car serviced or repaired from repair shops across the territory of India. Whether such repair shops are authorized dealer outlets or those run by independent repairers the conditions of competition for the sale of spare parts and after-sale repair and maintenance services are homogeneous across the territory of India and therefore the relevant geographic market for the present case consists of the entire territory of India. Therefore, this Commission is of the view that the relevant geographic market, as defined under section 2(s) of the Act, consists of the entire territory of India.

20.5.57 In conclusion, on this issue, the Commission is of the opinion that there exist two separate relevant markets; one for manufacture and sale of cars and the other for the sale of spare parts and repair services in respect of the automobile market in the entire territory of India.

Assessment of Dominance of OEMs

20.5.58 Having defined the relevant product market consisting of two separate relevant markets; the primary market one for manufacture and sale of cars and the other for the sale of spare parts and repair services, the issue before the Commission is if the OEMs are in a dominant position in such relevant market. Explanation (a) to section 4(2) provides that a dominant position means a position of strength, enjoyed by an enterprise, in the relevant market, to: (a) operate independently of competitive forces or (b) affect its competitors or consumers or the relevant market in its favor. The definition of 'dominant position' under section 4(2) of the Act, is similar to that under Article 102 of the Treaty of the European Union ("TFEU"). A dominant position in Article 102 is a position 'to prevent effective competition being maintained on the relevant market by affording it the power to behave to an appreciable extent independently of its competitors, its customers and ultimately of the consumers.'[Hoffman-La Roche & Co. v. Commission [1979] ECR 461, para. 38; United Brands v. Commission [1978] ECR 207, para 65].

20.5.59 Therefore, 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 affords such an enterprise with the capacity to affect the relevant market in its favour to the economic detriment of its competitors and consumers. It is pertinent to note that the Act prohibits the abuse of dominance and not dominance per se. Therefore, in analyzing whether the OEMs are dominant in the relevant markets, the Commission shall consider factors that allow such OEMs to act independently, or in other words, affords the OEMs with an opportunity to foreclose markets for its competitors or exploit its consumers.

20.5.60 In order to determine if the OEMs are in a dominant position, as per the provisions of Explanation (a) to section 4(2) of the Act, viz., "dominant position" means 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", it is necessary to first examine the competitive structure of the said relevant market.

20.5.61 Further, to understand the meaning of what amounts to the 'capacity of an enterprise to operate independently of competitive forces', reliance may be placed upon the E.U. Guidance on the Commission's Enforcement Priorities in Applying Article 82 EC Treaty to Abusive Exclusionary Conduct by Dominant Undertakings (the "Guidance") [(2009/C 45/02)] provides that:

> "This notion of independence is related to the degree of competitive constraint exerted on the undertaking in question. Dominance entails that these competitive constraints are not sufficiently effective and hence that the undertaking in question enjoys substantial market power over a period of time. This means that the undertaking's decisions are largely insensitive to the actions and reactions of competitors, customers and, ultimately, consumers."

20.5.62 In order to understand if the OEMs are subject to any effective degree of competitive constraints in the Indian automobile aftermarket, the Commission needs to consider that each OEM controls almost the entire production and supply of spare parts which can be used in repairing and maintaining the various brands of cars manufactured by each OEM. 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. The DG, has discovered, that due to the high degree of technical specificity even intra-brand substitutability of spare parts are greatly diminished. Therefore, an owner of a Maruti Alto cannot use the spare parts of a Honda Brio. Even interchangeability of spare parts within different brands of Maruti cars is greatly limited. Therefore, from the perspective of Maruti's consumer's, they are locked-in in the aftermarket for Maruti's spare parts, diagnostic tools and repair and maintenance services of various models of Maruti cars using such spare parts and diagnostic tools. Since the spare parts of one OEM are not interchangeable with that of the other, each OEM is shielded from any competitive constrains in the aftermarket from their competitors in the primary market.

20.5.63 Further, any effective degree of competitive constraints on the OEMs, is further weakened, even in the Indian automobile aftermarket. An automobile is a highly technical product, using superior electrical and engineering features, and an owner of a car cannot fit the spare parts into the machine but requires the services of a specialized technician. Therefore, the owner of automobiles does not operate in the market as purchasers of spare parts but require the service of individuals or firms engaged in maintenance and repair work. Such services are typically provided by either the authorized dealers/service workshops of the OEMs or by independent repairers or certain specialized multi brand service providers. The OEMs, by denying the independent repairers and multi brand service providers, access to required spare parts and tools/manuals to complete such repair work, have ensured that the independent repairers are not able to effectively compete with the authorized dealers of the OEMs in the secondary market for repairs and services.

20.5.64 Each OEM has entered into a network of contracts, pursuant to which, they have 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. In Hugin v. Commission [(1978) ECR 1869]; the ECJ found that Hugin was dominant in the relevant market for the fact that Hugin by its vertical integration of its subsidiaries and distributors had sheltered itself from all effective competition in the matter of service and maintenance of its cash registers. Similar to Hugin, each OEM through a network of contracts has restricted the supply of genuine spare parts of models of automobiles manufactured by the OEMs to the

aftermarket. The OEMs have imposed restrictions on their respective local OESs from supplying spare parts directly in the aftermarket. The overseas suppliers of the OEM are not selling spare parts directly in the Indian aftermarket. The DG, during the course of their investigation, has discovered that most of the OEMs have restricted their authorized dealers from selling spare parts and diagnostic tools over the counter. Further, the agreement between the OEMs and their authorized dealers require that such dealers source all the spare parts from the OEMs themselves. Therefore, each OEM is the sole supplier in the aftermarket for supply of spare parts and diagnostic tools for their own brand of automobiles.

20.5.65 Section 19(4) of the Act, provides the factors which the Commission shall take into account by the Commission, to determine if an enterprise is dominant under section 4 of the Act. One such factor is "market share of the enterprise." Market shares provide a useful first indication of the market structure and of the relative importance of the various undertakings active on the market (Hilti v. Commission [1991] ECR II-1439, paras 90, 91 and 92; Case T-340/03 France Telecom v. Commission [2007] ECR II-107, para 100). As discussed above, each OEM is a monopolist player and owns a 100 per cent share of the market share of the spare parts and repair services aftermarket for their own brand of cars. The customers of the automobiles manufactured by each OEM has to use the spare parts compatible to such brand of automobile and cannot substitute such spare parts with those supplied by other OEMs in the Indian automobile aftermarket. Therefore, the OEMs face no constraints from the existing supplies from actual competitors. Another factor listed in section 19(4) is the 'dependence of consumers on the enterprise'. Given the limited interchangeability of spare parts between the automobiles manufactured by various OEMs, each consumer of an OEM is completely dependent upon such enterprise. Moreover, the OEMs through a network of contracts have ensured that they are the sole supplier of the spare parts and diagnostic tools used to repair their brand of automobiles in the aftermarket. Therefore, the independent repairers, who are consumers of the OEMs, in the aftermarket for spare parts and diagnostic tools are also solely dependent upon such enterprises.

20.5.66 As per section 19(4)(h); another important factor that is required to be considered by the Commission is 'entry barriers' of competitors into the relevant market. Low barriers to entry or expansion by actual or potential competitors can deter a company from raising prices if expansion or entry would be likely, timely and sufficient. Barriers to entry can include not only legal barriers, but also advantages peculiar to the dominant company. Such advantages, as in the present case, may be technical compatibility of a consumable secondary product to the durable primary product. The fact that an owner of a Skoda car is locked-in and has to necessarily use the spare parts/diagnostic tools compatible to Skoda cars is in itself an entry barrier of other competitors of Skoda from entering into its aftermarket. Additionally, as discussed above, each OEM has also created barriers in the entry of independent repairers to the aftermarket of the repairs and maintenance of its brand of cars. The independent repairers require the spare parts and diagnostic tools to effectively compete with the authorized dealers in the aftermarket of repairs and maintenance for each brand of cars manufactured by the OEMs.

20.5.67 During the course of investigation, the DG has discovered that many multi brand service providers have stated that in the absence of the availability of the spare parts of the OEM they have to either refuse the customers or get the spare parts from the authorized dealers of the OEM after opening a job card without actually getting the car service, in order to retain the customer. Hence, the DG has concluded that the practice of the OEM acts as an entry barrier for independent repairers to undertake

repairs of the cars of the OEM and practically forecloses the market even for established and credible independent repairers who are equipped with the facilities required to cater to the after service requirement of all kinds of cars. The Informant has submitted that he approached certain independent repairers for servicing his cars. The submissions of the various independent repairers to Informant are summarized below:

Table 4

Name of Independent Repairer	Submissions
Standard Automobiles	An undated letter stating their inability to service his cars of the brands of Honda, Fiat and Volkswagen companies as their spare parts are not sold to them by the manufacturers or authorized dealers.
Jaipal Motors	An undated letter stating that they do not have the spare parts for these brands of cars and that their genuine parts are not available in open market. It has been stated that as per internal policies several companies like Honda, Flat, Volkswagen, Skoda& Ford do not allow sale of their spare parts in the open market. Informant was advised to take his car to the authorized dealer or company only.
Vishal Motor Works Ltd	An undated letter stating that they do not have and cannot sell or install in his Fiat car the genuine parts as the same are only sold to authorized dealers. It has been stated that parts are not available in after market according to company's policy and it is very difficult to buy the same. It has been suggested that he goes to the authorized dealer as they will best have parts.
Omkar Automobiles	Undated letter stating that they are unable to supply the requested genuine parts for any of his Honda, Volkswagen or Fiat vehicles because they are not supplied or sold genuine parts or accessories from authorized dealers/stockiest of the vehicles manufacturers or by the manufacturers
	themselves as per their internal policies. Further it has been stated that even if he were to procure the genuine parts for the vehicles, they would be unable to assist in installing or replacing the same as the technical knowledge was not available with them or openly in the market.
Julka Automobiles	A letter dated January 13, 2011 stating that genuine parts for Honda and Polo vehicle are not available with them for open market and that he should go to authorized dealer as only they are having it.

Based on the submissions of the independent repairers and the investigation of the DG, the Commission is of the opinion, that in the absence of the availability of genuine

spare parts and diagnostic tools that are compatible to carry out effective repair work on the various models of automobiles manufactured by the OEMs, the independent repairers are foreclosed to compete effectively with the authorized dealers of the OEMs. Therefore, such practices of the OEMs amounts to creation of entry barriers for the independent service providers in the Indian automobile aftermarket.

20.5.68 Many of the OEMs have submitted that their share in the automobile market in India is minuscule and therefore, they cannot be in a dominant position, pursuant to the provisions of explanation (a) to section 4(2) of the Act. In the view of the Commission, such submissions are misleading. The informant in the present case did not allege that the OEMs held market power in the primary market for manufacture and sale of automobiles; he alleged market power only in the aftermarket consisting of those customers that had already purchased the automobiles manufactured by the OEMs that needed replacement parts and services for after sale maintenance and repair that particular OEM branded automobile. The antitrust theory was that each OEM was engaging anticompetitive practices to prevent independent service repairers from competing with the authorized dealers of such OEMs in the aftermarket for maintenance and repair service of such OEM manufactured automobiles. Therefore, even if Mercedes-Benz holds 0.26% of the market share of the Indian automobile market, as discussed above, it is a monopolistic player in the supply of the spare parts and diagnostic tools of its own branded cars.

20.5.69 The Commission has held in MCX Stock Exchange Ltd. & Ors. v. National Stock Exchange of India Ltd. & Ors., (Case No. 13/2009), as follows:

> "In terms of explanation (a) of Section 4 of the Competition Act, 'the position of strength' is not some objective attribute that can be measured along a prescribed mathematical index or equation. Rather, it has to be a rational consideration of relevant facts, holistic interpretation of (at times) seemingly unconnected statistics or information and application of several aspects of the Indian economy. What has to be seen is whether a particular player in a relevant market has clear comparative advantages in terms of financial resources, technical capabilities, brand value, historical legacy etc. to be able to do things which would affect its competitors who, in turn, would be unable to do or would find it extremely difficult to do so on a sustained basis. The reason is that such an enterprise can force its competitors into taking a certain position in the market which would make the market and consumers respond or react in a certain manner which is beneficial to the dominant enterprise but detrimental to the competitors."

20.5.70 From the few facts enumerated above, the Commission is of the view 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 its brand of automobiles. As discussed above, 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. Due to the technical compatibility between the products in the primary market and the secondary market, each OEM is shielded from any competitive constrains in the aftermarket from their competitors in the primary market. Further, the OEMs, have ensured that the independent repairers are not able to effectively compete with the authorized dealers of the OEMs in the secondary market for repairs and services by denying them access to required spare parts and tools to complete such repair work. Finally, the OEMs have entered into warranty conditions with their consumers which dissuade them from availing the services of independent

repairers.

20.5.71 In the context of explanation (a) to Section 4 of the Act, what has to be ascertained is whether an enterprise has the "strength" and whether it has the ability to use that strength in its favour. In the instant case, we find that each OEM has a position of strength which enables it to affect its competitors in the secondary market, i.e., independent service providers in its favour, thereby limiting consumer choice and forcing the consumers to react in a manner which is beneficial to each OEM, but detrimental to the interests of the consumers.

Whether the dominant enterprise(s) as established above has abused its position.

20.5.72 The DG, during the course of its investigation has discovered that in case of several OEMs in the absence of availability of the genuine spare parts, diagnostic tools, technical manuals, etc. in the open market the ability of independent repairer to undertake repairs and service of the vehicles of such brands of cars and effectively compete with authorized dealers is severely impeded. As per the DG, such conduct amounts to imposition of unfair condition, denial of market access to independent repairers in terms of section 4(2)(a)(i) & 4(2)(c) respectively of the Act. The DG, during the course of its investigation, has discovered that in case of each OEM there is substantial escalation in most of the spare parts prices from the price at which has been sourced to the price at which it is made available to the consumers. The investigation has thus revealed that these OEMs are imposing unfair prices in sale of spare parts in terms of section 4(2)(a)(ii) of the Act. Further, the DG has discovered that the users of such cars are completely dependent on the authorized dealer network of these OEMs and are not in a position to exercise option of availing services of independent repairers. The DG is of the view that such conduct amounts to imposition of unfair condition on owners of cars of these OEMs in terms of Section 4(2)(a)(i) of the Act. The users of car wanting to purchase the spare parts have to necessarily avail the services of the authorized dealer of the OEM. It is therefore found that such OEMs use their dominance in the relevant market of supply of spare parts to protect the other relevant market namely; the after sales service and maintenance, thereby violating Section 4(2)(e) of the Act.

20.5.73 Before, analyzing each of the above abusive conduct in context of the OEMs, it is pertinent to discuss that the basic premise of the objection of the Informant with the practices undertaken by the OEMs, is the lack of effective choice for consumers and independent repairers in the Indian automobile aftermarket. In the words of Professor, Robert H Lande, "Consumer Choice as the Ultimate Goal of Antitrust", University of Pittsburgh Law Review, Vol. 62, No. 3, pp. 503-525, Spring 2001.

> "The role of antitrust can best be understood in terms of a fundamental standard 'the standard of consumer choice'. The antitrust laws are intended to ensure that the marketplace remains competitive so that worthwhile options are produced and made available to consumers, and this range of options is not to be significantly impaired or distorted by anticompetitive practices.
>
> How many options must be present in the market for consumer choice to be optimized? Antitrust certainty does not require that the number of options be maximized. Nor does antitrust prevent all conduct or transactions that have the effect of reducing the number of options available to consumers. Nor does the law affirmatively require the creation of options. Rather, it prevents business conduct that artificially limits the natural range of choices in the market place."

20.5.74 Under the preamble and section 18 of the Act, the duty of the Commission includes, to prevent practices having adverse effect on competition, to promote and sustain competition in markets, to protect the interests of consumers and to ensure freedom of trade carried on by other participants in markets, in India. Therefore, one of the functions of the Commission is to eliminate practices having adverse effect on competition and protect the interests of the consumers, including providing automobile consumers and the independent repairers with more choice in the Indian automobile aftermarket. In the view of the Commission there are two main issues that needs to be dealt by the Commission, they are:

(a) Ability of the consumers to freely choose between an independent repairer and an authorized dealers without being faced by any adverse financial consequences; and

(b) Ability of independent repairers to access the aftermarket and provide services in a competitive manner.

It is in this background, that the Commission has analyzed the alleged abusive practices of the OEMs within the parameters of section 4(2) of the Act.

Denial of Market Access

20.5.75 The DG's investigation has revealed that most of the overseas suppliers are not supplying spare parts directly into the Indian aftermarket. The DG has reviewed the agreements/arrangements between the OEMs and their respective overseas suppliers. The overseas suppliers of Mahindra Reva and Skoda contain clauses which specifically restrict such overseas suppliers from supplying spare parts directly into the Indian aftermarket. The agreements between the OEMs, like BMW, Fiat, Ford, General Motors, Honda, Maruti, Mercedes-Benz, Volkswagen and Hindustan Motors and their respective overseas suppliers are silent on the rights of such overseas suppliers from supplying directly into the Indian aftermarket. However, the DG during the course of its investigation has discovered that such overseas suppliers in practice do not supply spare parts in the Indian aftermarket. A sample of the answers provided by few OEMs during the recording of the statements regarding the actual position regarding the sales by overseas supplier shave been extracted below.

The relevant extract of submissions of Ford India is placed below:-

Q12. It is understood that Ford India imports some parts from overseas suppliers. Please furnish the agreement/document on the basis of which parts are being imported.

Ans: Ford India imports approx 25% of the spare parts value from Ford affiliates outside India. There is no agreement as these parts are imported from Ford affiliates itself. However, there is a export service standards from the affiliates of Ford in Thailand towards spare supplies.

Q13. Is there any restriction on the overseas suppliers on selling spare parts of Ford India vehicle directly in India?

Ans. Ford affiliates outside India, sells spare parts only to Ford India in India.

The relevant extract of submissions of Nissan is placed below:

Q.5 Please confirm whether your over-seas component supplier can supply

parts directly in India. If yes, are they presently supplying directly in India?

Ans: Overseas Suppliers don't supply directly in India except tyre and oil.

The relevant extract of submissions of Fiat is placed below:

Q.10 Is Fiat Group Automobiles (SPAL) also selling the parts being imported by FIAL (Fiat India Automobiles Limited) directly in the open market?

Ans: We don't know.

Q.11 Please confirm with your principal supplier and confirm

Ans: We shall revert.

Vide e-mail dated February 28, 2012

Ans: No

The relevant extract of submissions of Toyota is placed below:

Q.10 Are there any restrictions in the agreement on your overseas suppliers (TMAO) in supplying directly in the aftermarket in India?

Ans: No

Q.11 Are your overseas suppliers (TMAP) selling directly in the aftermarket in India?

Ans: We are not aware of our overseas suppliers selling directly in the aftermarket in India.

The relevant extract of submissions of Volkswagen is placed below:

Q4. Are your overseas suppliers supplying the parts imported by you directly in the market in India as well?

Ans. We are not aware whether they do so or not.

Q5. Can you check with them and revert?

Ans. We will try and check.

Vide letter dated March 6, 2012

With reference to your query on whether overseas supplier can supply spare parts directly to India, we would state that there are no such restrictions on overseas suppler.

With respect to your query on whether any permission has been granted by our company to overseas supplier for supplying parts directly in the market including after-sales market, we confirm that we have not received any such request from the overseas supplier. Further, the scope of our business does not cover any after-sales market activity.

Based on the above submissions the Commission is of the opinion that although the importer agreement/arrangements between the OEMs and their overseas suppliers are

silent on the rights of such overseas suppliers to sell spare parts directly in the Indian aftermarket, however, such overseas suppliers are not supplying spare parts directly into the Indian aftermarket.

20.5.76 The Commission has noted the findings of the DG regarding the ability of OESs to supply directly into the Indian aftermarket. The perusal of the agreements entered by the OEMs with the local OESs has revealed that invariably there are restrictions on the OES from supplying parts directly to third parties without the prior written consent of the OEMs. The restrictions have been placed upon the OESs ability to sell spare parts directly to third parties, where such spare parts are being manufactured by the OEMs using the drawings/designs/specifications/knowledge/toolings/moulds/jigs/IPRs/trademarks etc of the OEMs. The DG has observed that none of the OEMs have confirmed even a single instance where the permission has been granted to the OESs in terms of the agreements to sell spare parts to third parties. We have discussed the issue of the reasonability of such restrictions while deciding the AAEC caused by such agreements (Issue 4) later in the order. The table below summarizes the findings of the DG with respect of the restrictive clauses in the OES agreements with respect to each of the OEMs.

Table 5

OESs	Restrictive clause in OES Agreement/Purchase Orders/LOI
BMW	No clause in agreement with respect to OES's right to access aftermarket. However, they are not supplying in the market.
Fiat	OESs restricted from supplying to the aftermarket on pretext of protecting the IPRs of the OEM.
Ford	OESs restricted from supplying to the aftermarket on pretext of protecting the IPRs of the OEM.
General Motors	OESs restricted from supplying to the aftermarket on pretext of protecting the IPRs of the OEM.
Honda	OESs restricted from supplying to the aftermarket on pretext of protecting the IPRs of the OEM.
Mahindra	OESs restricted from supplying to the aftermarket on pretext of protecting the IPRs of the OEM.
Maruti	OESs restricted from supplying to the aftermarket on pretext of protecting the IPRs of the OEM.
Mercedes Benz	OESs restricted from supplying to the aftermarket on pretext of protecting the IPRs of the OEM.
Nissan	OESs restricted from supplying to the aftermarket on pretext of protecting the IPRs of the OEM.
Skoda	OESs restricted from supplying to the aftermarket on pretext of protecting the IPRs of the OEM.
Tata Motors	OESs restricted from supplying to the aftermarket on pretext of protecting the IPRs of the OEM.
Volkswagen	OESs restricted from supplying to the aftermarket on pretext of protecting the IPRs of the OEM.
Hindustan Motors	OESs restricted from supplying to the aftermarket on pretext of protecting the IPRs of the OEM.
Toyota	OESs restricted from supplying to the aftermarket on pretext of protecting the IPRs of the OEM.

20.5.77 The Commission has noted the findings of the DG regarding over the counter availability of spare parts at the authorized centers that is whether the spare parts can be purchased at the authorized dealers without necessarily getting the cars serviced there. The DG has recorded the submissions of the various multi-brand service

providers with respect to the availability of spare parts of automobiles manufactured by various OEMs. Their submissions have been tabularized below:

Table 6

Brand	Position of availability of Spare parts in open market
BMW	NA
Fiat	NA
Ford	NA
GM	PA (on a very restrictive basis)
Mitsubishi (Hindustan Motors)	NA
Honda	NA
M&M	PA for older models
Maruti	PA/A
Mercedes	NA
Nissan	NA
Skoda	NA
Tata Motors	PA
Toyota	PA for older phased out Models
Volkswagen	NA

: Not Available anywhere in PAN India

•PA: Partially available in some regions based on Dealer/Distributor discretion

•A: Available PAN India

We have discussed in detail the restrictive clauses of the authorized dealers agreements executed between each OEM and their authorized dealers; while discussing the AAEC caused by such agreements later in the order).

20.5.78 Further, it has emerged, during the course of its investigation, that due to the technological advancement in automobile design and increase in the electronic and electrical features and controls, specialized diagnostic testers/scanning equipment are required for properly diagnosing the faults at the time of repairing and servicing most of the brand of automobiles manufactured by various OEMs. Access to these specialized diagnostic tools, fault codes, technical manuals, training etc., is critical for undertaking service and repair of such vehicles. The DG has recorded the submissions of the various multi-brand service providers with respect to the availability of specialized diagnostic tools manufactured by various OEMs. Their submissions have been tabularized below:

Table 7

Brand	Tooling	Technology / Diagnostic tools	Workshop manuals/Catalogues	Special Tools	Technical Manual and information
Maruti	NA	NA	NA	NA	A (only to *My TVS)*
Ford	NA	NA	NA	NA	NA
Honda	NA	NA	NA	NA	NA
Toyota	NA	NA	NA	NA	NA
GM	NA	NA	NA	NA	NA
Tata Motors	NA	NA	NA	NA	A*
Skoda	NA	NA	NA	NA	NA
Mahindra & Mahindra	NA	NA	NA	NA	NA
Mitsubishi (Hindustan Motors)	NA	NA	NA	NA	NA
FIAT	NA	NA	NA	NA	A*
Volkswagen	NA	NA	NA	NA	NA
Nissan	NA	NA	NA	NA	NA
BMW	NA	NA	NA	NA	NA
Mercedes	NA	NA	NA	NA	NA

NA : Not Available anywhere in PAN India
PA : Partially available in some regions based on Dealer/Distributor discretion
A : Available PAN India
* Available to "My TVS" only, because My TVS has tie-ups with Tata Motors, whose dealers have been dealing with Tata and Fiat brand of cars.

Note: No information has been received with respect to premier brand vehicles

20.5.79 The DG, during the course of its investigation, has recorded statements of SPX India Private Limited ("SPX"), which is supplying diagnostic tools to several OEMs in India. SPX has submitted that that they are restricted in terms of their arrangement with the OEMs to sell the diagnostic tools which are specific to each OEM, directly in the aftermarket. The DG has also stated that it has emerged from the responses of SPX as well as independent repairers that there are limitations in diagnosing faults using alternate diagnostic tools. Therefore, based upon the practices of the OEMs, the Commission is of the conclusion that:

(a) in none of the instances are the overseas suppliers or the OESs supplying spare parts manufactured by them directly into the Indian automobile aftermarket. Therefore, on account of non-sale of spare parts by the overseas suppliers and the OESs to entities other than the respective OEMs, each OEM becomes the only source of supply of these spare parts for the aftermarket requirements.

(b) apart from Maruti; most of the other OEMs have some restrictions on the ability of their authorized dealers to sell spare parts to independent service providers.

(c) all the OEMs restrict the availability of the diagnostic tools/repair manuals etc., required to effectively repair various models of their respective brand of automobiles to the independent service providers and the multi brand retailers. It is pertinent to note that even though Maruti allows its spare parts to be sold over the counter to independent repairers; it restricts the access of such independent repairers to diagnostic tools required to repair various models of automobiles manufactured by Maruti. Therefore, even in case of automobiles

manufactured by Maruti, the independent service providers are restricted to effectively compete with the authorized dealers of the OEM.

20.5.80 The principle of free competition lies at the heart of the Commission's mandate under the Preamble and section 18 of the Act. Under section 18 and the Preamble of the Act, the Commission still has the overall responsibility, "it shall be the duty of the Commission to eliminate practices having adverse effect on competition, promote and sustain competition, protect the interests of consumers and ensure freedom of trade carried on by other participants, in markets in India." Therefore, the aim of the Commission is the institution of a system of undistorted competition which is commensurate to the promotion of the interests of the consumer. A dominant enterprise can impede free competition in the relevant market over which it enjoys a position of strength. One such ways of distorting free competition is the refusal by a dominant enterprise to meet, in full or in part, orders placed with it by its customers who are dependent upon the products or services of the dominant enterprise.

20.5.81 The ECJ in Commercial Solvents v. Commission[1974] ECR 223, (para. 25) held that "an undertaking which has a dominant position in the market of raw materials and which, with the object of reserving such raw material for manufacturing its own derivates, 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." The basic objection of the Court was that a dominant enterprise, which competes in both the upstream and downstream markets and is in effective control of a product/service in the upstream market which is required by the enterprises in the downstream market to effectively carry out their economic activity, may exclude a competitor from such downstream market, by refusing to supply such product/services to enterprises in the downstream market.

20.5.82 In the present case, the independent service providers require the spare parts and diagnostic tools compatible to the various models of automobiles manufactured by the various OEMs to carry out their economic activity of providing repair and maintenance services in the Indian automobile aftermarket. As discussed earlier, each OEM is a dominant player in the aftermarket for the supply of spare parts and diagnostic tools and through a network of contracts effectively controls the supply of such spare parts and diagnostic tools in the aftermarket. The OEMs through their own or related network of authorized distributors also operate in the aftermarket for aftersale repair and maintenance services of their own brand of cars. Each OEM have two type of customers; one in the primary market and the other in the secondary market. These customers are: (a) car owners who purchase the automobiles manufactured by the OEMs in the primary market and (b) independent service providers in the aftermarket. An owner of a car cannot fit the spare parts into the machine by himself and requires the services of a specialized technician. Therefore, the owner of automobiles does not operate in the aftermarket as purchasers of spare parts but require the service of firms engaged in maintenance and repair work. The independent repairers, who are not part of the official dealer network of the OEMs, do operate in the market for as purchasers of spare parts of the automobiles manufactured by the OEMs. Therefore, the independent service providers are customers of the OEMs in the aftermarket and further compete with the OEMs in the repairs and maintenance service aftermarket.

20.5.83 Section 4(2) provides a list of abusive conducts, which when undertaken by a dominant enterprise, would fall within the mischief of section 4(1) of the Act. Section 4(2)(c); provides that a dominant enterprise shall abuse its dominance, if it indulges in practice or practices resulting in denial of market access. As discussed earlier, we are of

the opinion that each OEM is a monopolistic player in the aftermarket for its own brand of spare parts and diagnostic tools and is in effect the sole supplier of such spare parts and diagnostic tools to the aftermarket. We have also discussed the practices of the OEMs to conclude that in effect each OEM severely limits the access of independent repairers and other multi brand service providers to genuine spare parts and diagnostic tools required to effectively compete with the authorized dealers of the OEMs in the aftermarket. Such practices amounts to denial of market access by the OEMs under section 4(2)(c) of the Act.

20.5.84 Further, such denial of market access is specifically aimed at adopting a course of conduct with a view to exclude a competitor from the market by means other than legitimate competition and such exclusionary abusive conduct allows the OEMs to further strengthen their dominant position and abuse it. As has been noted by the European Court of Justice, that "such behaviour cannot be countenanced if its actual purpose is to strengthen this dominant position and abuse it" (United Brands v. Commission Case 27/76 [1978] ECR 207, (para 189). It is the opinion of the Commission that in such cases a violation of section 4(2)(c) of the Act is clearly established.

20.5.85 The OEMs have submitted that the spare parts and diagnostic tools, workshop manuals are their proprietary materials and therefore accessible only to the authorized dealers network of each OEM. The Commission notes that unlike section 3(5) of the Act, there is no exception to section 4(2) of the Act. Therefore, if an enterprise is found to be dominant pursuant to explanation (a) to section 4(2) and indulges in practices that amount to denial of market access to customers in the relevant market; it is no defense to suggest that such exclusionary conduct is within the scope of intellectual property rights of the OEMs. On the basis of aforesaid, the Commission is of the opinion that the OEMs have denied market access to independent repairers and other multi brand service providers in the aftermarket without any commercial justification.

Unfair Price

20.5.86 The investigation conducted by the DG has concluded that the OEMs are imposing unfair prices in sale of spare parts in terms of section 4(2)(a)(ii) of the Act, which is substantiated by the considerable mark up in prices and significant variation across spare parts as demonstrated in the DG's reports. Section 4(2)(a)(ii) provides that there will be an abuse of dominant position, if a dominant enterprise, imposes unfair or discriminatory price in purchase or sale (including predatory pricing) of goods or service. Section 4(2)(a)(ii) is similar to the prohibition in Article 102 of the TFEU, which provides that an abuse by a dominant undertaking shall include directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions. The Commission has looked into the seminal cases establishing the legal test for excessive pricing under Article 82 of the EC Treaty (now Article 102 of TFEU). In United Brands Company and United Brands Continental BV v. Commission[1978] ECR 207, the ECJ held that 'charging a price which is excessive because it has no reasonable relation to the economic value of the product supplied' could constitute abuse of a dominant position. The ECJ in United Brands proposed a cost-based test to assess the relationship for the purposes of Article 82 between the economic value of the product/service and the price charged for it by a dominant undertaking:

> "The questions therefore to be determined are whether the difference between the costs actually incurred and the price actually charged is excessive, and, if the answer to this question is in the affirmative, whether a price has been

imposed which is either unfair in itself or when compared to competing products."

20.5.87 Thus, as per the test set by the ECJ in United Brands case the first stage of the analysis aims to identify the profit margin of the dominant enterprise and then to use that information to demonstrate whether the price is 'excessive'. If it is then the second stage considers whether the excessive price is unfairly high and consequently abusive. The first stage of the test for exploitative pricing involves calculating the difference between the production cost and the price of the product/service in order to identify the profit earned by the dominant enterprise. Based upon the investigation of the DG, the OEMs source their components/spare parts to be used for the assembly line requirements as well as aftermarket requirements primarily from the local original equipment suppliers (OESs). Several components assembled in the car are also imported from overseas suppliers. Therefore, the cost of production of a spare part for an OEM is the price at which the spare part is sourced from the OESs or the overseas suppliers.

20.5.88 In order to analyze the mark up from the point of the OEM to the final customer, the price difference between the rate at which the spares are sourced by the OEMs from the OES (including overseas suppliers) and the price at which they are sold to the customers by the authorized dealers was calculated on sample basis. The companies were asked to provide a list of the top 50 spare parts in terms of spare parts consumed and in terms of revenue earned from then sale for the financial year 2010-11 on quarterly basis for their most popular brand of cars. The DG has examined the price difference (mark up) for the top 50 spare parts, for each OEM, based on consumption and revenue generated was calculated using the formula as under: Price Difference (%) = {(Price at which available to Customer)-(Price at which procured from OES)}*100/(Price at which procured from OES).

20.5.89 The markup for the top 50 spare parts across quarters for each OEM has been summarized in the table below:

Table 8

OEM	Price Mark-up of top 50 spare parts based on Revenue Generated	Price mark-up of top 50 spare parts on the basis of Consumption
Nissan	84.96% - 201.98%	85.81%-258.78%
Maruti	-77.98% - 433.59%	-16.94% - 650%
Mahindra	65.80%- 462.50%	108.58%-890.99%
Volkswagen	54.36% -995.55 (Q1, 2010-11); 61.41% - 995.55% (Q2, 2010-11); 58.17%-995.55% (Q3, 2010-11); 58.17%-995.55% (Q3, 2010-11)	62.27%-995.55% (Q1,2010-11); 62.27%-995.55% (Q2, 2010-11); 22.54%-995.55% (Q3; 2010-11); 62.27%-995.55% (Q4, 2010-11)
Toyota	79.61%-1305.85%	38.26% -510.43%
BMW	101.38% - 458.98%	76.24% - 484.04%
Ford	38.37% -1171.09% (Q1, 2010-11); 35.62% - 1171.09% (Q2, 2010-11); 35.62% – 1171.09%(Q3, 2010-11); 35.62% -1171.09% (Q3, 2010-11)	64.1 – 1696.36 (Q1, 2010-11); 64.1 – 1696.36 (Q2, 2010-11); 58.68% - 1696.36% (Q3, 2010-11); 64.1% – 1696.36% (Q3, 2010-11)
Mercedes-Benz	70.34 – 292.22% (Q1, 2010-11); 67.31- 306.80% (Q2, 2010-11); 76.63- 301.71%(Q3, 2010-11); 84.86-2150.69% (Q3, 2010-11)	59.80- 284.88% (Q1, 2010-11); 11.25-1206.15% (Q2, 2010-11); 76.63- 1207.20 %(Q3, 2010-11); 71.78 – 1245.87% (Q3, 2010-11)
Skoda	85.06- 265.88% (Q1, 2010-11); 79.15- 280.75% (Q2, 2010-11); 76.29 – 248.54%(Q3, 2010-11); -0.92-260.40% (Q3, 2010-11)	-31.6 – 230.83% (Q1, 2010-11); -33.78 – 254.18% (Q2, 2010-11); -34.84- 248.54%(Q3, 2010-11); -35.81 – 218.42% (Q3, 2010-11)
Tata	60.76% - 658.80%	64.60%- 858.90%
Fiat	33.60% - 3020.29%	19.93% - 4817.17%
Honda	(-)12.10% - 984.73%	(-)77.20% - 939.13%
General Motors	1.66% – 871.56% (Q1, 2010-11); (-)0.23% -871.56% (Q2, 2010-11); 3.39%- 871.56%(Q3, 2010-11); 66.92% -871.56% (Q3, 2010-11)	(-)18.82% - 545.16% (Q1, 2010-11); (-)20.33% - 764.08% (Q2, 2010-11); 3.39%- 764.08% (Q3, 2010-11); 28.64%-545.16% (Q3, 2010-11)
Hindustan Motors	79.25% - 133.32% (Ambassador brand)	86.47% - 206.25% (Ambassador brand)

20.5.90 Based upon the findings of the DG, as tabularized above, we have noticed that there has been a substantial markup in the prices of spare parts from the point at which

such spare parts are sourced from the OESs and other overseas suppliers and the price at which they are available to the consumers across all OEMs. The DG has observed that the average markup in the price of spare parts is approximately 100 per cent in case of most OEMs while the upper limit of such markup is approximately 5000 per cent.

20.5.91 The Commission is aware that in adopting a cost-price comparison to determine the extent of profits enjoyed by a dominant enterprise entails the calculation of the cost of production of the goods/services of the dominant enterprise. This can be a particularly difficult task given that an enterprise may have diverse production and market operations which incurs various categories of costs and working out the production costs may raise great difficulties, especially determining what costs should be taken as a basis for calculating the cost-price ratio to show whether the price charged exceeds the costs incurred. However, the Commission is of the view that such difficulties do not arise in the present case. Since the OEMs source a majority of their spare parts, both for assembly line and aftermarket requirements from OESs or other overseas suppliers, a starting point for the Commission's cost-price analysis can be the price at which the spare parts are sourced from the OESs and other suppliers. The OEMs have submitted that the DG in its investigations has failed to consider that over and above the procurement other costs incurred by the OEMs, including, depreciation on tangible assets, amortization of intangible assets, royalty for technical know-how, packing materials, warehouse management, octroi, government taxes, financial and freight cost etc. The Commission has noted that such submissions of the OEMs are general in nature and the OEMs have submitted broad cost components, however, the OEMs have not submitted particulars of the constituent elements of its production costs.

20.5.92 The ECJ in United Brands noted that producers often allocate their costs arbitrarily to individual units of production and it may be impossible to calculate accurately the average total cost of producing a particular product. In United Brands, the ECJ seems to have accepted that an approximate analysis of costs may be sufficient in complicated cases. It held that:

> "While appreciating the considerable and at times very great difficulties in working out production costs which may sometimes include a discretionary apportionment of indirect costs and general expenditure and which may vary significantly according to the size of the undertaking, its object, the complex nature of its set up, its territorial area of operations, whether it manufactures one or several products, the number of its subsidiaries and their relationship with each other."

Therefore, in the absence of the any submissions of the OEMs indicating a break-up of the productions costs, the Commission feels prudent to adopt the procurement costs as an approximate estimation of the production costs of the OEMs with respect to the spare parts procured from OESs and other suppliers for its assembly line and aftermarket requirements.

20.5.93 The objective of the price-cost investigation is to establish the profit margin of the dominant market actor. In United Brands the ECJ held that the comparison between the selling price of the product in question and its cost of production, which should disclose the amount of profit margin. However, a profit margin does not in itself indicate that the price is excessive. Section 4(2)(a)(ii) does not prohibit profit margins- only unfair prices have been prohibited. However, where it has been established that a price substantially exceeds the cost of production, it will be necessary to assess whether the difference is so great as to be 'excessive', triggering a review of the prices 'fairness'.

The DG's investigations have revealed that all OEMs have substantially marked up the price of its spare parts by an average of 100 per cent and in some extent to as high as 5000 percent. In view of the Commission, such mark-ups are disproportionate to the economic value of the products supplied by the OEMs.

20.5.94 The concept of unfairness of a price is related to the notion that such price is unrelated to the 'economic value' of the product and that such price are being charged by the enterprise because of its capacity to use its market power or position of strength in that relevant market to affect its competitors or consumers in its favour. As evident from the DG's investigation, the OEMs are charging a substantially high price for its top 50 spare parts, without which the respective owners of the various models of the automobiles manufactured by the OEMs cannot get their automobiles repaired, serviced or maintained in the aftermarket. The actual cost of procuring the spare part is much lower than the price at which they are being sold to the ultimate consumer; however, the value of such spare parts to the consumer is great, because without such spare parts the owner will not be able to effectively repair his automobile. Even if the OEM has substantially marked up the price of its spare parts; the locked-in consumer would be forced to purchase such spare parts in order to effectively render the much expensive primary market equipment, i.e., the automobile itself, in a workable condition. If the aftermarket was open to competition; i.e., the OEMs were not the only source of the genuine spare parts and diagnostic tools in the aftermarket; the OEMs would not have been able to maintain such high markups without facing necessary competitive restraints.

20.5.95 In British Horseracing Board v. Victor Chandler International[2005] EWHC 1074 (Ch), (para 56) it was held that "in determining whether a price is unfair it is necessary to consider the impact on the end consumer and all of the market conditions. In a case where unfair pricing is alleged, assessment of the value of the asset both to the vendor and the purchaser must be a crucial part of the assessment." As discussed above, the value of a spare part for the OEM is the cost at which the spare part is procured from its supplier; while the value of the spare part for the consumer is disproportionally higher. This is because the value of the spare part for the consumer has to be understood in relation to the use of the spare part to effectively repair and render his automobile in a workable condition. Therefore the willingness of the locked-in consumer to pay a particular price for a spare part has to be understood in the context that he perceives the spare part as a necessary secondary consumable product for the effective working of his primary product. The OEMs necessarily exploit such a position of the consumer by charging higher marked-up prices in the secondary market.

20.5.96 In analyzing the unfairness of the prices charged by the OEMs, it is necessary to ascertain whether the dominant enterprise has made use of the opportunities arising out of its dominant position in such a way as to reap trading benefits which it would not have reaped if there had been normal and sufficiently effective competition. As discussed earlier, based upon the DG's investigations, it has been revealed that in the case of all the OEMs, the overseas suppliers and most of the local OESs are either contractually prohibited from selling spare parts directly in the open market. Therefore, the OEMs are the only source of availability of genuine spare parts in the aftermarket. The OEMs require their authorized dealers to source the spare parts only from the OEMs authorized vendors and further restrict the over the counter sale of spare parts and diagnostic tools to independent repairers. These restrictions therefore create entry barriers for the OES who could produce matching quality spare parts, eliminates direct access by OES from supplying genuine spare parts of an OEM in the aftermarket and in the process, foreclose competition in the supply of genuine spare parts and diagnostic

tools for the various models of automobiles manufactured by the OEMs.

20.5.97 The fact that the OEMs are the only source of supplying spare parts for its brand of automobiles in the aftermarkets is an important factor in analyzing the enterprise's degree of exploitative pricing. The ECJ in General Motors Continental NV v. Commission [1975] ECR 1376, agreed that the "holder of the exclusive position ....may abuse the market by fixing a price--for a service which it is alone in a position to provide." Therefore, the fact that the OEMs are the only source of genuine spare parts compatible to its brand of automobiles in the aftermarket allows such OEMs to use the opportunities arising out of its dominant position to reap trading benefits which it would not have reaped if there had been normal and sufficiently effective competition. The analysis of the cost-price data, as provided in the table above, indicates the ability of the OEM to price the spare parts without being subject to any constraints since there is no competition in the spare parts market. Given the complete dependence of the users on the OEM for their spare parts requirements, the interest of consumers are not safeguarded in form of competitive prices of spare parts in the present scheme of things. The cost benefit, if any, that may arise from the OEM having its own distribution channels also does not seem to be passed on to the customer in the form of low prices of spare parts and there appears no justifiable efficiency factors in the form of any benefits to the consumers.

20.5.98 Further, dining the course of the DG's investigation, the companies were asked to furnish the details of turnover and profits from sale of automobiles as well as from spare parts business separately. The analysis with respect to companies that have submitted the requisite data shows that in all the cases, the margin from spares business exceeds the margin from car business substantially. In fact several OEMs, are inclining overall losses as well as that from the sale of cars, however profits have been generated from spares parts business. The revenue generated from the sale of spare parts and from the sale of automobiles for a few OEMs is tabularized below.

Table 9

OEMs	Margin (%) from Automotive business	Margin (%) from spare parts business	Comments
Maruti	4.4% (2008-09); 8.7% (2009-10); 4.7% (2010-11)	20.0% (2008-09); 21.0% (2009-10); 21.0% (2010-11)	Maruti's margins from vehicles are substantially lower than those derived from sale of spare parts
Volkswagen	(-)23.70% (2008-09); (-)7.15% (2009-10); 0.40% (2010-2011)	49.37%	Volkswagen is making substantial losses from sale of cars and has made nominal profit only in FY 2010-2011.
BMW	21.78% (2008-09); 16.70% (2009-10); 22.36% (2010-11)	27.08% (2008-09); 31.48% (2009-10); 42.77% (2010-11)	BMW's margin from sale of spare parts are higher
Skoda	(-)3.19% (2008-09); (-) 2.96% (2009-10); (-) 0.35% (2010-11)*	11.59% (2008) ;22.84% (2009); 19.49% (2010)	DG has observed that Skoda, as a whole, is incurring losses; but is making significant profit margins from the sale of spare parts.
Fiat	(-) 88.35% (2008); (-) 10.44% (2009); (-)6.62% (2010)	5.72% (2009-10); 9.39% (2010-11)	Fiat has been incurring substantial losses on vehicle sales whereas it has been earning profits on the spare parts segment
Honda	(-)8.42% (2008-09); (-)0.10% (2009-10); (-)2.02% (2010-11)	26.02% (2008-09); 22.70% (2009-10); 8.02% (2010-11)	Honda is making negative margins from sale of cars whereas it is selling spare parts at substantial profit

In this context it is relevant to mention that as per CII-Mckinsey Report, the aftermarket business is highly profitable for OEMs. The aftermarket contributes a modest 24% in revenues to OEMs, however, a sizable 55% of profit is derived from this segment. The Commission is of the opinion that such sizeable revenues from the sale of spare parts are possible because of the fact that the OEMs are able to mark-up the price of spare parts without any competitive constraints.

20.5.99 It is pertinent to note that several commentators have objected to price regulation from a policy perspective, arguing that in the absence of market failures,

excessive prices motivate potential competitors to enter into the market and are therefore self correcting. However, the Commission is of the opinion that in certain industry/sectors the prevalent excessive pricing practices may not be self correcting, i.e., as in the present case, where the OEMs have insulated themselves from all possible competition in the aftermarket, (a) through then network of restrictive contracts and (b) pursuant to the fact that spare parts of various models of automobiles are not interchangeable with other brands, have ensured that they are the only source of supplying spare parts for its brand of automobiles in the aftermarkets, thereby significantly enhancing such enterprise's degree of exploitative pricing. For example, as per the date tabularized in table 8 above, Fiat marks up the price of its top 50 spare parts (on the basis of consumption) from 19.93%-4817.17%. Under the existing competitive structure of the Indian automobile aftermarket, Fiat will not be subjected to any competitive constraints either from the other OEMs (due to limited interchangeability between spare parts of various brands of automobiles) or from the independent repairers (due to denial of access to the aftermarket of spare parts and diagnostic tools) to self correct its pricing abuses unless the structure of the market is modified to allow competition. Therefore, the Commission is of the opinion that the exploitative pricing conduct by each OEM (as evident from Table 8 above) is a manifestation of lack of competitive structure of the Indian automobile market. The Commission is therefore of the opinion, that structurally modifying the competitive nature of the Indian automobile market will itself induce market self-correcting features, by enhancing consumer-choice and access of independent repairers to effectively compete in the Indian aftermarket. Such remedies, in the opinion of the Commission shall have a rationalizing effect on prices of the products in the Indian automobile aftermarket.

Leveraging

20.5.100 Section 4(2)(e) provides that it shall be an abuse of a dominant position if a dominant enterprise "uses its dominant position in one relevant market to enter into, or protect, other relevant market." The two relevant markets in the current case are the market for spare parts and diagnostic tools and the market for repairs and maintenance services, which as we have described earlier are different, yet inter-linked and inter-connected (refer to our discussions in paragraph 21.2.16 of this order). The OEMs have an inherent dominant position of strength in the market for spare parts and diagnostic tools because of limited inter-brand interchangeability of spare parts and the fact that the OEMs, pursuant to a network of restrictive contracts and commercial practices have become the sole supplier of genuine spare parts of various models of their automobiles and diagnostic tools in the aftermarket. Given the inter-linkages between the repair/service markets and the spare parts/diagnostic tools market, the OEMs have a commercial incentive to leverage their dominance from the relevant market of spare parts/diagnostic tools to that of repairs and maintenance services. The fact that OEMs indulge in such leveraging is evidence from the data that the OEMs (acting through their authorized dealer network) deny 94.99% of the total service providers active in the Indian automobile aftermarket (consisting of multi-brand retailers, semi-organized service stations and un-organized garage workshops), effective access to the Indian aftermarket on competitive terms. (ACMA Report 2011).

20.5.101 The OEMs typically provide aftersale services and repair of their brand of automobiles through a network of authorized dealers. These authorized distributors are also the source of supply of genuine spare parts of various models of automobile manufactured by an OEM. As discussed above, the OEMs restrict the ability of the independent repairers to obtain spare parts from the authorized dealers. The DG has

analyzed the authorized dealer agreements executed between the OEMs and their respective authorized dealers. The authorized dealer agreements can be divided into three categories:

a) Certain agreements specifically restricted the sale of spare parts over the counter. These include the authorized dealer agreements of Fiat, Nissan, Skoda and Mahindra.

b) Certain agreements between the OEMs and the authorized dealers do not contain specific terms restricting the sale of spare parts in the open market. However, the DG during the course of its investigation has discovered that in practice such authorized dealers either allow limited sale of spare parts for older phased out models or in some circumstances do not sell spare parts across the counter at all. These include the OEMs Ford, Honda, Maruti, Premier, Volkswagen, Hindustan Motors, Toyota and Tata Motors.

c) Certain agreements between OEMs and authorized dealers allow such dealers to either sell spare parts directly to independent repairers (e.g. Mercedes) or allow it to be sold to actual customers of the OEM (e.g. BMW, General Motors).

20.5.102 As per the investigation of the DG, even in cases listed in sub-clause (b) above where there are no specific clauses in the agreements entered by the OEMs restricting over the counter sales, the enquiries carried and submissions of stakeholders bring out that the spare parts are not generally available over the counter and at best are being sold selectively. The OEMs and the authorized dealers may not be keen to sell the spare parts over the counter to prevent the customers from shifting to independent repairers. The sale of spare parts over the counter is in any case at the discretion of the OEM and the authorized dealers. Further, all the OEMs (except BMW) have warranty clauses which effectively deny any warranty to the owners of automobiles if such owners avail the services of the independent repairers or other multi brand service providers. Moreover, in the limited instances where spare parts are available to the actual owners, the owners have to buy such spare parts at the MRP and then avail the services of the independent repairers at additional costs; whereas the authorized dealers are able to provide such services at cheaper rates since the applicable spare parts are available to the authorized dealers at a discount over the MRP. Hence, based on these facts, it can be stated that in practice the OEM and the authorized dealers allow the use of genuine spare parts only for purpose of undertaking service and repairs at the workshop of the authorized dealers. Therefore, most of the OEMs force their customers to buy maintenance and repair services together with spare parts, since independent repairers' demand for spare parts is related to maintenance and repair services provided by them to those who do not indent to purchase maintenance and repair services from the OEMs.

20.5.103 Therefore, in most cases the owners of various brands of automobiles are completely dependent on the authorized dealer network of the OEMs and are not in a position to exercise option of availing services of independent repairers. In most cases, the users of car wanting to purchase the spare parts have to necessarily avail the services of the authorized dealers of the OEM. It is therefore found that such OEMs use their dominance in the relevant market of supply of spare parts to protect the other relevant market namely; the after sales service and maintenance thereby violating Section 4(2)(e) of the Act. Even in case of OEMs where the spare parts are available to the independent repairers as well as the owners of cars in the open market, the independent repairers are still foreclosed from the aftermarket for repairs and

maintenance of the various brands of automobiles manufactured by the OEMs. This is because none of the OEMs allow their diagnostic tools, repair manuals etc., to be sold in the open market. It has emerged from the investigations of the DG that with technological advancement in vehicle design and increase in the electronic and electrical features and controls, specialized diagnostic testers/scanning equipment are required for diagnoses at the time of car repair or service of most of the cars of various brands. Access to these specialized diagnostic tools, fault codes, technical manuals, training etc. is critical for undertaking service and repair of such vehicles. The independent repairers are substantially handicapped from effectively attending to aftermarket requirements of automobiles due to the lack of access to specialized diagnostic tools. We have previously noted the submissions of the independent and the multi brand repairers with respect to the status of the availability of spare parts and diagnostic tools for each OEM (See Table 6 and 7). Therefore, it is found that the conduct of these OEMs amounts to violation of Section 4(2)(e) of the Act in the same manner as the OEMs which disallow the sale of spare parts over the counter to independent repairers.

20.5.104 The Commission, pursuant to an order dated May 28, 2013, inter alia, asked the OEMs to submit details regarding what percentage of then customers seek the services of their authorized dealers post warranty. The submissions of the OEMs have been summarized in the table below:

Table 10:

Name of OEMs	No. of consumers using authorized dealers	Source
Nissan	No data provided	N/A
MSIL	2010-11: 27%; 2011-12: 29%; 2012-13: 33%	MSIL Internal records
Hindustan Motors	Ambassador vehicles: 27% Pajero vehicles: 95%	No source provided
Ford	50% (approx)	Affidavit of Mr.DushyanthJayakumar, authorized representative of Ford
Honda	64% (without Brio, as all Brio cars are within warranty)	No source provided
BMW	78%	No source is provided
M&M	2007-08: 33%; 2008-09: 40%; 2009-10: 52%	No source is provided, however, the OEM claims that such data is highly confidential.
Skoda	Segment 1(0-4 years from the date of sale): 68% Segment 2 (5-7 years from the date of sale): 34% Segment 3 (8 and above years from the date of sale): 14%	No source provided. However, the submissions have been certified to be true by an affidavit of the company secretary of Skoda
Mercedes Benz	Cars in the 4th year of operation: 89% Cars in the 5th year of operation: 81%	No source is provided. The submissions have been signed by the General Manger (legal affairs and company secretary) and the
		Deputy General Mangers (Legal Affairs) of Mercedes Benz.
General Motors	Cars in 3rd-4th year: 78% Cars in 4th -5th year: 62%	No source is provided
Toyota	Cars in 4th -7th years: 71%	Toyota internal records
Volkswagen	Volkswagen brand cars: 92% Audi brand cars: approx 80-85%	No source has been provided. Submissions have been supported by an affidavit of Sri BalKrishanSabharwal, Chief General Manger and head of accounting, taxation and legal.
Fiat	42%	No source has been provided
Tata	41% (Tata has submitted that 59% of its customers use independent service stations/workshops in the post warranty period)	No source provided. Submission has been extracted from the affidavit of Mr.Ankur Sinha.
Mercedes	4th year of operation: 89% 5th year of operation: 81%	No source has been provided. Submission has been signed by Mr. R.B. Pande, General Mnager, Legal Affairs and Company Secretary and Mr. R.A. Jagtap, Dy. General Manger, Legal Affairs.

20.5.105 OEMs, based upon the abovementioned data, have argued that such data is indicative of the fact that owners of various models of OEMs' cars do not return to the

OEM's dealership network in the post warranty period and this is indicative of the fact that substitutes for servicing and repair of various models of OEMs' cars are available and being undertaken in the aftermarket. However, the Commission is unable to accept such a contention of the OEMs for the following reasons.

(a) As evident from Table 10, most of the OEMs have not provided any source for the data regarding the percentage of their customers who use the OEM's authorized dealer network in the post warranty period. In the absence of disclosure of any source, such data cannot be scrutinized or relied upon by the Commission.

(b) The submissions of the OEMs, as set out in table 10 are contrary to the findings of the DG and, in certain cases, the express provisions of the OEM's authorized dealer agreements. For example, OEMs like, Fiat, Skoda, Nissan and M & M, expressly restrict the ability of their authorized dealers to sell spare parts over the counter, besides restricting the access to diagnostic tools to the OEMs authorized dealers. They further have polices for absolutely cancelling their warranty obligations if any of their cars are repaired by an independent repairer in the post warranty period. However, based upon the submissions of the OEMs, approximately 42% of Fiat's customers, 68% of Skoda's customers and 52% of M & M customers use the services of their authorized dealers in the initial post warranty period. The DG during the course of its investigation has concluded that other OEMs like Ford, Honda, Maruti, Volkswagen, Hindustan Motors, Toyota and Tata Motors have policies of absolutely invalidating their warranty obligations if any part of their cars is repaired by an independent repairer in the post warranty period. Inspite of such provisions, the data submitted by the OEMs indicate that 50% of Ford's customers, 64% of Honda's customers and 41% of Tata's customers use the services of the OEM's authorized dealer services in the post warranty period. It is interesting to note that as per the data submitted by the OEMs, prudent consumers, being aware that using the services of an independent repairer would cancel the warranty obligations of the OEMs on all defects arising out of their brand of cars would still prefer to use the services of an independent repairer. In the opinion of the Commission, in the absence of sufficient justifications from the OEMs regarding the source and basis of calculation of such post warranty retention figures, the Commission is unable to reconcile such data with the express provision of the OEMs, dealer agreements, their business practices, the submissions of the independent repairers and multi brand repairers and other findings of the DG.

(c) During the course of investigation, the DG has discovered that many multi brand service provider have stated that in the absence of the availability of the spare parts of the OEM they have to either refuse the customers or get the spare parts from the authorized dealers of the OEM after opening a job card without actually getting the car service, in order to retain the customer. The submissions of such service providers have been set out in Table 4 above. The submissions of the OEMs and those of the multi-brand service providers appear to be contradictory. If the aforesaid data submitted by the OEMs is correct, and an increasing number of car owners are using the services of independent service providers in the post warranty period, then there would have been no reason for the multi-brand service providers to allege their inability to service their customers in the post warranty period.

20.5.106 In view of the aforesaid, the Commission finds the OEMs (OPs) to be

indulging in anti-competitive practices resulting in contravention of section 4(2)(a)(i), 4(2)(a)(ii), 4(2)(c) and 4(2)(e) of the Act.

20.6 Determination of Issue No. 3

20.6.1 The OEMs source spare parts for their assembly line and aftermarket requirements from overseas suppliers and other local OESs, pursuant to agreements with such overseas suppliers and the OESs. The OEMs distribute the spare parts to the aftermarket and provide for aftersale repairs and maintenance of their various models of cars through a network of authorized dealers. The authorized dealers and the OEMs enter into dealership agreements to regulate the terms and conditions pursuant to which the authorized dealers sell spare parts and provide maintenance services in the aftermarket. Therefore, OEMs enter into three types of agreements: (a) agreements with overseas suppliers; (b) agreements with OES and local equipment suppliers and (c) agreements with authorized dealers. During the course of its investigation, the DG has analyzed the agreements and arrangements of the OEMs with the OESs, overseas suppliers and the authorized dealers to determine if such agreements are in the nature of agreements prohibited under section 3(4) of the Act.

20.6.2 At the outset the Commission would like to dispose one of the submissions of the OEMs with respect to the use of the words use of the word "between" in section 3(3) and "amongst" in section 3(4) of the Act. Some of the OEMs, like Ford, have submitted before the Commission, that the legislature has intentionally used two different words to describe the relationship between the enterprises in section 3(3) and in section 3(4) of the Act. It has been pointed out that section 3(3) used the word "between" whereas section 3(4) uses the word "amongst". Thus, it has been submitted that an agreement relatable to section 3(4) of the Act, cannot be a bilateral one and has to be an agreement between three (3) or more persons, i.e., it has to be multilateral (in contradistinction to a bilateral agreement). It was further submitted that the provisions of the Act will apply to vertical agreements, i.e., agreement between the OEMs and the OESs or the OEMs and their authorized dealers, only when three (3) of more parties are present to an agreement. If the argument put forth by the OEMs is accepted, it will lead to illogical conclusion. To hold that the provisions of section 3(4) shall apply to a vertical agreement only when more than two parties are involved, an absurd result would emerge where all vertical agreements amongst enterprises or persons at different stages or levels of the production chain, which causes an AAEC, under the provisions of section 19(3) of the Act, shall be exempt from its provisions because such agreements are bilateral in nature. Such an interpretation shall encourage enterprises to enter into anti-competitive vertical agreements by structuring such agreements as bilateral agreements. Further, this interpretation also would render meaningless the first sentence of section 3 of the Act, which nullifies all agreements (and not any particular class or type of agreement) in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely to cause an AAEC in India. In view of the foregoing we conclude that the Legislature did not intend to restrict the application of the provisions of section 3(4) of the Act to only multilateral agreements and hence the contention raised by the OEMs in this regard is liable to be rejected.

Analysis of agreements/arrangements between the OEMs and their overseas suppliers

20.6.3 The DG, during the course of the investigation, has analyzed the importer agreements entered by the OEMs with their overseas suppliers to find restrictions if any, on these suppliers from selling spare parts directly in the Indian aftermarket. The

examination of these agreements has however not revealed any specific clause restricting overseas suppliers from undertaking such supplies. However, as per the DG, based upon the facts gathered during the investigation it has emerged that even these overseas suppliers are not supplying spare parts to any entities other than the OEMs. The DG has further observed that in most of the cases the overseas suppliers are the group companies/associate companies of the OEM or its overseas parent company. Hence, the DG has alleged that it is possible that there is the existence of an internal arrangement/understanding between the OEM and their overseas suppliers restricting the latter from supplying spare parts directly to the Indian aftermarket. Such agreements shall be in the nature of an exclusive distribution arrangement/understanding under section 3(4)(c) of the Act.

20.6.4 The OEMs have denied the existence of any such arrangements between the OEMs and their overseas suppliers. The OEMs have submitted that since most of the overseas suppliers are their group companies or overseas parent companies, even if it is assumed but not admitted that there was an arrangement between the OEMs and their overseas suppliers; the same cannot be considered as an agreement between two enterprises under section 2(h) of the Act under the doctrine of 'single economic entity'. The OEMs have referred to the decision of the Commission in Exclusive Motors v. Lamborghini (Case 52 of 2012); where the Commission has held:

> "To establish a contravention under Section 3, an agreement is required to be proven between two or more enterprises. Agreement between opposite party and its group company 'Volkswagen India' cannot be considered to be an agreement between two enterprises as envisaged under section 2(h) of the Act. Agreements between entities constituting one enterprise cannot be assessed under the Act. This is also in accord with the internationally accepted doctrine of 'single economic entity'. It was averred by the counsel for the informant that as per opposite parties letter dated April 2, 2011, Volkswagen India was 'not a subsidiary of the Automobili Lamborghini S.p.A. but was a separate legal entity owned by Volkswagen Group'. This does not help the informant's case in any manner whatsoever. As long as the opposite party and Volkswagen India are part of the same group, they will be considered as single economic entity for the purposes of the Act. Any internal agreement between them is not considered as an agreement for the purposes of Section 3 of the Act."

20.6.5 Considering the above decision, the Commission is of the opinion that an internal agreement/arrangement between an enterprise and its group/parent company is not within the purview of the mischief of section 3(4) of the Act. Each OEM has a separate arrangement with its foreign suppliers and each of such arrangement need to be analyzed separately in order to ascertain if the doctrine of 'single economic entity' is applicable to such agreements/arrangements. At the same time, the Commission would like to emphasize that the exemption of single economic entity stems from the inseparability of the economic interest of the parties to the agreement. Generally, entities belonging to the same group e.g. holding-subsidiaries are presumed to be part of a 'single economic entity' incapable of entering into an agreement, the presumption is not irrebuttable. It is a question which should be decided on the facts and circumstances of each case. Based upon facts revealed by the DG's investigation in the present case, OEMs like BMW, Fiat, Ford, General Motors, Honda, Maruti, Mercedes-Benz, Volkswagen, Hindustan Motors and Toyota have agreements/arrangements with their respective overseas suppliers which do not contain any specific restrictive clause regarding the rights of the overseas suppliers to supply spare parts into the Indian aftermarket. OEMs like Skoda has entered into overseas supplier agreements which

contain specific clauses, restricting the ability of their respective suppliers from supplying spare parts into the Indian aftermarket. OEMs like Mahindra and Mahindra, Nissan, Tata and Premier do not import spare parts from overseas suppliers. All the aforesaid OEMs, except Maruti, and Hindustan Motors have arrangements with their overseas suppliers, which are part of the same corporate group or where such overseas supplier is the overseas parent company of the OEM. Therefore, such arrangements need not be scrutinized under section 3 of the Act in view of the 'single economic entity' justification claimed by them.

20.6.6 At the same time, OEMs like Maruti and Hindustan Motors, who import spare parts from overseas suppliers which are not part of the same corporate group cannot claim the protection of the aforesaid doctrine of a 'single economic entity' and such agreements/arrangements are not beyond the purview of scrutiny under section 3 of the Act. However, the Commission is of the opinion that there is not sufficient direct or circumstantial proof to establish the existence of an arrangement between the OEMs Maruti, and Hindustan Motors and their foreign suppliers. The U.S. Supreme Court, in Monsanto Co. v. Spray-Rite Service Corp. (104 S. Ct. 1464) has provided guidance regarding what proof is necessary for establishing the existence of a conspiracy in the context of vertical distribution agreement cases. It states that the plaintiff must present "direct or circumstantial evidence that reasonably tends to prove that the manufacturer and others had a conscious commitment to a common scheme designed to achieve an unlawful objective". The Commission is of the opinion that there is no direct or circumstantial evidence to prove the existence that such aforesaid OEMs and its foreign supplier had an understanding or a conscious commitment to ensure that spare parts manufactured by such overseas suppliers would not be supplied to the automobile open market in India. Consequently, the Commission is unable to conclude the existence of agreements between these OEMs and the overseas suppliers, within the meaning of section 3(4)(c) of the Act, because of insufficiency of evidence.

Analysis of agreements/arrangements between the OEMs and the OESs

20.6.7 As discussed earlier, the OEMs procure spare parts for both assembly line and aftermarket requirements from the local OES. Based upon the DG's investigation, the spare parts supplied by the OES can be broadly categorized under following heads:

1) Where the design, drawing, technical specification, technology, know-how, toolings (which are large machines to manufacture the parts), quality parameters etc., are provided by the OEMs. The OES are required to manufacture and supply such spare parts according to the specified parameters.

2) Where the patents, know-how, technology belongs to the OES, however, the parts are manufactured based on the specifications, drawings, designs supplied by the OEM. The tooling/tooling cost may also be borne by the OEM in some of these cases.

3) Where the spare pails developed and sold by the OES are made to their own specifications or designs or designs and specifications which are commonly used in the automobile industry. Such parts are very few for example, batteries, tyres etc.

20.6.8 Based upon the investigation of the DG, it has been observed that OESs supplying spare parts pursuant to agreements/arrangements which fall within category (1) and (2) above; cannot supply spare parts directly into the aftermarket without seeking prior consent of the OEMs. Based upon the submissions of the OEMs and the

OESs it has been gathered that most of the OESs are not selling directly in the aftermarket. The DG's investigation has not revealed any instance where written consent has been granted by OEMs to OESs to supply spare parts directly in the aftermarket. The OEMs have contended that spare parts manufactured by the OESs using IPRs like patents, designs, copyrights, trademarks etc., of the OEMs are proprietary to the OEM and therefore cannot be sold by OES to third parties without prior consent.

20.6.9 The DG, dining the course of its investigation, has analyzed the agreements entered between the OEMs and the OESs. The table below summarizes the nature of the restrictions contained in such agreements with respect to the ability of the OESs to supply spare parts to the Indian automobile aftermarket

Table 11:

Agreements with local OESs		
OESs	**Restrictive clause in OES Agreement/Purchase Orders/LOI**	**Comments**
BMW	No clause in agreement w.r.t to OES's right to access aftermarket	Only one OES, i.e., Lear
Fiat	Restrictions present for protecting IPRs	
Ford	Restrictions present for protecting IPRs	
General Motors	Restrictions present for protecting IPRs	
Honda	Restrictions present for protecting IPRs	Honda has submitted that in case of "Asahi Glass", wherein, such OES has used its own technology and/or IP rights, Honda has permitted the particular OESs to sell directly in the aftermarket.
Mahindra	Restrictions present for protecting IPRs	
Maruti	Restrictions present for protecting IPRs	
Mercedes Benz	Restrictions present for protecting IPRs	Only one OES supplier
Nissan	Restrictions present for protecting IPRs	Nissan has contended that original equipment like tyre, battery etc., can be sold without the consent of Nissan.
Skoda	Restrictions present for protecting IPRs	
Tata Motors	Restrictions present for protecting IPRs	
Volkswagen	Restrictions present for protecting IPRs	
Hindustan Motors	Restrictions present for protecting IPRs	OES agreements for Ambassador branded cars were not provided to the DG for review
Toyota	Restrictions present for protecting IPRs	

Based upon the findings of the DG, as summarized in table 11, the Commission is of the opinion that none of the OESs actually supply genuine spare parts of the various brands of the OEMs directly into the aftermarket. The DG has submitted that the relevant agreements between the OEMs and the OESs are therefore in the nature of 'exclusive distribution agreements' and 'refusal to deal' as contemplated under section 3(4)(c) and 3(4)(d) of the Act respectively. In order to assess the same, we need to determine firstly, whether such agreements/arrangements fall under section 3(4) and secondly, whether they are causing an appreciable adverse effect on competition (AAEC) within

the meaning of section 3(4) read with section 3(1) of the Act. Further, most of the OEMs have relied upon the exemption contained in section 3(5)(i) in order to justify their restrictions on the sale of spare parts by the OESs to third parties without the consent of the OEMs. Whether such an exemption is available to the OEMs is taken up after analyzing the agreements on the touch stone of the decisive criterion enshrined under section 3(4) of the Act i.e. AAEC.

20.6.10 With regard to the first factor, i.e. whether the agreement falls under section 3(4) or not, we need to analyze whether the parties to the agreement were in a vertical relationship. As per the facts, the OEMs were procuring spare parts for both assembly line and aftermarket requirements from the local OESs and irrespective of the category in which their agreement falls i.e. who owned the patents, know-how, technology or who supplied the specifications, their dealing were vertical in nature. Such agreements between the OEMs and the OESs are, having features of exclusive distribution agreement and refusal to deal as per the provisions of section 3(4)(c) and (d) of the Act, respectively. Therefore, the agreements are liable to be scrutinized for its AAEC under section 3(4) read with section 3(1) of the Act.

Assessment of AAEC of agreement between OEMs and OES

20.6.11 In order to analyze the AAEC caused by such agreements between the OEMs and OESs, we have noted the factors provided in section 3(4) of the Act. Section 3(4) provides:

> 19(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.

It should be noted that as per the provisions of section 3(4) of the Act, only agreements which causes or is likely to cause an AAEC on competition in India shall be subject to the prohibition contained in section 3(1) of the Act. Therefore, in order to determine if the agreements entered between the OEMs and the authorized dealers are in the nature of an 'exclusive distribution agreement' or 'refusal to deal' under section 3(4)(c) and 3(4)(d) of the Act, the Commission needs to determine if such agreements cause an AAEC in the market based upon the factors listed in section 3(4) of the Act. It is pertinent to note that clauses (a)-(c) of section 3(4) deals with factors which restrict the competitive process in the markets where the agreements operate (negative factors) while clauses (d)-(f) deals with factors which enhance the efficiency of the distribution process and contribute to consumer welfare (positive factors). An agreement which creates barriers to entry may also induce improvements in promotion or distribution of

goods or vice-versa. Thus, whether an agreement restricts the competitive process is always an analysis of the balance between the positive and the negative factors listed under section 19(a)-(f).

20.6.12 The OEMs have submitted that the regulations imposed upon the OESs are necessary to ensure quality control and protect the goodwill of the brand of the OEM. The OEMs have submitted that in the absence of any quality certification process in India to certify the quality of certain brand of spare parts, the OEMs are themselves required to examine the quality of applicable parts and items in the market and determine whether they are suitable for use in their brand of automobiles. The OEMs have submitted that if OESs are permitted to sell spare parts directly in the aftermarket, the OEMs will be unable to ensure the quality of such spare parts, jeopardizing the safety and health of their customers, besides jeopardizing the goodwill of the OEMs brand of automobiles. The Commission appreciates the concern of the OEMs but is unable to conclude that the OEMs cannot achieve their desired objective without imposing the current restrictions upon their OESs. The contractual relationship between the OEMs and the OESs can be pre-conditioned with the requirement that the OESs will be subjecting the spare parts that they wish to sell directly into the aftermarket to the same standards of safety checks as the OEMs. The OEMs can license their safety check methodology to their OESs for a royalty fee. Further, the OEMs to safeguard their brand image and to protect their consumer goodwill can require that the OESs label the genuine spare parts sold by them directly in the aftermarket with appropriate labels to limit their liability. Further, the OEMs in their contracts with their customers can limit their warranty against the use of faulty or defective spare parts sold by their OESs.

20.6.13 In view of the foregoing, it is evident how selling finished products in the open market does not compromise the intellectual property rights in such products. Consequently, the mere selling of spare parts and diagnostic tools in the aftermarket by the OESs does not violate the intellectual property rights in such spare parts. Additionally, the OEMs can through its contractual agreements with the OESs ensure that its intellectual property rights are not compromised and are protected. The OEMs can contractually require the OESs to produce the finished spare parts (which are meant to be sold in the open market) in compliance with the applicable industry standards and other consumer laws of India ensuring that the safety of consumers purchasing such spare parts is not compromised. Besides, the OEMs could through its agreements with customers incentivize such consumers to avail the authorized dealer network for purchasing spare parts and availing other after sale repair services with extended warranty commitments and other post sales consumer benefits. The ultimate choice should be left with the consumers who may choose either an authorized dealer of the OEM or an independent repairer to purchase spare parts of repair services. The Commission is of the opinion that there is a requirement for the creation of a collaborative space between the independent repairers, multi-brand operators, the OEMs and their OESs so that they can play an effective role in curbing the usage of spurious spare parts and providing the automobile consumers of India with competitive and efficient repair and maintenance options. Therefore, the Commission is of the opinion that the restrictions placed on the OESs adversely affects the competition in the automobile sector and falls within the mischief of section 3(4) read with section 3(1) of the Act. However, since most of the OEMs have relied upon the exemption contained in section 3(5)(i) in order to justify their restrictions on the sale of spare parts by the OESs to third parties without the consent of the OEMs, we have to analyze the strength of their contention before reaching a conclusion on contravention under section 3(4) read with section 3(1). It may be noted that if the OEMs are able to prove that their agreements with OESs are protected by the exception enshrined under section 3(5)(i) of

the Act, the defense will prevail to protect their agreements which may otherwise be having AAEC.

Availability of the IPR exemption under Section 3(5)(i) of the Act

20.6.14 Section 3(5)(i) provides:

> (5) Nothing contained in this section shall restrict-
>
> > (i) the right of any person to restrain any infringement of, or to impose reasonable conditions, as may be necessary for protecting any of his rights which have been or may be conferred upon him under-
> >
> > (a) the Copyright Act, 1957 (14 of 1957);
> >
> > (b) the Patents Act, 1970 (39 of 1970);
> >
> > (c) the Trade and Merchandise Marks Act, 1958 (43 of 1958) or the Trade Marks Act, 1999 (47 of 1999);
> >
> > (d) the Geographical Indications of Goods (Registration and Protection) Act, 1999 (48 of 1999);
> >
> > (e) the Designs Act, 2000 (16 of 2000);
> >
> > (f) the Semi-conductor Integrated Circuits Layout-Designs Act, 2000 (37 of 2000).

20.6.15 Several OEMs have relied upon the aforesaid exemptions and stated that on account of these provisions, the restrictions of sales on OESs, of their proprietary parts to third parties without prior consent would fall within ambit of reasonable condition to prevent infringements of their IPRs. It has been contended that significant investments are made into research and development facilities by them based on which these products are manufactured. In this connection, certain European Commission decisions have also been relied upon by the OEMs.

20.6.16 In determining whether the agreements entered between the OEMs and the OESs would fall within the ambit of the provisions of section 3(5)(i) of the Act; it is necessary to consider, inter alia, the following:

> a) whether the right which is put forward is correctly characterized as protecting an intellectual property; and
>
> b) whether the requirements of the law granting the IPRs are in fact being satisfied.

The DG during the course of the investigation has provided an opportunity to the OEMs to confirm the status of the IPRs held by them in India along with the necessary details justifying the claim of exemption pursuant to section 3(5)(i) of the Act. The Commission has noted that none of the OEMs have submitted the relevant documentary evidence to successfully establish the grant of the applicable IPRs, in India, with respect to the various spare parts pursuant to which such OEMs have claimed the exemption under section 3(5)(i) of the Act. The Commission is of the opinion under section 3(5)(i) allows an IPR holder to impose reasonable restrictions to protect his rights 'which have been or may be conferred upon him under' the specified IPR statutes mentioned therein.

The statute is clear in its requirement that an IPR must have been conferred (or may be conferred) upon the IPR holder prior to the exception under section 3(5)(i) being available. Therefore, before the OEMs are permitted to seek the exemption under section 3(5)(i) they must establish that their IPRs have been granted protection (or that the OEMs have initiated the process of being granted protection) under the specified IPR statutes in India. The Commission, after reviewing the submissions of the findings of the DG and the submissions of the OEMs is not satisfied regarding both the characterization of certain rights, claimed by the OEMs, as IPRs as well as regarding the fact that the OEMs could not provide sufficient evidence to establish their claim over a particular type of IPR. Even in those cases where the OEMs have registered/applied for registration of certain designs, patents, however, the details of specific spare parts to which these correspond, have not been furnished. Hence, it has not been possible to relate these claimed rights under the applicable IPR laws to individual spare parts that are protected. In our view in the absence of the OEMs ability to first establish their claim of IPRs in the spare parts and the diagnostic tools they cannot avail of the exemption provided in section 3(5)(i) of the Act.

20.6.17 The OEMs have submitted that some of the IPRs claimed by the OEMs are validly held by their overseas parent corporation and such proprietary technology has been transferred to the OEMs through technology transfer agreements ("TTA"). The Commission notes that a particular IPR claimed by the OEMs are territorial in nature and the particular right is vested upon the holder of such IPR only in a given jurisdiction. Thus, even if the parent corporation of the OEMs held such rights in the territories where such rights were originally granted, the same cannot be granted upon the OEMs operating in India by entering into a TTA, unless such rights have been granted upon the OEMs pursuant to the provisions of the statutes specified under section 3(5)(i) of the Act. Thus, the OEMs pursuant to a TTA were holding a right to exploit a particular IPR held by its parent corporation and not the IPR right itself. Consequently, such OEMs could not avail of the exemption provided in section 3(5)(i) of the Act. It is pertinent to add here, that the Commission is not the competent authority to decide, for example if a patent/trademark that is validly registered under the applicable laws of another country fulfills the legal and technical requirement or is capable of being registered under the Indian IPR statutes, specified under section 3(5) of the Competition Act. Such a mandate would lies with the IPR enforcement agencies of India. For the Commission to appreciate a party's validly foreign registered IPR, in the context of section 3(5) of the Act, satisfactory documentary evidence needs to be adduced to establish that, the appropriate Indian agency administering the IPR statutes, mentioned under section 3(5)(i) have: (a) validly recognized such foreign registered IPRs under the applicable Indian statues, especially where such IPR statutes prescribe a registration process, or (b) where such process has been commended under the provisions of the applicable Indian IPR statutes and the grant/recognition from the Indian IPR agency is imminent.

20.6.18 The OEMs have further submitted that they have a valid claim of copyright protection over its engineering drawings for the various spare parts and the technical manuals as 'literary works' under the Copyright Act. Since any work which is the subject matter of copyright need not be registered to get protection, the OEMs have claimed that the non-registration of the designs and technical drawings of their spare parts and diagnostic tools under section 2(o) of the Copyright Act, does not deprive them of the full copyright protection under the Copyright Act. Consequently, the OEMs have submitted that they are entitled to avail the exemption under section 3(5)(i) of the Act.

20.6.19 However, the DG after a thorough study of several judgments relating to the Indian copyright law has concluded that the copyright protection claimed by several of

the OEMs over the designs, drawings and specifications of their respective spare parts are not available to the OEMs. The DG has come to this conclusion based upon the fact that though there are no requirements to register the copyright over a design of a spare part under the Copyright Act, the right has been limited by the Copyright Act, which mandates that the copyright over the designs registered under the [Indian] Design Act, 1911 or such designs which are capable of being registered under the Designs Act, but not registered, shall cease to exists once the concerned design has been applied more than 50 times by industrial process by the owner of the copyright or his licensee. Given this background the DG has concluded that copyright does not subsist in the designs and drawings of all the spare parts, as claimed by the OEMs.

20.6.20 The Commission has noted the submissions of the OEMs regarding the applicability of the provisions of section 15 of the Copyright Act to the copyright over the designs of the spare parts and the diagnostic tools. The OEMs have submitted that the drawings and/or the tools/moulds for the various spare parts that are supplied to the OESs are protected under the Copyright Act by virtue of the provisions of the International Copyright Order, 1999 implementing the provisions of the Berne Convention, read with section 33 of the Copyright Act, the copyright over the said drawings would ipso facto extend to the territory of India. The OEMs have further submitted that the Commission does not have jurisdiction to determine whether the protection under the Copyright Act, 1957 can subsist in relation to the spare parts pursuant to the provisions of section 15(2) of the Copyright Act.

20.6.21 The Commission is of the opinion that it does not need to determine the applicability of the provisions of section 15 of the Copyright Act to the designs of the spare parts and diagnostic tools required to repair the various models of automobiles manufactured by the OEMs in order to determine the applicability of the exception of section 3(5)(i) of the Act to the agreements entered between the OEMs and the OESs. The Commission notes that the exemption under section 3(5)(i) allows an IPR holder to "impose reasonable conditions, as may be necessary for protection any of his rights". In view of the Commission, the concept of protection of an IPR is qualified by the word "necessary". So the question that one should ask is: can the IPR holder be able to protect his IPR, even if such restriction was not present. For example, what the OESs will sell to the open market are spare parts which are finished products (e.g. bumpers, bonnet/hoods, car gears, fog lights etc). All such products are finished products and selling them in the open market does not necessarily compromise the IPR such products. For example, selling a Xerox photocopier machine will not compromise the patent held by Xerox on the "image loop" that captures the photocopies page and reproduces it. The intellectual property required by the OESs to manufacture a spare part (e.g. car gear) will be protected contractually pursuant to the agreement between the OEMs and the OESs. Merely selling of the spare parts, which are manufactured end products, does not necessarily compromise upon the IPRs held by the OEMs in such products. Therefore to answer the question posed above, in our opinion, the OEMs could contractually protect their IPRs as against the OESs and still allow such OESs to sell the finished products in the open market.

20.6.22 The DG's investigation has further revealed that apart from spare parts even diagnostic tools, manuals and catalogues form a part of the secondary spare parts market. The OEMs have claimed that such diagnostic tools, manuals and catalogues are proprietary information and hence available only to the authorized vendors of the OEMs. However, as in the case of spare parts, selling a diagnostic tool in the open market does not compromise the IPRs of the OEMs in such diagnostic tools and equipment. For example a medical imaging machine (e.g. a CT scan machine) helps medical

practitioners to better diagnose diseases. Does selling of a CT Scan machine to a hospital results in compromising the intellectual property right of the maker of the CT Scan machine? If that was the case then all CT Scan manufacturers would have to open up diagnostic centres were only their trained personnel would be able to medically treat people. Merely selling an automobile diagnostic machine in the open market does not compromise the intellectual property that an OEM may hold in such machines. Therefore, the Commission is of the view that the restrictions imposed upon the OESs form selling spare parts directly into the aftermarket are not within the purview of the exemption of section 3(5)(i) of the Act. The Commission finds the argument of the OEMs of putting the restrictions on OESs for sale of their proprietary parts to third parties as reasonable conditions for claiming the exemption under section 3(5)(i) of the Act unacceptable devoid of any merit.

20.6.23 Therefore, since the exception under section 3(5)(i) of the Act is not applicable to the agreements between OEMs and OESs, the contravention found by the Commission under section 3(4)(c) & (d) read with section 3(1) of the Act stands established.

Analysis of agreements/arrangements between the OEMs and the authorized dealers

20.6.24 The DG has during the course of its investigation, examined the conduct of the OEMs with respect to the dealing with the authorized dealers and the terms and conditions of agreements with them for sale of automobiles in the primary market and the sale of spare parts and providing of maintenance services in the secondary market. Form the perusal of the agreements, the DG has reported the following observations:

a. In case of agreements entered by few OEMs with their dealers there are specific clauses restricting/prohibiting sale of spare parts over the counter. The DG has found such agreements to be in the nature of exclusive distribution agreements and refusal to deal in terms of Section 3(4)(c) and 3(4)(d) of the Act. Such OEMs include, Fiat, Skoda, Nissan and Mahindra.

b. In several cases though there are no specific clauses in the agreements entered by the OEMs restricting over the counter sales, however, the DG, based upon the enquiries carried out and submissions of stakeholders, have concluded that the spare parts are not generally available over the counter and at best are being sold selectively. The DG, therefore, alleged, alleged, that there exists an arrangement or understanding between the OEM and the authorized dealers regarding non sale of spare parts over the counter to individual customer/independent repairers thereby amounting to exclusive distribution and refusal to deal agreement in terms of Section 3(4)(c) and 3(4)(d) of the Act.

c. There are clauses in agreements entered by most of the OEMs with the Authorized dealers requiring them to source spare parts only from them or their approved vendors. These agreements are found to be in nature of exclusive supply agreements in terms of Section 3(4)(b) of the Act.

d. Further the dealer agreements entered by all the OEMs with then dealers contain restrictions on dealing in competing brands of cars without seeking their consent in writing. During the investigation, most of the OEMs have not confirmed any instance where such permission in writing has been granted to any of their dealers. Several OEMs have contended that some of then dealers have dealership of other brands and some of them have also furnished details in this regard. It is however, observed that in most of the cases, very few dealers are dealing in other brands of cars. It has therefore emerged that as a

general practice in the industry not many dealers are dealing in competing brands and taking up of dealership in competing brands is discouraged, permission is never sought nor given. Investigation has also come across few instances where it has been stated by the discontinued dealers that their dealership was terminated on account of their taking/proposal to take dealerships of other brands of cars.

20.6.25 The findings of the DG have been summarized in the table below.

Table 12

Agreement between OEMs and their authorized dealers				
OEMs	Counter sale of Spare Parts	Availability of Diagnostic Tools	Warranty Conditions	Ability of Dealers to deal with competing brands
BMW	Not Permitted (as per DG's interpretation of clauses of dealer agreement) OEM contents that such sales are allowed	Can be accessed at company's website	Outside warranty period if cars are repaired by an independent repairer, defects arising not directly out of a defective performance of an independent repairer, is honoured under the warranty obligations	Restricted
Ford	No clause * (DG based upon submissions of multi-brand retailers and independent repairers have contended no such sales occur in practice)	Only available to authorized dealers	Warranty invalidated if repaired by independent repairer	Restricted (However, 61 dealers have undertaken dealership of competing brands)

Honda	No clause *	Only available to authorized dealers	Warranty invalidated if repaired by independent repairer	Restricted (However, some dealers have undertaken dealership of competing brands)
Maruti	No clause* DG allows spare parts of its brand to be sold in the open market	Only available to authorized dealers. However, Maruti has contended that independent repairers can repair about 99.5% of Maruti branded cars without the help of Maruti's diagnostic tools, manuals etc	Warranty invalidated if repaired by independent repairer	No restriction
Tata Motors	No Clause* DG's investigation has revealed that limited sales of spare parts for certain models of Tata cars are occurring over the counter.	Only available to authorized dealers.	Warranty invalidated if repaired by independent repairer	Restricted
Volkswagen	No Clause*	Only available to authorized dealers.	Warranty invalidated if repaired by independent repairer	Restricted (However, certain Volkswagen dealers have been dealing

				in competing brands)
Hindustan Motors	No clause*	Only available to authorized dealers.	Mitsubishi cars-Warranty invalidated if repaired by independent repairer	Restricted (OEM has stated that such actions are discouraged)
Toyota	No Clause*	Only available to authorized dealers.	Warranty invalidated if repaired by independent	Restricted
Fiat	Total restriction	Only available to authorized dealers	Warranty invalidated if repaired by independent repairer	Does not have its own dealership network
Skoda	Total Restriction	Only available to authorized dealers.	Warranty invalidated if repaired by independent repairer	Restricted (However, certain Honda dealers have been dealing i n competing brands)
Nissan	Total restriction	Only available to authorized dealers.	Warranty invalidated if repaired by independent repairer	Restricted (However, certain Nissan dealers have been dealing in competing brands)
Mahindra	Total Restriction However, the DG has discovered that spare parts of certain models of Mahindra cars are available in the open market	Only available to authorized dealers	Warranty invalidated if repaired by independent repairer	Restricted (However, some dealers have undertaken dealership of competing brands)
General	Counter	Only	Warranty	Restricted

Motors	sales allowed only to actual GMI customers	available to authorized dealers	invalidated if repaired by independent repairer	(However, several dealers have undertaken dealership of competing
Mercedes-Benz	Specific clause which allow dealers to sell spare parts to independent repairers	Only available to authorized dealers.	Warranty invalidated if repaired by independent repairer	brands) Restricted

Assessment of AAEC of agreements between OEMs & Authorized Dealers

20.6.26 As already explained while assessing the AAEC of agreements between OEMs and OESs, in order to analyze the AAEC caused by agreements between the OEMs and the authorized dealers also, we have noted the factors provided in section 3(4) of the Act.

20.6.27 The rationale given by the OEMs for such restrictions, such as, (i) the independent operators may not possess the skills required to replace the parts and undertake repairs thereby causing health hazards, (ii) widespread availability of counterfeit parts; (iii) parallel resale network if established would conflict with the distribution network etc. The OEMs have submitted that the rationale behind their policies in restricting access to spare parts and diagnostic tools to independent repairers is to protect the automobile owners from the counterfeit and spurious spare parts market. The policy is to ensure that the automobile owner does not end up purchasing spurious/counterfeit spare parts in the mistaken assumption that he is purchasing a genuine spare part. It has been further submitted that the reasons provided by the OEMs to restrict availability of the spare parts and diagnostic tools are due to the fact that technologically advanced vehicles require specialized skills, infrastructure, regular training which is available only at the authorized dealers, and the OEMs have submitted that even if genuine spare parts are purchased by customers over the counter, but they are fitted in the vehicle by an untrained or unskilled person, the fitment of the part may not be done properly and the car may develop even more serious safety defects. The OEMs have submitted that it would be practically impossible for the OEM to ensure that once the customer buys the genuine parts "over-the-counter", it would be fitted correctly using the approved procedures in the open aftermarket that comprises of thousands of unskilled and untrained mechanics. This is more relevant in respect of safety critical parts e.g. engines, brakes, etc. It is also practically impossible for the OEMs to try and cover these thousands and lakhs of roadside mechanics and garages in their training and skilling activities.

20.6.28 However, the Commission is of the view that access to spare parts and diagnostic tools cannot be restricted due to greater public good. The presence of spurious parts/health hazards should not be used as an argument to deny consumer choice. Every car owner (consumer) should have a choice to make a rational decision after taking into account the costs and benefits into account. A Mercedes owner may be less concerned with money he is spending in repairs and more averse to risk of

spurious parts as compared to an owner of Maruti/Honda Brio. The choice of 'whether to go to an Independent Repairer or Authorised Dealer' should not be taken away in the guise of consumer protectionism. Further, the Commission is of the view that it would be wrong to presume that the entire set of aftermarket repairers is a monolithic group of service providers. As evident from the table below the total number of after sale service providers may be divided into various categories, including, OEM authorized dealerships, multi-brand retailers and standalone neighborhood garages.

Type of Service Centre	Number of workshops
OEM authorized	19000
Multi Brand Dealers	950
Semi – Organized Service Stations	60000
Neighbourhood Garages / Un-organized service providers.	300000

Source: The Indian Automotive Aftermarkets study, 2011

As per the DG Report, the Indian automobile aftermarket is serviced by several multi-brand retailers, who have the same scale of operations, in terms of finances, infrastructure and workforce, as many of the OEM authorized dealer workshop. These include Bosch Car Service, Carnation Auto India (Pvt) Ltd., Vahan Motors (Pvt) Ltd. and TVS Automobile Solutions (Pvt) Ltd. Therefore, the argument submitted by several OEMs that even if spare parts are available over the counter, the cars could develop fitment defects when serviced by unskilled independent repairers cannot be accepted entirely. For example, a Mercedes car owner may not avail the services of a local garage owner, due to lack of technologically advanced diagnostic tools required to service a Mercedes brand car, however, the Mercedes car owner may be inclined to get his Mercedes car repaired from the repair shop a multi-brand repairer, since he may perceive that such repair shops are providing comparable repair jobs to that of the Mercedes authorized workshops. Alternatively, a Honda Brio owner may avail the services of the local garage repair shop, because, in the estimation of a Honda car owner, the local garage technician has enough skill and training to service/repair his Honda branded car. At the present state of affairs neither the garage owner nor the multi-brand repairer has effective access to spare parts or diagnostic tools. Therefore, both the owner of a Mercedes car as well as the owner of a Honda Brio car is forced to avail the services of the authorized dealers.

20.6.29 Based upon submissions made by the OEMs in reply to the queries raised by the Commission in its order dated May 28, 2013, the Commission is of the opinion that since substantial segments of car owners shifts to unauthorized network for their repair and maintenance needs once their warranty expires, absence of genuine spare parts, tools leads to rise in usage of spurious spare parts thus jeopardizing the safety of car owner and leading to high emissions. Therefore, the fact that the OEMs restrict the access of spare parts and diagnostic tools in the Indian automobile aftermarket, coupled with the fact that all OEMs substantially mark up the price of their spare parts, is responsible for the shift of car customers to spurious parts. During the course of the investigation, several multi-brand service providers have submitted that one of the primary reasons for substantial segments of car owners to shift to unauthorized network for the repair and maintenance of their cars in the post-warranty period, is the absence of genuine spare parts and diagnostic tools leading to the rise in usage of spurious spare parts, thus, jeopardizing the safety of car owner and leading to high emissions. Further, SIAM has submitted to the DG that there is a serious problem of spurious parts

in the Indian automobile aftermarket with approximately 35 % of the spare part in the aftermarket being counterfeit. The Commission is of the opinion that a large number of the customers of each of the OEMs avail the services of independent repairers, due to high mark up of the genuine spare parts and the requirement to avail repair services from the authorized dealers of the OEMs. The OEMs: (a) by restricting access to genuine spare parts and diagnostic tools leads to the rise in the usage of spurious spare parts and (b) by denying the independent repairers access to repair manuals force them to work on inefficiently, jeopardizing consumer safety. Further, the Commission is of the opinion that the clauses in agreements requiring authorized dealers to source spare parts only from OEMs or their approved vendors is anti-competitive in nature. Based on the foregoing, there is no doubt that by restricting access of independent repairers to spare parts and diagnostic tools and by denying the independent repairers access to repair manuals, the agreements entered into between OEMs and authorized dealers have fallen foul of the provisions of section 3(4)(b), 3(4)(c) & (d) read with section 3(1) of the Act.

20.6.30 Besides, it may be noted that the DG has also found contravention of the provisions of the section 3(4)(b), 3(4)(c) and 3(4)(d) of the Act, with respect to agreements entered into between OEMs and their authorized dealers, restricting the ability of such dealers to deal in competing products. The Commission, however, is of the opinion that the root of the anti-competitive conduct complained of and as investigated by the DG, in the present case mostly emanates from and is localized in the aftermarket for automobile spare parts and repair services, respectively. The Commission has not considered any issues relating to the primary market for sale of cars in the present case. Since the issue of 'single-branding', or the restrictions as imposed by the OEMs, restricting the ability of their respective authorized dealers to deal in competing products, is an issue related to the primary market for automobiles, the same is not being examined by the Commission in the present order.

20.6.31 Before parting with the assessment of AAEC of various agreements entered into by the OEMs with their OESs and authorized dealers, the Commission would like to emphasize that the efficiencies of the selective distribution system claimed by the OEMs need to be analyzed in perspective of the ability of the restrictive clauses to create foreclosure effects and barriers to entry in the market. Article 101(3) (analogous to section 3(4) of the Act) provides that an agreement, containing restrictive clauses which 'contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit', will cause AAEC if such restrictive clauses 'afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.' Therefore, the agreement as a whole must not lead to the elimination of competition. The criterion of attempting to balance the efficiency gains and the foreclosure effects of vertical agreements is to reflect the view that short term efficiency gains must not be outweighed by longer-term losses stemming from the elimination of competition.

20.6.32 Guidelines on the application of Article 81(3) of the EC treaty (2004/C 101/08) (where Article 81(3) (currently Article Art 101(3) of the TFEU) is analogous to section 3(4) of the Act) provide that:

> "[u]ltimately the protection of rivalry and the competitive process is given priority over potentially pro-competitive efficiency gains which could result from restrictive agreements. The last condition of Article 81(3) recognizes the fact that rivalry between undertakings is an essential driver of economic

> efficiency, including dynamic efficiencies in the shape of innovation. In other words, the ultimate aim of Article 81 is to protect the competitive process. When competition is eliminated the competitive process is brought to an end and short-term efficiency gains are outweighed by longer-term losses stemming inter alia from expenditures incurred by the incumbent to maintain its position (rent seeking), misallocation of resources, reduced innovation and higher prices."

This criterion thus requires an analysis of the competitive restraints imposed upon the parties, the degree of competition existing prior to the agreements and the impact of the agreement on competition. It is therefore essential to note the nature of the competitive constraints in while analyzing the AAEC caused by the restrictive clauses of an agreement pursuant to the factors provided in section 3(4) of the Act. In situations where an agreement providing apparent efficiencies allow the enterprise to create structural entry barriers and consequently eliminate the competitive process, the Commission must look beyond the immediate short term efficiency goals of such alleged anti-competitive agreements. It is pertinent to appreciate the long lasting anti-competitive effects, if any, of such agreements in the market in which they operate.

20.6.33 The General Court of the European Union, while considering the exercise that the European Commission is required to undertake in conducting an analysis under Article 101(3) of the Treaty for the Functioning of the European Union (TFEU) [which is pari materia to section 3(4) of the Act] in its judgment in GlaxoSmithKline Services Unlimited v. Commission [(Case T-168/01) [2006] CMLR 1623, at para 244] held the task to be:

> "weighing up the advantages expected from the implementation of the agreement and the disadvantages which the agreement entails for the final consumer owing to its impact on competition, which takes form of a balancing exercise carried out in the light of the general interest appraised at Community level."

Therefore, the task of the Commission while analyzing the appreciable adverse effect on competition caused by any agreement under section 3 of the Act is to balance the anti competitive and pro competitive factors mentioned under section 3(4) of the Act.

20.6.34 As we have noted earlier, that the OEMs are the sole supplier of genuine spare parts and diagnostic tools in the aftermarket. Therefore, for each make of an automobile the OEM is in a monopolistic position with respect to the supply of spare parts and repair and maintenance services. It is pertinent to note that the OEMs also follow a policy where the warranty clauses on their brand of automobiles get absolutely cancelled if the automobile owner approaches an independent repairer or other repairers outside the official distribution network. Therefore, the authorized dealer agreements of the OEMs have to be analyzed from the perspective that the effect of such agreements result in a total deprivation of consumer choice in the aftermarket for spare parts and maintenance services. Such practices further allow the OEMs to adopt a rent-seeking behavior where they substantially mark-up the price of their spare parts from the price at which such spare parts are procured from the OESs and other suppliers. We have discussed these issues while dealing with section 4 of the Act in this order and the same are not being repeated here. Therefore, the Commission is of the opinion that in instances where an agreement, irrespective of the fact that it may contain certain efficiency enhancing provisions, allows an enterprise to completely eliminate competition in the market, and thereby become a dominant enterprise and indulge in

abusive exclusionary behavior, the factors listed in section 3(4)(a)-(c) should be prioritized over the factors listed in section 3(4)(d)-(f).

20.6.35 The ECJ in Nederlandsche Banden-Industrie Michelin (Michelin) v. Commission [(1983) ECR 3461, at para 57] explaining the concept of the prohibition of Article 102 stated that, an undertaking in a dominant position: "has a special responsibility not to allow its conduct to impair genuine undistorted competition on the common market." Therefore, a non-dominant enterprise may enter into a vertical agreement which forecloses the market but enhance certain distribution efficiencies, and in such conditions the Commission on balancing the factors provided in section 3(4), may conclude that such agreement does not cause an AAEC in the market. However, where such agreements are entered into by a dominant entity, and where the restrictive clauses in such agreements are being used to create, maintain and reinforce the exclusionary abusive behavior on part of the dominant entity, then the Commission should give more priority to factors laid down under section 3(4)(a) to (c) than the pro-competitive factors stated under section 3(4)(d) to (f) of the Act, given the special responsibility of such firms not to impair genuine competition in the applicable market.

20.6.36 In United States v. Arnold, Schwinn & Co., 388 U.S. 365, 376 (1967), the U.S. Supreme Court held that:

> "*[a] manufacturer of a product other and equivalent brands of which are readily available in the market may select his customers, and, for this purpose, he may "franchise" certain dealers to whom, alone, he will sell his goods. If the restraint stops at that point--if nothing more is involved than vertical "confinement" of the manufacturer's own sales of the merchandise to selected dealers, and if competitive products are readily available to others, the restriction, on these facts alone, would not violate the Sherman Act.*"
>
> (Emphasis added)

In our view the above passage from the decision of the U.S. Supreme Court is helpful in understanding the AAEC of exclusive distribution agreements in the present case. We have to analyze the exclusive distribution agreements in the context of the fact the consumers do not have access to any competitive products because the exclusive dealers are the only dealers who are selling the specific OEMs' brand of spare parts and diagnostic tools. These spare parts are unique and are not exchangeable with spare parts made by other OEMs. Moreover, as discussed above, all the OEMs have warranty policies that deprive the owners of automobiles of any warranty on their vehicles if such owners use the services of the independent service providers. The composite effect of such policies of the OEMs is that the OEMs are rendered manufacturers of a product/service, other and equivalent brands of which are not readily available in the market. Therefore such restriction is very likely to cause an AAEC.

20.6.37 The OEMs have relied upon the E.U. law to submit that in the context of selective distribution agreements, Article 101(1) (analogous to section 3(4) of the Act) is inapplicable if certain conditions are met. These conditions have been stipulated in paragraph 175 of the E.U. Guidelines on Vertical Restraints (SEC (2010) 411). These include:

a) the characteristics or nature of the product in question necessitate a selective distribution system;

b) the distributors are chosen by reference to objective criteria of a qualitative

nature which are set out uniformly and are not used arbitrarily to discriminate against certain retailers; and

c) the criteria set out do not go beyond what is necessary for the product in question.

The OEMs have submitted that the selective distribution network of their authorized dealers comply with the above mentioned standards/conditions and therefore such agreements should not be considered as causing an AAEC in the automotive aftermarkets in India and section 3(4) should be held inapplicable to such agreements. However, Article 5(a); Recital 16 of the E.U. Motor Vehicle Block Exemption Regulation, 2010, provides for certain 'hardcore restrictions', the presence of such restrictions renders a vertical distribution agreement ineligible for the benefits of the Block Exemptions. These 'hardcore restrictions' include:

a) the restriction of the sales of spare parts for motor vehicles by members of a selective distribution system to independent repairers which use those parts for the repair and maintenance of motor vehicle;

b) the restriction, agreed between a supplier of spare parts, repair tools or diagnostic or other equipment and a manufacturer of motor vehicles, of the supplier's ability to sell those goods to authorized or independent distributors or to authorized or independent repairers or end users.

The Commission has noted that both or atleast one of the above hardcore restriction is present in all the authorized dealer agreements entered by the OEMs (See Table 11). Therefore, contrary to the submissions of the OEMs even if the selective distribution agreements comply with the conditions set forth in the E.U. Guidelines on Vertical Restraints, even in the E.U., such agreements would be ineligible for the Block Exemptions due to the presence of the hardcore restrictions.

20.6.38 Further, the ECJ has held in Metro v. Commission (No. 2) [1986] ECR 3021, that even where vertical selective distribution agreements comply with the conditions set forth in the E.U. Guidelines on Vertical Restraints, they may still infringe Article 101(1) of the TFEU if the market is tied up with a network of similar agreements. Thus, where the competitive process is being eliminated by a network of similar agreements, even if some of such agreements are compatible with the exemptions provided in the Guidelines the same may not be extended to the set of such vertical agreements. In the present case, the OEMs through a network of agreements (overseas supplier agreements, OESs agreements and authorized dealer agreements) ensure that they are the sole supplier of genuine spare parts in the aftermarkets and by restricting the supply of diagnostic tools and imperious warranty conditions ensure that they become the only viable supplier of effective repair and maintenance services in the aftermarket. Therefore, even if the OEMs submit that one or more of such vertical agreements, by themselves, do not cause an AAEC in the automobile aftermarkets in India because of certain efficiency enhancing conditions or that such agreements would be eligible for exemption under mature competition law jurisdictions, the same is not acceptable to the Commission. The Commission is of the opinion that the network of such agreements allows the OEMs to become monopolistic players in the aftermarkets for their model of cars, create entry barriers and foreclose competition from the independent service providers. Such a distribution structure allow the OEMs to seek exploitative prices from their locked-in consumers, enhance revenue margin form the sale of auto component parts as compared to the automobiles themselves besides having potential long term

anti-competitive structural effects on the automobile market in India.

20.6.39 Some of the OEMs have submitted that the DG during the course of preparing its investigation reports(s) has erroneously compared the Indian automobile market with those of developed competition regimes, like E.U. and the USA, and have relied upon the statutory provisions of such regimes to reach the conclusions that the OEMs have violated the provisions of the Competition Act. Therefore, the Commission has specifically looked into the practices of OEMs of developing nations and have found that business practices of OEMs, restricting access to spare parts and technical manuals has been frowned upon by competition authorities of developing nations like Brazil and South Africa.

20.6.40 On 8 October 2012, the French Competition Authority ("FCA") published the results of its sectoral inquiry of the motor vehicle maintenance and repair. The main recommendations were against:

- any contractual restrictions by OEMs discouraging sale of spare parts to independent repairers.
- OEMs denying access to repair tools/technical information to independent repairers.
- warranty clauses that discourages consumers from availing the services of an independent repairer.
- the widespread practice of issuing recommended retail prices for spare parts resulting in convergence of such recommended prices between the independent and the manufacturer channels.

The Commission has noted that both or atleast one of the above restrictions is present in all the authorized dealer agreements entered by the OEMs (See Table 11).

20.6.41 Brazil's Secretariat of Economic Law (SDE), the chief investigative body in matters related to anticompetitive practices in Brazil, opened an investigation of Helibras, the exclusive distributor in Brazil for a certain brand of helicopter, based on complaints that the company refused to make technical manuals and spare parts available to aircraft service companies that wished to enter into maintenance contracts with purchasers of the helicopter. SDE issued a preventive order that required Helibras to provide the necessary manuals and parts. After unsuccessfully seeking a court injunction against SDE's order, Helibras offered to enter into an agreement that entailed the same provisions as the order. Brazil's Council for Economic Defence (CADE), the administrative tribunal, composed of seven Commissioners, which makes the final rulings in connection with anticompetitive practices and merger review, approved the Helibras agreement in 2004. Further, the Gauteng North High Court in South Africa, in July 2012, dismissed with costs an application brought by BMW against Grand mark International, an importer and distributor of spare parts, including bonnets, headlight assemblies, grills and front fenders that were fitted to BMW models. BMW's claim that such imports infringed its design rights on such spare parts was rejected by the High Court, which considered that a spare part such as a bonnet as a completely functional item that had no relevance to the design claimed by BMW.

20.6.42 Therefore, the Commission is of the opinion that both in the mature and the developing competition law regimes of the world, refusal to access branded or alternate spare parts and technical manuals/repair tools, necessary to repair sophisticated

consumer durable products, such as automobiles, is frowned upon, since such practices restricts consumer choice besides foreclosing the market for repairs/maintenance contracts by independent repairers. The fact that the competition law agencies of both mature and developing countries have reached the same conclusions, i.e., requiring the removal of practices that limit the availability of spare parts and repair tools, is illustrative of the fact that irrespective of the size, nature of level of development of the automobile industry of such countries, the practices of the OEMs were found to restrict consumer choice and foreclose the aftermarkets and were held to be anticompetitive in nature. Therefore, after analyzing the comparative case laws of other mature and developing competition law jurisdictions and the facts of the present case, the Commission is of the opinion that:

i. the OEMs like, Skoda, Mahindra, Nissan and Fiat which completely restrict the access to spare parts and diagnostic tools coupled with an absolute cancellation of warranty if cars are repaired by independent repairs, completely foreclose the market for independent repairers, create barriers to entry and deprive consumers of any choice in the aftermarket for spare parts and repairs. Further, the agreements also contained clauses requiring the authorized dealers to source spare parts only from OEMs or their approved vendors. The Commission is in agreement with the findings of the DG that such agreements are in the nature of exclusive supply and distribution agreements and such practices amounted to refusal to deal under the terms of section 3(4)(b), 3(4)(c) and 3(4)(d) of the Act.

ii. The OEMs like, BMW, Ford, Honda, Maruti, Tata Motors, Volkswagen, Hindustan Motors and Toyota, have no clauses in their authorized dealer agreements which prohibit over the counter sales, however, the DG based upon its investigation and the submissions of the independent service providers have concluded that, in practice very limited sales actually take place subject to the discretion of the OEMs and their authorized dealers. Even if such OEMs could contend that they allow the genuine spare parts of their models of automobiles to be available in the open market, the DG has discovered that none of such OEMs allow their diagnostic tools to be available in the open market. Further, all such OEMs have adverse warranty implications if the owners of their brand of automobile use the services of an independent service provider outside the distribution network. The Commission has discussed earlier that spare parts are required by the owners of automobiles for getting their automobiles repaired, and not as a product in itself. Therefore, the availability of spare parts in exclusion of the requisite diagnostic tools, manuals etc., required for using such spare parts and effectively repairing an automobile, have negligible effect on reducing the anti-competitive foreclosure effects on the market for independent service providers. Further, the agreements also contained clauses requiring the authorized dealers to source spare parts only from OEMs or their approved vendors. The Commission is in agreement with the findings of the DG that such agreements are in the nature of exclusive supply and distribution agreements and such practices amounted to refusal to deal under the terms of section 3(4)(b), 3(4)(c) and 3(4)(d) of the Act.

iii. General Motors and Mercedes-Benz are the only two OEMs that to a limited extent allow the sale of their genuine spare parts over the counter to actual owners of General Motor automobiles and to independent repairers, respectively. However, such OEMs do not allow the sale of diagnostic tools and repair manuals to independent repairers and further the warranty on such

automobiles get invalidated if the owners use the services of independent service providers. Further, the agreements also contained clauses requiring the authorized dealers to source spare parts only from OEMs or their approved vendors. Therefore, even in cases of OEMs like General Motors and Mercedes-Benz, which allow over the counter sale of genuine spare parts, in effect foreclose the market for independent repairers and other service providers and even such OEMs are, as mentioned above in violation of section 3(4)(b), 3(4)(c) and 3(4)(d) of the Act.

21. Conclusion

21.1 In view of the aforesaid discussions and for reasons recorded earlier, the Commission is of the considered opinion that the Opposite Parties (OPs) have contravened the provisions of sections 3(4)(b), 3(4)(c), 3(4)(d), 4(2)(a)(i) and (ii), 4(2)(c) and 4(2)(e) of the Act, as applicable. As elucidated in detail in the order, the Commission does not accept the "unified systems market" in this case specifically, and in the Indian market conditions in general. The kind of parameters which have been defined even in other jurisdictions and literature for accepting the systems market approach do not normally exist in the Indian market, including in regard to availability of relevant information (e.g. life-cycle cost) to the consumers, his ability/inability to take a rational/analytical decision based on complex data which may or may not be available, the reputational impact of anti-competitive conduct in the aftermarket on the firm's product in the primary market etc. These factors are aggravated in the Indian market situation due to some globally recognised different characteristics of Indian consumer (including cost-consciousness) and the complex nature of aftermarkets.

21.2 In deciding the remedies in this case, the Commission's primary objective is to correct the distortions in the aftermarket, to provide corrective measures to make the market more competitive, to eradicate practices having foreclosure effects and to put an end to the present anti-competitive conduct of the parties. The aim of the Commission is to provide more freedom to Original Equipment Suppliers (OESs) in sale of spare parts, and more choice to consumers and independent repairers. The Commission considers it necessary to (i) enable the consumers to have access to spare parts and also be free to choose between independent repairers and authorized dealers and (ii) enable the independent repairers participate in the aftermarket and provide services in a competitive manner and to have access to essential inputs such as spare parts and other technical information for this purpose, as part of a more competitive eco-system which is equally fair to the OPs and their authorized network also.

21.3 In view of the foregoing, the Commission, therefore, orders the following under section 27 of the Act:-

i) The parties are hereby directed to immediately cease and desist from indulging in conduct which has been found to be in contravention of the provisions of the Act.

ii) OPs are directed to put in place an effective system to make the spare parts and diagnostic tools easily available through an efficient network.

iii) OPs are directed to allow OESs to sell spare parts in the open market without any restriction, including on prices. OESs will be allowed to sell the spare parts under their own brand name, if they so wish. Where the OPs hold intellectual property rights on some parts, they may charge royalty/fees through contracts carefully drafted to ensure that they are not in violation of the

Competition Act, 2002.

iv) OPs will place no restrictions or impediments on the operation of independent repairers/garages.

v) The OPs may develop and operate appropriate systems for training of independent repairer/garages, and also facilitate easy availability of diagnostic tools. Appropriate arrangements may also be considered for providing technical support and training certificates on payment basis.

vi) The OPs may also work for standardization of an increasing number of parts in such a manner that they can be used across different brands, like tyres, batteries etc. at present, which would result in reduction of prices and also give more choice to consumers as well as repairers/service providers.

vii) OPs are directed not to impose a blanket condition that warranties would be cancelled if the consumer avails of services of any independent repairer. While necessary safeguards may be put in place from safety and liability point of view, OPs may cancel the warranty only to the extent that damage has been caused because of faulty repair work outside their authorized network and circumstances clearly justify such action.

viii) OPs are directed to make available in public domain, and also host on their websites, information regarding the spare parts, their MRPs, arrangements for availability over the counter, and details of matching quality alternatives, maintenance costs, provisions regarding warranty including those mentioned above, and any such other information which may be relevant for full exercise of consumer choice and facilitate fair competition in the market.

21.4 As regards imposition of penalty, the Commission notes that the OPs have violated the provisions of both sections 3 & 4 of the Act. It is further noted that cars are an intrinsic part of life and living in today's world, and the owners have to take care of their maintenance over a long period of time with significant financial implication. As such, anti-competitive conduct of the opposite parties impacts a very large number of consumers in the country estimated to be around 2 crore. Further, as noted in earlier paragraphs, the anti-competitive conduct of the opposite parties has restricted the expansion of spare parts and independent repairers segment of the economy to its full potential, at the cost of the consumers, service providers and dealers. It is also noted that despite the fact that most attractive markets for the automobile manufacturers and some OPs have made consumer-friendly commitments in other jurisdictions like Europe, they have failed to adopt similar practices in India which would have gone a long way in significantly diluting their present anti-competitive conduct. This makes their conduct even more deplorable.

21.5 On the other hand, there are mitigating circumstances while fixing the quantum of penalty. The OPs have argued that the absence of appropriate legislative and regulatory framework for safety and standards relating to spare parts and after sales services is a handicap vis-Ã -vis the position prevailing in many other jurisdictions like EU, France, USA and even developing nations like Brazil, China and South Africa. This is something which may be separately brought to the notice of the government for appropriate action, which could include suitable legislation and setting up of an appropriate regulator as stated earlier in this order. The other mitigating circumstance to which the Commission assigns weight is the fact that many of the opposite parties, though not all, indicated willingness to voluntarily discontinue many of these practices and offer greater choice

and freedom to the consumers, repairers and dealers

21.6 In view of the foregoing, the Commission imposes a penalty of 2% of total turnover in India of the opposite parties. As such, the penalty imposed on different parties is as follows:-

S.No	Name	Turnover for 2007-08 (in Crores)	Turnover for 2008-09 (in Crores)	Turnover 2009-10 (in Crores)	Turnover 2010-11 (in Crores)	Turnover 2011-2012 (in Crores)	Total Turnover for three years (in Crores)	Average Turnover for three years (in Crores)	@2% of average Turnover (in Crores)
1.	Honda Siel	4039.72	3526.08	4204.43	--	--	11770.23	3923.41	78.47
2.	Volkswagen India Pvt Ltd*	26.01	95.77	366.16	--	--	487.94	162.65	3.25
3.	Fiat India Automobiles Ltd	369.96	792.02	3334.66	--	--	4496.64	1498.88	29.98
4.	BMW India Ltd	826.93	964.07	1270.12	--	--	3061.12	1020.37	20.41
5.	Ford India Pvt ltd	2068.89	1754.32	2144.38	--	--	5967.59	1989.20	39.78
6.	General Motors**	--	--	--	403133	442657	8457.90	4228.95	84.58
7.	Hindustan Motors	781.08	656.18	639.73	--	--	2076.99	692.33	13.85
8.	Mahindra & Mahindra	11671.64	13364.02	18801.46	-	--	43837.12	14612.37	292.25
9.	Maruti Suzuki	18823.8	21453.8	30392.8	--	--	70670.40	23556.80	471.14
10.	Mercedes-Benz	989.77	1152.64	1318.93	--	--	3461.34	1153.78	23.08
11.	Nissan Motors	87.67	46.16	110.79	--	--	244.63	81.54	1.63
12.	Skoda Auto India	1587.90	2095.75	3275.06	--	--	6958.72	2319.57	46.39
13.	Tata Motors	35918.96	71737.81	94312.37	-	-	201969.14	67323.05	1346.46
14.	Toyota Kirloskar Motors	4268.74	3948.89	5790.11	--	--	14007.73	4669.24	93.38

*Volkswagen has provided turnover for year 2007-2008 (From February 6, 2007 to March 31, 2008); for the Year 2008-09 (April 1, 2008 to

December 31, 2008) and for the year 2009-10 (January 1, 2009 to December 31, 2009).

** General Motors has provided financial statements only for 2 years (2010-11 and 2011-12)

21.7 The directions of the Commission contained in para 22.3 of this order will be complied with by the opposite parties in letter and spirit. Each OP is directed to file individual undertakings, within 60 days of the receipt of their order, about compliance to cease and desist from the present anti-competitive conduct, and initiation of action in compliance of other directions. This will be followed by a detailed compliance report on all directions within 180 days of the receipt of the order. The amount of penalty will be paid by the OP within 60 days of the receipt of the order.

21.8 A copy of this order may also be forwarded to the Ministry of Road Transport and Highways and ACMA (Automotive Component Manufacturers Association).

21.9 In terms of the order passed on 29.04.2013 by the Hon'ble High Court of Delhi in Writ Petition No. W.P. (c) 2734/2013 filed by MSIL, it is ordered that the operation of the present order shall not be given effect to till after the expiry of a period of 10 days from the date of this order.

21.10 The Secretary is directed to inform the parties accordingly.