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Is India's competition watchdog finally coming of age?

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From probing whether Google abused its dominant position in the Android operating system space to a full-fledged investigation of e-commerce companies – India's antitrust watchdog, the Competition Commission of India (CCI), seems to be breaking new ground on several fronts.

The latest addition to the CCI's list of trailblazing efforts is its recent order concerning Maruti Suzuki's discount control policy which has brought certain interesting aspects to the forefront, indicating its evolution as a watchdog.

In early July, the CCI passed a *prima facie* (based on first impression) order on the automobile heavyweight's discount control policy; and directed the Director General (DG) to investigate the matter. Let's take a quick look at what the order was about.

CCI's Maruti Suzuki Order: The Background

The concept of an Appreciable Adverse Effect on Competition (AAEC) in the relevant market in India is central to India's competition law. A business practice can cause an AAEC if it, among other things, creates barriers for new entrants to the market or drives existing competitors out.

When a seller or manufacturer either directly or indirectly (by way of discounts, etc.) fixes the resale price that must be charged by a downstream re-seller or dealer for its goods or services, it can violate the Competition Act, 2002 (Competition Act), if it causes or is likely to cause an AAEC. This concept of fixing the resale price of a goods or service is popularly known as Resale Price Maintenance (RPM), under competition law.

Typically, to establish that such violation has occurred, the seller or the manufacturer resorting to RPM should hold substantial market power; and the conduct in question must result in an AAEC.

Why this order is noteworthy

First, this case was taken up by the CCI *suo motu* (without a formal complaint) based on an anonymous e-mail against Maruti Suzuki sent by one of the automaker's dealers (re-sellers) – this by itself is unprecedented.

The complaint alleged that Maruti Suzuki penalised dealers who provided additional discounts to customers over and above what was recommended by the automaker. Incidentally, the dealership agreements were silent on the discount control mechanism and allowed dealers the discretion to set discounts at will.

It was alleged that the entire mechanism of controlling dealer discounts was enforced by Maruti Suzuki through mystery shopping audits whereby, fake customers would pay surprise visits to inquire into dealer discounts at various stores and would report any additional discounts offered by the dealers to the company. In turn, the carmaker would issue a show cause to the dealer concerned through an e-mail. In the absence of any credible justification for providing such discount, the dealer was directed to pay a penalty by way of cheque deposits to a specified account.

The complaint also alleged that the discount control policy was implemented across India, particularly in cities where more than 4 to 5 dealers had business operations.

The second point that makes this order distinctive is the fact that the CCI appears to have employed its investigative prowess at the *prima facie* stage itself. Maruti Suzuki cited various clauses of the dealership agreement to show lack of authority on its part to impose penalty for providing higher discounts. It also highlighted its efforts to encourage dealers to provide additional discounts instead, by contributing to the schemes floated by the dealers.

However, the CCI disregarded the dealership agreement and decided to take a deep-dive into the actual on-field conduct of the automaker.

What this order means, going forward

The CCI is no stranger to evaluating the issue of RPM under the garb of discount policies. More recently, Hyundai Motors faced the music for implementing a similar discount control policy on its dealers through mystery shoppers.

However, this order assumes significance as it signals the coming of age of the CCI, which appears to have upped the ante by basing its findings on the actual conduct of enterprises rather than being swayed by formal agreements.

This order also encourages aggrieved persons to proactively and fearlessly approach the CCI without having to strictly follow the formal route under the Competition Act.

In conclusion, while the final fate of this order remains to be seen, it is clear that the auto space will continue to be on the CCI's radar as a priority sector. For stakeholders, this may be an opportune moment to re-evaluate existing business practices to stay on the right side of the law.

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