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Fair Competition
For Greater Good

COMPETITION COMMISSION OF INDIA

Case No. 03/2011

Date: 27/07/2015

In re:

Shri Shamsher Kataria

Informant

And

Honda Siel Cars India Ltd.

Volkswagen India Pvt. Ltd.

Fiat India Automobiles Ltd.

BMW India Pvt. Ltd.

Ford India Pvt. Ltd.

General Motors India Pvt. Ltd.

Hindustan Motors Ltd.

Hyundai Motor India Ltd.

Mahindra & Mahindra Ltd.

Mahindra Reva Electric Car Company (P) Ltd.

Maruti Suzuki India Ltd.

Mercedes-Benz India Pvt. Ltd.

Nissan Motor India Pvt. Ltd.

Premier Ltd.

Skoda Auto India Pvt. Ltd.

Tata Motors Ltd.

Toyota Kirloskar Motor Pvt. Ltd.

(collectively, the 'Opposite Parties')

CORAM

Mr. Ashok Chawla

Chairperson



Mr. S.L. Bunker

Member

Mr. Sudhir Mittal

Member

Mr. Augustine Peter

Member

Mr. U.C. Nahta

Member

Appearances:

For Hyundai Motor India Ltd:

Shri Amitabh Kumar, Advocate;

Shri Samir Agrawal, Advocate;

Shri Vaibhav Choukse, Advocate;

Shri B.C. Dutta;

Shri D. Suresh;

Shri Prasaht; and

Shri Mehar Shrinivas.

For Mahindra Reva:

Ms. Avaantika Kakkar, Advocate;

Ms. Anisha Chand, Advocate;

Shri Dhruv Rajain, Advocate; and

Shri Devjeet Ghosh

For Premier Ltd.

Shri Ravisekhar Nair, Advocate; and

Ms. Krushika Nayan Choudhary, Advocate.



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ORDER UNDER SECTION 27 OF THE COMPETITION ACT, 2002

1. Factual Background

- 1.1 The information in the present case was filed by Shri Shamsheer Kataria (hereinafter, referred to as the “Informant”) under Section 19 (1)(a) of the Competition Act, 2002 (hereinafter, referred to as the “Act”) on 18.01.2011 against Honda Siel Cars India Ltd., Volkswagen India Pvt. Ltd. and Fiat India Automobiles Ltd., alleging anti-competitive practices on the part of these three car manufacturers, whereby the genuine spare parts of automobiles manufactured by them were not made freely available in the open market.
- 1.2 The Commission considered the matter and on perusal of the material on record, passed *prima facie* order dated February 24, 2011 under section 26(1) of the Act directing the Director General (hereinafter, referred to as the “DG”) to conduct an investigation into the matter and submit his investigation report.
- 1.3 From the preliminary enquiries made during the investigations, the DG opined that other automobile manufactures or Original Equipment Manufacturers (hereinafter referred to as “OEMs”) (other than the three car manufacturers named by the Informant) might also be indulging in similar restrictive trade practices with respect to after sales service, procurement and sale of spare parts from the Original Equipment Suppliers (hereinafter referred to as “OES”), setting up of dealerships etc. It appeared that the case involved a much larger issue relating to the prevalence of anti-competitive conduct by the automobile players in the Indian automobile sector and its implications on the consumers at large. Consequently, the DG proposed before the Commission that the investigation should not be restricted to the 3 car manufacturers alone and it should be expanded to examine the alleged



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anti-competitive trade practices of all car manufacturers in India, as per the list maintained by the Society of Indian Automobile Manufacturers (“SIAM”).

1.4 The Commission considered the abovementioned request of the DG and, *vide* order dated 26.04.2011, approved the request to initiate investigation against 14 other OEMs operating in India (in addition to the three car manufacturers named in the information filed by Shri Shamsher Kataria). These 14 OEMs 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” or “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 “Maruti”)
- 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”)

1.5 After considering the investigation report submitted by the DG, the Commission decided to forward copies thereof to all the 17 Opposite Parties for filing their replies/objections thereto *vide* its order dated 04.09.2012. Pursuant to that, Reva and Premier filed applications dated 01.02.2013 and



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21.12.2012 respectively under Regulation 26 of the Competition Commission of India (General) Regulations, 2009 (hereinafter referred to as the 'General Regulations') requesting for striking out of their names from the array of parties. The Commission decided to dispose of these applications with the final order. With regard to Hyundai, a Writ Petition No. 31808/2012 (hereinafter referred to as the "Writ Petition") was filed by it before the Madras High Court challenging the jurisdiction of the Commission. Madras High Court granted an ex parte stay in the matter *vide* its interim order dated 06.02.2013 and, therefore, the matter could not be proceeded qua Hyundai also.

- 1.6 Therefore, the Commission *vide* its order dated 25.08.2014 under Section 27 of the Act (hereinafter referred to as the "Main Order") had *inter alia* imposed penalties only on fourteen out of the seventeen Opposite Parties (OPs). For the reasons recorded in the preceding paragraph, the order of the Commission has remained pending against Hyundai, Reva and Premier (hereinafter referred to as the "present Opposite Parties") as the Commission decided to pass separate order against the present Opposite Parties after affording them reasonable opportunity to make their submissions in respect of the findings in the DG report and queries raised by the Commission. The relevant excerpt from the Main Order in this context is reproduced below:

'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.' (Para 3.8)



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- 1.7 In accordance with that decision, subsequently, the Commission *vide* its order dated 05.11.2014 directed Hyundai, Reva and Premier to appear before the Commission for oral hearing and asked them to file their respective written submissions/objections in response to the DG report, if any.
- 1.8 Accordingly, the present Opposite Parties appeared before the Commission and also filed their written submissions. Before dealing with the written submissions and oral arguments made by the present Opposite Parties, the Commission deems it appropriate to elucidate the findings of the DG with respect to these Opposite Parties.

2. **Findings of the DG**

- 2.1 In the Main Order, the Commission has already recorded the overall findings of the DG as enshrined in the main report and specific findings with regard to 14 OEMs. Since the general findings of the DG, as contained in the main DG Report is representative of the specific findings of the DG, as contained in each of the sub-reports, the same should be read as part of this order. Similarly, the present order of the Commission should also be read as part of the Main Order. For the sake of brevity, the general findings of the DG, as recorded in that order, are not reproduced here in detail. The present order contains brief and succinct discussion of the main DG report and the respective sub-reports, dealing with each of the present Opposite Parties i.e. Hyundai, Reva and Premier.

Findings of the Main DG report

- 2.2 The DG Report identified two separate markets for the passenger vehicle sector in India—the primary market, consisting of the manufacture and sale of passenger vehicles and the secondary market (After-Sales Markets),



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comprising of the complementary products or secondary products which is complementary to and derived from the primary product (i.e., spare parts for passenger vehicles). The DG report has further identified the two sub segments of the aftermarket for passenger vehicles in India, as follows:

- (a) Supply of spare parts, including diagnostic tools, technical manuals, catalogues etc for the aftermarket usage; and
- (b) Provision of aftersale services, including servicing of vehicles, maintenance and repair services.

2.3 The second question which the DG has dealt with was to analyze whether the aftermarket segments described above constitute distinct relevant product markets or whether the products in the primary market (i.e. cars) and the products in the aftermarket (i.e., repair services and spare parts) constitute a single market i.e. part of one indivisible ‘system’ of products consisting of a durable primary product and a complementary secondary product.

2.4 After conducting detailed analysis and providing cogent reasons, the DG concluded that the spare parts market for each brand of cars comprising of vehicle body parts (manufactured by each OEM, spare parts sourced from the local OESs or overseas suppliers), specialized tools, diagnostic tools, technical manuals for the aftermarket service together formed a distinct relevant product market. With regard to the question as to whether maintenance and repair services of the products in the primary market constitute a separate relevant market, the DG has concluded that after sale repair and maintenance services constitute a distinct relevant product market. The DG’s investigation has further revealed that the spare parts for a particular brand of vehicle were available through the authorized dealers of the respective OEMs in any part of India and hence concluded that the relevant geographic market would be ‘India’.



- 2.5 The DG has further found that each OEM is a 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.
- 2.6 Since the diagnostic tools were not sold directly in the aftermarket by the manufacturer of these tools due to restrictions in the agreement or arrangements between the OEMs and such equipment manufacturers, the DG found each OEM to be the only viable source of supply of these specialized tools, technical manuals, fault codes, etc., for their respective brand of automobiles and hence dominant.
- 2.7 Finding the conduct of the OEMs abusive, the DG has further observed that 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 offer repair and maintenance services to the vehicle owners and effectively compete with the authorized dealers of the OEMs for similar services was severely hampered. Such conduct was found to be in contravention of section 4(2)(a)(i) and 4(2)(c) of the Act, as it amounts to an imposition of unfair condition and denial of market access to independent repairers by OEMs. Further, as per the DG, each OEMs used their dominant position in the market for the supply of their spare parts to protect their dominance in the market for repair and maintenance services for their respective brands of automobiles which amounted to a violation of section 4(2)(e) of the Act.
- 2.8 The DG's investigation also revealed that each OEM had substantially escalated the price of spare parts, for their respective brands of automobiles



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which showed their ability of imposing unfair prices in the sale of spare parts in terms of section 4(2)(a)(ii) of the Act.

- 2.9 The DG has further concluded that the essential facilities doctrine is applicable to the restrictive practices adopted by the OEMs, as the OEMs have put the independent repairers at a distinct disadvantageous position and have jeopardized their ability to undertake repairs of the automobiles manufactured by the OEMs by not making spare parts and diagnostic tools available to them.
- 2.10 The DG has also examined the agreements/letters of intent entered into between the OEMs and the OESs and found that most of such agreements/letters of intent had clauses which restricted 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 has found that none of the present Opposite Parties held valid Intellectual Property Rights (IPRs) for any of their spare parts in India to claim exemption under section 3(5)(i) of the Act. Agreements between OEMs and the local OESs were found to contain exclusive distribution agreements and refusal to deal clauses which are in contravention of the provisions of section 3(4)(c) and (d) of the Act, respectively.
- 2.11 The DG during the course of the investigation also found that a large number of OEMs, particularly those having foreign affiliations, were sourcing large number of spare parts from overseas suppliers and such overseas suppliers were not supplying spare parts to any entities apart from the OEMs. The DG, therefore, concluded that in such situations there may be a possibility of the existence of an unwritten arrangement between the OEMs and the overseas suppliers for ensuring that the spare parts are supplied to the OEMs or its authorized vendors only, which would be in violation of section 3(4)(c) and 3(4)(d) of the Act.



- 2.12 With regard to the agreements between the OEMs and their authorized dealers, the DG has found that certain clauses of the agreements specifically restricted the sale of spare parts over the counter to third parties, which were in the nature of exclusive distribution agreements and amounted to refusal to deal under section 3(4)(c) and 3(4)(d) of the Act. Further, the DG has observed that, though certain agreements entered between the OEMs and their authorized dealers did not contain specific terms restricting the sale of spare parts in the open market, he concluded that there was an unwritten understanding or arrangement between such dealers and the OEMs, contrary to section 3(4)(b) of the Act as the dealers were found to be not selling spare parts in the open market.
- 2.13 The dealer agreements entered by and between the OEMs and their authorized dealers also contained restrictions on dealing with competing brand of cars and the dealers had to obtain the consent of respective OEMs in writing prior to entering into agreements with competitor brands.
- 2.14 The DG has analyzed the appreciable adverse effect on competition (“AAEC”) owing to the practices adopted by the OEMs in each of the secondary markets of spare parts and repair and maintenance services. The DG has found that there was AAEC on competition in terms of section 19(3) of the Act in the market of spare parts for each OEM on account of the restrictions such as exclusive supply agreements, refusal to deal and exclusive distribution agreements.



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3. **Findings of the DG with respect to Hyundai/HMIL**

- 3.1 As per the DG's investigation report, Hyundai is a 100% subsidiary of M/s Hyundai Motor Company, South Korea (HMC) and was incorporated in the year 1996. Hyundai is involved in the manufacture and sale of motor vehicles, spare parts, after sales and related activities. The wholesale distribution and supply chain solutions for Hyundai are currently being provided by M/s MOBIS India Ltd. ("MIL"). As such, the after sales market for spare parts of Hyundai brand of cars is catered to by MIL. The DG has been informed that MIL is a subsidiary of Mobis Korea which is a part of the Hyundai group and is engaged in the distribution of spare parts in several countries for HMC. Mobis Korea, as part of its global spare part management strategy, handles supply of spare parts in all the countries where Hyundai cars are sold.
- 3.2 The specific findings of the DG against the alleged anti-competitive practices of Hyundai are summarized below:
- 3.3 Hyundai has entered into a technology and royalty agreement with HMC for supply of spare parts for its operations in India. On perusal of the said agreement, though the DG could not discover the existence of any clause(s) which prohibits the ability of the overseas supplier from selling directly to the aftermarket in India, the DG has reported that, "the fact that the overseas supplier is the parent company of Hyundai and only supplies spare parts to MIL (a group company of Hyundai for dealing with aftermarket requirements in India), indicates the existence of an arrangement between Hyundai and the overseas supplier for not supplying spare parts directly into the Indian aftermarket."
- 3.4 The DG, after reviewing Hyundai's basic purchase agreement (entered with the OESs for supply of spare parts) and other purchase orders executed by



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Hyundai for procuring of spare parts from various OESs in India, found that such agreements contained clauses which restricted the OESs from supplying spare parts directly to the aftermarket. Such restrictions appeared to be due to use of drawings and designs of Hyundai.

- 3.5 Further, based upon the submissions made by independent repairers and multi-brand retailers, the DG found that, in most cases, the dealers refused to sell spare parts in the open market and spare parts of only certain car models were made available over the counter.
- 3.6 It was also discovered during the course of DG's investigation that the authorized dealers are being permitted to source spare parts from Hyundai directly or from its authorized vendors but not from the OESs who themselves supplied spare parts to Hyundai.
- 3.7 Further, the DG has found that during the warranty period, owners of Hyundai cars are totally dependent on its authorized network as the warranty extended is liable to be invalidated if a Hyundai car is repaired by an independent repairer.
- 3.8 Further, ability of the Hyundai dealers to deal in competing brands was also restricted. Hyundai's dealers are not permitted to deal with competing brands without seeking the prior permission of the OEM. The DG could not come across a single instance wherein such permission has been granted.
- 3.9 Further, the price mark up for top 50 spare parts in terms of revenue generated is observed to be in the range of 28.26% - 502.76% and price mark-up of top 50 spare parts on the basis of consumption is observed to be in the range of 50.04% - 644.68%.



- 3.10 Though Hyundai has justified its restrictions on the basis of IPR and safety issues, it has failed to establish before the DG that it possesses valid IPRs in India, with respect to its spare parts for which restrictions are being imposed upon OESs.
- 3.11 Further, the DG has opined that refusal to supply diagnostic tools and spare parts by Hyundai to independent repairers amounts to denial of access to an “essential facility”.
- 3.12 The DG has concluded that the restrictions imposed upon the OESs and the authorized dealers, coupled with the restrictions on the independent repairers (non-availability of spare parts and diagnostic tools used for repairing of Hyundai brand cars) amounts to not only imposition of unfair terms under section 4(2)(a)(i) but also denial of market access under section 4(2)(c) of the Act. Further, the DG has opined that the substantial price margin earned on spare parts amounts to unfair pricing within the meaning of section 4(2)(a)(ii) of the Act.
- 3.13 The DG has also found that Hyundai has leveraged its dominance in one relevant market (i.e., supply of spare parts) to protect the other relevant market (i.e. market for repair services) in violation of section 4(2)(e) of the Act.
- 3.14 The DG has also found that Hyundai is in violation of section 3(4)(c) and 3(4)(d) of the Act, for not allowing its authorized dealers to deal with competing brands of cars and not allowing them to sell spare parts and diagnostic tools to the independent repairers.
- 3.15 Further, the DG has found that the agreements entered with the authorized dealers contain restrictive clauses requiring the dealers to source the spare parts only from Hyundai or its authorized vendors. The DG has found these



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agreements in the nature of exclusive supply agreements in violation of section 3(4)(b) of the Act.

4. **Findings of the DG with respect to Reva**

4.1 Reva is a subsidiary of M/s Mahindra and Mahindra which holds 55% stake in Reva. It has been gathered from the public domain that Reva, formerly known as the Reva Electric Car Company (“RECC”), is an Indian company based in Bangalore, involved in designing and manufacturing of compact electric vehicles. The company’s flagship vehicle is the Reva electric car, available in 24 countries with more than 4,000 vehicles sold worldwide. Reva was acquired by the Indian conglomerate M&M in May 2010. The company has its manufacturing facility at the Bommasandra Industrial Area, Bangalore. The company has submitted that it has engaged dealers of M&M to deal in Reva cars and has a dealership network of 25 dealers across the country.

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

4.3 During the course of investigation, the DG has found that Reva has executed purchase orders with overseas suppliers for supplying of spare parts for its operations in India. On perusal of the purchase orders, it was found that such overseas suppliers are restricted from supplying spare parts (which have been manufactured based on the designs supplied by Reva) directly into the aftermarket in India.

4.4 With regard to the agreements with the local OES, the DG has found that OESs are restricted from selling spare parts manufactured based on design, drawing etc. supplied by Reva to other entities and in the open market. With



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respect to agreements entered with authorized dealers, the DG has analyzed the Letter of Intent (“LOI”) but did not find any clause pertaining to the rights of dealers to undertake over the counter sales of spare parts. In actual practice, it was found by the DG that there was only limited availability of spare parts in the open market and there appeared to be an understanding between Reva and its dealers prohibiting the sale of spare parts over the counter.

- 4.5 Further, the DG also discovered that, contrary to the contentions of Reva, the dealers of Reva were not permitted to deal with competing brands of cars in any manner without seeking the prior permission of Reva and no such permission had been granted in any instance by Reva.
- 4.6 Further, the users of Reva brand cars would stand to lose their warranty if they avail the services of independent repairers.
- 4.7 The Price mark up for 38 out of top 50 spare parts in terms of revenue generated is observed to be in the range of (-) 66.74% to 797.33% and price mark up of 42 out of top 50 spare parts on basis of consumption is observed to be in the range of (-) 66.74% to 1180.42%.
- 4.8 The DG found that the non-availability of diagnostic tools and spare parts necessary to repair the Reva cars hampered the ability of independent repairers to effectively compete with the authorized dealers of Reva. Refusal to supply such diagnostic tools and spare parts was found by the DG to amount to denial of access to an “essential facility”.
- 4.9 Further, as per the DG’s investigation, given the restricted availability of spare parts in the open market, non-availability of diagnostic tools and technical manuals, the ability of independent repairers to undertake repairs



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and maintenance service of the vehicles of Reva and effectively compete with the authorized dealers of Reva is significantly reduced, thereby amounting to denial of market access in terms of section 4(2)(c) and imposition of unfair condition on independent repairers in terms of section 4(2)(a)(i) of the Act. The pricing of spare parts has also been found to be unfair in terms of section 4(2)(a)(ii) of the Act.

4.10 Reva is also found to be using its dominant position in the relevant market for supply of spare parts to enter and protect the relevant market for after sales services in contravention of section 4(2)(e) of the Act.

4.11 The DG has also found that the agreements/arrangements entered by Reva with the OESs, overseas suppliers and authorized dealers are in the nature of exclusive supply, exclusive distribution and refusal to deal as contained in section 3(4)(b), 3(4)(c) and 3(4)(d) of the Act.

5. **Findings of the DG with respect to Premier**

5.1 Premier is promoted by M/s Doshi Holding Pvt. Ltd., holding 43.36% of the voting capital in Premier. The company is, inter-alia, engaged in the businesses of manufacturing CNC machines, heavy engineering and automotives. The company also sells CNC machines, components for wind mills, auto components etc. The company operates in the automotive business segment and manufactures sports utility vehicles (SUV) and light commercial vehicles (LCV). Premier's manufacturing facility is located at Chinchwad, Pune. The company has 53 automobile dealers which are located in 53 cities.

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



- 5.3 The DG has reviewed the LOI executed by Premier with the local OESs for supplying of spare parts for Premier's assembly line and aftermarket requirements and has found that the LOI contains clauses that restrict the OESs from supplying spare parts directly into the aftermarket. The DG has observed that the clause of the LOI require that all the spare part requirements shall be met through Premier and its authorized agents. Although Premier had maintained that its spare parts were freely available over the counter, it was not able to substantiate the said claim in any manner. Further, Premier has claimed that its consumers were under the warranty period at that time and therefore the need for over the counter sales has not arisen yet.
- 5.4 Further, the warranty conditions of Premier were found to be such that the owners of Premier cars stand to lose their warranty if they avail the services of independent repairers. Premier has claimed that it is open to technologically support the independent repairers, but as the cars sold by it are all within the warranty period and are not being catered by independent repairers, such contention of Premier remained untested.
- 5.5 The DG, during the course of the investigation, did not discover any restrictions being imposed upon the dealers of Premier from dealing with competing brands.
- 5.6 The DG could not find out as to whether Premier has marked up the price of its spare parts since Premier was not able to provide the prices of its top 50 spare parts as it had just started the initial market seeding of its vehicles for trial and consumer feedback and related data was not available.
- 5.7 Further, the DG has stated that the availability of the diagnostic tools and spare parts in the future (when the consumers of Premier would be in the



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post warranty period) would be necessary for the independent repairers to repair the Premier cars and also essential to effectively compete with the authorized dealers of Premier. Consequently, in the opinion of the DG, denial to access such diagnostic tools and spare parts amounts to denial to access an “essential facility” and amounts to abuse of dominant position by Premier.

- 5.8 The DG has also found that there are implied restrictions on Premier’s OESs from supplying spare parts in the aftermarket and the fact that Premier’s dealers are allowed to sell spare parts and diagnostic tools in the open market is an untested claim. In the view of the DG, such restrictions enable Premier to be the sole supplier of genuine spare parts in the aftermarket in India and consequently a dominant entity in the aftermarket for Premier branded cars.
- 5.9 Further, Premier was also found to be in a position to restrict the availability of spare parts and diagnostic tools in the open market which would amount to an imposition of unfair condition and denial of market access to independent repairers in terms of sections 4(2)(a)(i) and 4(2)(c) of the Act. The DG also opined that provisions of section 4(2)(e) of the Act would be invoked since Premier was using its dominant position in one relevant market i.e. market of supply of spare parts to enter and protect other relevant market of after sales services, repair and maintenance of cars. The DG apprehended that Premier would be able to charge unfair prices for its spare parts in the post warranty period in the absence of competition in the market for spare parts.
- 5.10 Further, the DG has also found that agreements/arrangements entered by Premier and its OESs are in the nature of exclusive supply and exclusive distribution, thereby violating section 3(4)(b) and 3(4)(c) of the Act.



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6. Replies of the Parties

- 6.1 At the outset it may be mentioned that the Commission, after considering the investigation report submitted by the DG, decided to forward copies thereof to all the 17 Opposite Parties for filing their replies/objections thereto *vide* its order dated 04.09.2012. Pursuant to that, Reva and Premier had filed their objections to the DG report but did not participate in the matter thereafter as their applications dated 01.02.2013 and 21.12.2012, respectively, filed by them under regulation 26 of the General Regulations were taken on record but were kept pending. Further, pursuant to Madras High Court's order dated 06.02.2013 granting *ex parte* interim stay in the Writ Petition No. 31808/2012 (hereinafter referred to as the "Writ Petition") filed by Hyundai challenging the jurisdiction of the Commission, the matter could not be proceeded *qua* Hyundai. At that time, the Commission decided to pass an order with respect to the present Opposite Parties separately after passing the order with respect to the remaining 14 OEMs (OP 1 to 14 in the Main Order).
- 6.2 In pursuance thereof, the Commission in its ordinary meeting held on 05.11.2014 directed the present Opposite Parties to appear before the Commission for oral hearing. Subsequently, in the ordinary meeting held on 12.02.2015, the present Opposite Parties were directed to file their replies/objections by way of written submissions to the DG report, if any.
- 6.3 The replies of the present Opposite Parties have been summarized in the following paragraphs.



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6.4 *Reply of Hyundai*

6.4.1 In its reply, Hyundai has submitted that the DG has drawn incorrect conclusions and erred in the application of competition law and established competition law principles, *inter alia*, in (a) assessing the relevant market; (b) assessing the dominance of Hyundai; (c) assessing the conduct of Hyundai to be abusive; and (d) assessing the agreements between Hyundai on the one hand and OESs and dealers on the other to be anti-competitive. It was submitted that Hyundai is not dominant in any of the relevant markets as defined by the DG and has not engaged in any conduct which would be an abuse of a dominant position under the Act. In addition, Hyundai has not imposed any condition or engaged in any conduct that would constitute an infringement of Section 3 of the Act.

6.4.2 On the contrary, the actions of Hyundai were claimed to be pro-competitive. It was contended that Hyundai has a large and one of the most accessible service and sales network as compared to other car manufacturers in India with 412 dealers and more than 1,087 service points located across India.

6.4.3 Hyundai has also argued that the unorganized sector in India is characterized by a lack of skills and proper training because the independent repairers are averse to investing in training themselves for repairing of high end and executive premium cars. Further the absence of any effective government regulation and the problem of counterfeits are the major challenges being faced by the OEMs like Hyundai in the Indian market.

6.4.4 Further Hyundai advanced its preliminary objection challenging the validity of the DG's action to initiate an enquiry into the conduct of OEMs (including Hyundai) other than the three OEMs named in the original information.



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- 6.4.5 It was averred that the DG had incorrectly relied upon the developments in USA and EU, with respect to after-market services without considering the differences and dynamics of Indian Automobile Industry.
- 6.4.6 Apart from the preliminary objections, Hyundai has submitted that the DG has fundamentally misconstrued the nature of Hyundai's relationship with its OESs. It was claimed that Hyundai's agreements with its OESs are 'subcontracting arrangements' and as such exclusivity in such arrangements fall outside the purview of Section 3 of the Act because such exclusivity is required to protect Hyundai's significant investments in developing its OESs and contributions to the manufacture of spare parts. Hyundai has further stated that even if the sub-contracting agreements are found to fall within the scope of Section 3, the designs, specifications, drawings and technologies provided by Hyundai to its OESs are protected by unregistered copyright and trade secret. In addition to Hyundai/ HMC drawings and specifications which are entitled to copyright protection, Hyundai has claimed that its drawings/know-how/specifications would also be conferred with IP-protection by virtue of them being confidential information. To substantiate the claim, Hyundai cited the judgment of the Delhi High Court in *Cattle Remedies and Anr. Vs. Licensing Authority/Director of Ayurvedic and Unani Services*, wherein it has been observed that apart from specific statutes relating to trade mark, copyright, design and patent, etc., trade secrets are also a form of IP. Further, it was argued that Hyundai's agreements with its local OESs do not cause an appreciable adverse effect on competition in India
- 6.4.7 With regard to the findings on the Hyundai's agreements with its overseas suppliers, it was argued that the DG has failed to establish the existence of an 'agreement' and has wrongly relied on the mere 'possibility' of an agreement to conclude the existence of an agreement. Further, Hyundai has sought exemption for such agreements citing the established principle of



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‘single economic entity’ doctrine as such agreements were between the Hyundai Group companies.

6.4.8 It was contended that Hyundai encourages over the counter sale of spare parts and diagnostic tools by authorized dealers, dealer’s branch and Hyundai authorized service centres and does not prohibit its dealers from taking competing dealerships and that a number of its dealers have competing dealerships.

6.4.9 Hyundai has objected to the relevant market identified by the DG based on the concept of after markets, stating that the correct relevant market in this case is a ‘systems market’ consisting of the sale of cars in India.

6.4.10 Further, it was contended that Hyundai has not abused its dominant position in the market for spare parts for Hyundai vehicles. DG’s finding on the applicability of essential facilities doctrine was also objected to by Hyundai on the ground that such doctrine has very strict requirements. It was urged that there is no denial of access to spare parts for Hyundai vehicles as independent repairers have access to Hyundai branded spare parts as well as to OESs branded and non-branded spare parts.

6.4.11 It was also argued that the DG has failed to show that the prices of Hyundai spare parts were ‘unfair’ or excessive within the meaning of Section 4(2)(a)(ii) of the Act.

6.4.12 It was further submitted that Hyundai is not present in the second (non-dominant) market i.e., the market for after-sale services, repair and maintenance, and as such, cannot be deemed to be using its dominant position in the market for sale of spare parts and diagnostic tools to enter into and protect the other relevant market for after-sale services, repair and maintenance.



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6.5 *Reply of Reva*

6.5.1 Reva has submitted that it is in the business of manufacturing and sale of electric cars and is one of the pioneer companies to have introduced electric cars in the Indian market. Reva has stated that it remains committed to the cause of manufacturing and selling of a “green car” focusing on the ongoing research and development work on the Reva NXR car that will be launched next year.

6.5.2 Reva has submitted that the company has sold only 4500 cars over the last 11 years (less than 500 vehicles per year) since Reva was conceptualized in 2001 and it has a very negligible market share. Therefore, as per Reva, the size and resources of the company, when compared to other car manufacturers would reveal that the company has a miniscule share in the market. It was claimed that it has made no profits since the time of its inception. Reva has further submitted that the dealers of the company have not done any significant business over the past 3 years.

6.5.3 Reva has submitted that the electronic components utilized in the Reva car are complex and the mechanics who repair the Reva car must either be diploma holders or automobile engineers, as per the company’s standards. Reva has further stated that the company especially trains engineers for this purpose. Reva has stated that to repair an electric car, specialized skills are required and safety being a critical parameter, the company mandates training before attending to the electric vehicles as opposed to mechanical cars that run on petrol or diesel.

6.5.4 It was submitted that vis-à-vis Reva’s relationship with the OESs from whom it sources spare parts and components for its cars, Reva is on a receiving end because the OESs require minimum quantities to be ordered



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before they accept an order and this increases the company's costs manifold. Considering the low volume of work opportunity that Reva cars offer, there are not sufficient OESs who would be interested in manufacturing spare parts for Reva.

6.5.5 With regard to the findings of the DG regarding agreements between Reva and its authorized dealers, Reva has stated that it has been using the support of the dealership network of the company's promoter's (Mahindra & Mahindra Limited) dealer network. Reva has stated that the company currently has 37 authorized dealers and workshops including certain multi-brand workshops (who have been authorized by the company) in some cities. Reva states that the company continues to be challenged by the fact that the dealers are reluctant to maintain a stock of the spares that may be needed because they do not consider the business as viable. Reva has submitted that since the number of Reva cars on the road is directly proportional to the demand for the spare parts and since the demand and the sale of the Reva cars are low, the spare parts requirements would also be limited.

6.5.6 Reva has submitted that it has sought to ensure the availability and appointment of a dealer at least in those cities where there were at least 20 Reva cars registered. Additionally, for those consumers who approach the company and want to buy Reva cars in cities where the company has no dealerships and workshops, Reva attempts to maintain a force of service engineers who visit the residence of such consumers to repair and/or service the car. Reva has further stated that the consumer is made aware of the non-availability of after sales service and signs an agreement with the company for the availability of offbeat service of the cars.

6.5.7 Reva has submitted that the company has not revised the price of its spare parts in the last three (3) financial years. Reva further submitted that the



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Government of NCT of Delhi had initiated a scheme for granting of subsidy to battery operated vehicles (BOVs) sold in Delhi with a view to promote the use of such vehicles so that in due course they emerge as competitors to petrol driven vehicles in maintaining a cleaner environment. This, as per Reva, indicates that the Government and its agencies appreciate that the company needs all possible assistance to emerge as a competitor much less to be in a position to cause AAEC in the market or abuse its dominance.

6.5.8 Reva has submitted a list of top 100 parts by quantity of the 583 odd parts that are supplied by the company for the Reva brand of car. Reva has submitted that out of these top 100 parts, there are no IPRs registered or claimed in India on any of the parts except the EMS (energy management system) Assembly on which the company claims patent rights (U.S. Patent No. 5487002). Reva has submitted that it had not applied for a patent on EMS in India and it has no registered patents or designs with respect to any of these top 100 parts of the company in India.

6.5.9 Further, Reva has submitted that out of the top 100 spare parts referred above, 74 parts have substitutes available in the open market, because (i) the manufacturer uses generic parts for the same, (ii) the manufacturer claims no copyright or other IPR on the same; (iii) not only the company's OESs but also third party suppliers and vendors supply this product into the open market and the same may be procured by any independent repairer for using on the cars manufactured and sold by the company.

6.5.10 Reva has justified its high mark up in the prices by stating that due to the low demand for its cars it is not possible for it to achieve any economies of scale.

6.5.11 Further, Reva has submitted that it is not in a dominant position and, therefore, incapacitated to abuse its dominant position.



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6.5.12 Thereafter, Reva has filed applications dated 01.02.2013, 20.02.2013 and 05.07.2013, under Regulation 26 of the General Regulations requesting the Commission to strike off Reva's name from the proceedings in this case. Reva has further submitted that the order of the Commission dated 05.03.2013 explicitly mentioned that the Commission is considering the application filed on behalf of Mahindra Reva for exemption under Regulation 26 and for this reason Reva stopped participating actively in the proceedings in the said matter.

6.5.13 Mahindra Reva, in response to Commission's order dated 12.02.2015, reiterated the submissions made on 30.11.2012, 01.02.2013, 20.02.2013 and 10.12.2014, which have already been discussed above and hence not reproduced herein.

6.6 *Reply of Premier*

6.6.1 Premier has submitted that both the primary and the secondary activities of the automotive sector constitute one distinct systems market and, therefore, the aftermarket definition provided by the DG is misplaced. Premier has submitted that the DG has failed to apply any of the factors stated in section 19(7) of the Act and that the relevant market identified by the DG does not confirm to the definition stated in section 2(t) of the Act since: (a) physically the spare parts are but a part of the end product, i.e., the vehicle and therefore a part of the same system and that the DG has erroneously disregarded the physical characteristics or end use of the goods whilst arriving at a conclusion on the relevant market since the end use of the spare part is the functionality of the vehicle and the consumer derives utility not from the spare part itself but by applying the same to the vehicle; (b) the consumer utility is derived only through the use of the final product, i.e., the



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vehicle and considering the availability of non-genuine products, it is the consumer's choice to opt for a non-genuine product as long as the customer can continue to derive utility by using the primary product; and (c) the primary activities and the secondary activities are undertaken by the same specialized producer and hence it would be erroneous to segregate the products into two separate markets.

6.6.2 Premier has stated that the DG has identified the relevant product market in a counter intuitive manner and that the DG fails to appreciate that in respect of the spare parts that are manufactured in-house, subject to sharing of know-how and technical information, there is no contractual or statutory prohibition on OESs to manufacture or supply the same. Premier has further submitted that with respect to the in-house manufactured auto components there is no after market demand. Further, as per Premier, the products sourced from local OES, diagnostic tools, technical manuals, software etc., are vehicle specific.

6.6.3 Premier has submitted that it has a miniscule market share in the passenger vehicle sector and that the same has been acknowledged by the DG in the Reports. Further, it has been contended that even assuming that the alleged vertical restraints exists in terms of section 3(4)(b), (c) and (d) of the Act, the same must be viewed in terms of the minuscule market share of Premier in the passenger vehicle market.

6.6.4 Premier has submitted that there were no restrictions on its OESs to sell its spare parts directly in the aftermarket. Premier has submitted that the DG has erroneously disregarded the fact that the alleged restrictive clause is a part of the standard letter of intent issued to a supplier and this stands superseded by the purchase order once the development cycle of the component is over. Premier has submitted that the DG has made no



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conclusive finding as to whether there is an operative restriction on sale/supply of spare parts in the aftermarket which contravenes section 3(4) of the Act. Premier has submitted that DG has found that Premier has executed/entered into agreements with its OESs in the nature of exclusive supply, exclusive distribution and refusal to deal. However, the DG did not cite a single OESs who has been restricted/prohibited from dealing in the aftermarket by virtue of the alleged supply/distribution agreements.

6.6.5 Premier has submitted that the DG has failed to appreciate the viability of supplying to the aftermarket for the OESs. Premier has submitted that with the miniscule sale figures, it would be unrealistic for an OES to develop transportation and distribution networks, supply chains, packaging, credit risk, promotions and business development for the purpose of aftermarket sales catering to an odd 2000 vehicles (number of vehicles sold since 2009). Premier has submitted that several other OESs may not engage in direct sales/distribution on account of commercial unavailability, operational hazards or on account of business prudence.

6.6.6 Premier has submitted that there are no restrictions upon the dealers to source the spare parts from Premier and no restrictions have been imposed on its authorized dealers from undertaking any over the counter sales. Premier has submitted that the DG has not found any clause in the dealer agreements regarding the restriction on the dealers to undertake over the counter sales of spare parts. Premier has further stated that given the fact that most of the cars manufactured by Premier are under warranty, there is no competition in the sector of aftermarket sales, repair and maintenance and that the post warranty period remains untested. Therefore, Premier has submitted that there are no conclusive findings by the DG that the agreements entered into by Premier would cause an AAEC.



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6.6.7 Premier has submitted that even assuming that there was a vertical restraint in the nature of exclusive distribution, the same would be reasonable given the extensive warranty obligations taken up by Premier. Premier has stated that the expenses incurred by it towards warranty claims over the past three years aggregated to approximately Rs. 64,71,355/- and the same is on account of defects/drawbacks in the spare parts/components supplied by the OESs.

6.6.8 Premier has submitted that at the relevant time, it was manufacturing a single car model, i.e., an SUV by the name of Premier Rio which was running in loss and Premier is in the process of re-entering the Indian automotive sector. Premier has submitted that even assuming that it has applied certain vertical restraints in its dealing with local OESs, the same would be crucial to cement its re-entry in the Indian automotive sector and the pro-competitive effects of the entry of a new market entrant in the automotive sector far outweighs the anti-competitive effects, if any, especially since Premier had a miniscule market share in the Indian automotive sector.

6.6.9 With respect to the observations of the DG regarding the supply of spare parts by the overseas suppliers of Premier, directly into the aftermarket, Premier has stated that the conclusion reached by the DG is erroneous. Premier has stated that firstly, perusal of the importer agreements have not revealed the existence of any restriction on the ability of the overseas supplier from directly selling the spare parts into the aftermarket; secondly, Premier's overseas suppliers are not catering to the aftermarket; and thirdly, there is no evidence to confirm that overseas suppliers are catering to the aftermarket. Premier has submitted that in the absence of any direct evidence from the overseas supplier, the conclusions reached by the DG should be excluded.



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6.6.10 With respect to the availability of technical and diagnostic tools, manuals, software, etc., Premier has stated that it would be dangerous to open up the market to an organized sector dominated by two or three players or the unorganized sector dominated by unskilled individual repairers and counterfeit spare parts. Premier has stated that in India there is no requirement of matching quality of spare parts available from non-authorized sources and, consequently, any liability that such spare parts do not conform with the legal certification requirements would have to be borne by Premier if independent repairers fail to use genuine spare parts/tools etc.

6.6.11 Premier has submitted that the conclusions reached by the DG regarding the applicability of the “Essential Facilities Doctrine” to Premier are based upon a comparison of the Indian automotive market with that of other mature automobile markets which is erroneous considering the massive counterfeit/non-genuine spare parts market in India.

6.6.12 Further, Premier has stated that the reliance by the DG on the regulations of the European Union (EU) are erroneous since the quality control mechanism and the market realities of the Indian automobile sector and the EU automobile sector are very different and the EU regulations cannot be applied *mutatis mutandis* to the Indian scenario.

6.6.13 Further, Premier has submitted that it had a miniscule market share of less than 1% in the relevant market and cannot be held to be in a dominant position under section 4 of the Act.

6.6.14 Further, Premier has also submitted that, the DG has observed that Premier is the sole supplier of the spare parts for Premier brand automobiles and hence is in a position to influence the ability of independent repairers to



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attend to its automobiles. However, the DG also opined that this position is untested since most of the Premier brand automobiles are still under warranty and thus are not being attended to outside the dealer network. Premier has submitted that since the DG could not make any conclusive finding as to whether Premier is abusing its alleged dominant position and in the absence of such a finding, merely a position of dominance should not be construed as a contravention of section 4 of the Act.

6.6.15 During the course of the oral submissions, on 13.12.2012, Premier requested for striking out its name followed by a written application under Regulation 26 of the General Regulations dated 21.12.2012 on the grounds that (a) Premier has a miniscule market share (below 0.29%) in the Indian automotive market and that approximately only 2000 vehicles of a single model (Premier Rio) of Premier have been sold till date; (b) that the DG has found no evidence of contravention of the Act by Premier. It was also urged that the DG has erroneously: (i) relied upon certain statements of dealers of Premier stating that they source spare parts for Premier cars from Premier itself without analyzing that in the absence of any demand for spare parts in the aftermarket (during the course of the DG's investigation all Premier brand cars were within the warranty period) why would suppliers wish to retail Premier spare parts and (ii) relied upon a particular clause of the Premier LOI which stated that the spare parts need to be sourced from Premier or its authorized dealers, without analyzing the responses of the Premier's OESs, who have stated that they do not wish to enter the aftermarket for Premier spare parts; and (c) that based upon the DG's investigation, Premier has not abused its dominance under section 4 of the Act and further, the only conduct that can be considered as abusive under section 4(2) of the Act, are conducts that has already taken place and since Premier has not yet performed any of the abusive conducts enumerated in



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section 4(2) of the Act, it is not liable for abusing its dominance under the provisions of the Act.

6.6.16 In response to the order of the Commission dated 05.11.2014, Premier made applications dated 12.12.2014, 09.03.2015 and 16.03.2015. *Vide* its application dated 12.12.2014, Premier requested for a recall of order dated 05.11.2014, stating that the same has been passed without reference to the previous orders dated 08.02.2013 and 28.05.2013. Premier has reiterated the above contentions in its application dated 09.03.2015 and has requested the Commission to recall orders dated 05.11.2014 and 12.02.2015.

7. *Decision of the Commission*

- 7.1 The Commission has carefully gone through the material placed on record and submissions made by the present Opposite Parties. In addition to the substantive issues involved in the matter, objection regarding the jurisdiction of the Commission to inquire into the conduct of the OEMs who were not named specifically in the initial information filed by the Informant has also been raised.
- 7.2 At the outset it may be noted that all the issues, preliminary as well as substantive, which need to be determined through this order have already been dealt with by the Commission in the Main Order in great detail. This order, therefore, may be read as a part and parcel of the Main Order, unless mentioned specifically otherwise. For the sake of brevity, the main observations of the Commission in the Main Order have not been reproduced in detail in this order.
- 7.3 Before, dealing with the substantive issues the Commission deems it proper to deal first with the objections raised by Hyundai regarding the jurisdiction of the Commission in the present matter.



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7.4 Determination of Preliminary Issue regarding jurisdiction of the Commission

7.4.1 Hyundai has raised preliminary objection on the Commission's jurisdiction to investigate and proceed against any other Opposite Party other than the three Opposite Parties, viz., Honda, Volkswagen and Fiat, named in the original information. It has been urged that the DG had no power to investigate the conduct and agreements of Hyundai as the Informant did not raise any allegations against it for any violation of the provisions of the Act.

7.4.2 The issue of jurisdiction has been dealt with in length in the Main Order wherein the Commission rejected this plea taken by the other Opposite Parties. The Commission is a statutory body, established under the Act with the legislative mandate *inter alia* to prevent 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. As such, the purpose of filing information before the Commission is only to set the ball rolling as per the provisions of the Act.

7.4.3 The Commission further mentioned that the scope of inquiry is much broader and the Commission during its inquiry is not restricted to consider the material placed by the parties only. The direction under section 26(1) is an administrative direction to the DG for investigation of the contravention of the provisions of the Act, without entering upon any adjudicatory or determinative process. During the investigation, the DG may come to know that not only the parties named in the direction of the Commission but also other players in the same industry are also involved in the alleged anti-



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competitive conduct. In such a case to hold that the Commission cannot direct the DG to investigate the conduct of other parties would not only render the inquiry inchoate but would further deprive the Commission from delivering complete justice in the matter and also lead to multiplicity of proceedings relating to the same type of conduct, which the law always seeks to avoid. On the basis of this reasoning, the Commission in its Main Order had held that there was no irregularity in allowing the request of the DG for investigating the conduct of all the OEMs suspected to be indulging in anti-competitive activities.

7.4.4 Challenging the jurisdiction of the Commission, Hyundai had filed a Writ Petition which was admitted in the Madras High Court on 28.11.2012. The Madras High Court, *vide* interim order dated 06.02.2013 allowed *ex parte* interim stay of proceedings against Hyundai. The Writ Petition was finally disposed off by the final order dated 04.02.2015, wherein the Madras High Court confirmed the jurisdiction of the Commission. The Madras High Court, in its order dated 04.02.2015, has observed that though DG cannot initiate an investigation *suo motu*, the real question is whether in the case on hand, what was done by the DG would tantamount to *suo motu* initiation of investigation or not. The Madras High Court answered the question in negative. While commenting on the scope of the DG's investigation, the Madras High Court opined that the DG placed additional information before the Commission. The Commission then passed an order on 26.04.2011. Thereafter, the DG issued a notice to the writ petitioner on 04.05.2011, only in compliance of the directions issued under Section 41(1) of the Act. Citing the foregoing reasons, Madras High Court's order unequivocally held that neither the DG nor the Commission have overstepped the jurisdiction vested in them by law.



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7.4.5 Even otherwise, since all the Opposite Parties were given ample opportunity to present their case and all the Opposite Parties have submitted their detailed objections to the DG report, presented their oral arguments and filed their written submissions before the Commission, the Commission is of the view that there has been no procedural irregularity as such in the present case.

7.4.6 In view of the aforesaid, the Commission is of the view that the contention raised by Hyundai challenging the jurisdiction of the Commission is devoid of any merit, especially in the light of the Madras High Court's order dated 04.02.2015.

7.4.7 Before moving to the substantive issues, the Commission feels it appropriate to deal with the applications filed by Reva (dated 01.02.2013) and Premier (21.12.2012) under Regulation 26 of the General Regulations. Reva and Premier have alleged before the Commission that the order dated 05.11.2014 wherein these parties were asked to present their objections to the DG report was bad in law as the Commission had already exonerated them in the matter. Reva has submitted that during the course of the hearing, on 04.02.2013, the Commission had informed the representatives of Reva that it has taken note of its prayers and has accordingly exonerated Reva from the allegations of the DG Report and that a substantive order in this regard would be passed in due course. It was further stated that the order of the Commission dated 05.03.2013, had explicitly mentioned that the Commission is considering the application filed on behalf of Mahindra Reva for exemption under Regulation 26 of the General Regulations. Similarly, Premier stated that in its order dated 08.02.2013, the Commission had mentioned that it is considering the application filed on behalf of Premier for striking off its name from the array of Parties. It was also submitted by the aforementioned parties that in the order of the Commission dated 28.05.2013, the Commission had sought additional information from the



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Opposite Parties other than Reva and Premier. Citing these reasons, Reva and Premier have requested, recall of Commission's order dated 05.11.2014 through which the Commission has re-initiated proceedings against them in the present matter.

7.4.8 The Commission has considered the submissions and applications filed by Reva and Premier and perused all the dated orders mentioned above. Based on a combined reading of all the material, it appears that both Reva and Premier have misconstrued the orders and directions of the Commission. During the pendency of the proceedings in Case No. 03/2011, the Commission had only taken on record the applications filed by Reva (dated 01.02.2013) and Premier (dated 21.12.2012) under Regulation 26 of the General Regulations. Since, the final determination on the issue of relevant market definition was pending at that moment; the Commission had put those applications on hold as the determination of the relevant market will have a great bearing on the decision by the Commission on those applications. This is evident from the orders of the Commission dated 08.02.2013 and 05.03.2013 wherein the Commission had categorically stated that the order on such applications will be passed in due course.

7.4.9 Thereafter, the Commission, at the time of passing the Main Order with respect to 14 other Opposite parties, had made it clear that it shall pass a separate order in respect of the present Opposite Parties, viz., Hyundai, Reva and Premier after affording them a reasonable opportunity to make their submissions in respect of the findings in the DG report and queries raised by the Commission. The Commission, had only deferred its order with respect to these three Opposite Parties and had not at any point of time, exonerated any of them from the proceedings. The contention raised by Reva and Premier that they should be exempted owing to their miniscule market share in the car segment would also be dealt with later in this order. At this



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juncture, it would suffice to say that the Commission did not exonerate at any time any of these abovesaid parties from the proceedings.

7.4.10 Besides, these preliminary issues, the following substantive issues also require determination in the matter.

8. Determination of Substantive Issues

(1) *Issue 1: Whether the present Opposite Parties have violated the provisions of section 4 of the Act?*

(2) *Issue 2: Whether the present Opposite Parties have violated the provisions of section 3 of the Act?*

8.1 *Issue 1: Whether the present Opposite Parties have violated the provisions of section 4 of the Act?*

8.1.1 It has already been mentioned before that the present order is in continuation of the Main Order of the Commission. Consequently, this order should be read in continuation with and as an extension of that Main Order. For the sake of brevity the main observations of the Commission in the Main Order are not reproduced here in detail.

Determination of the Relevant Market

8.1.2 The Commission has discussed in detail the principles governing the determination of the relevant market generally and more specifically for the case at hand in its Main Order and therefore, only the main observations and findings are reproduced hereunder.



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8.1.3 After considering the relevant provisions of the Act, findings of the DG report, conceptual framework relating to the issues with respect to the “aftermarkets” and “systems market” as concepts of competition law, submissions made by the Opposite Parties and other material placed on record, the Commission accepted the aftermarkets definition as opposed to the concept of unified systems’ market definition advocated by the Opposite Parties to argue that the sale of cars and spare parts together constitute a single market. The Commission had held that there exist two separate relevant markets: one for *manufacture and sale of cars*, and another for *sale of spare parts*. The latter is further divided into two sub-segments, consisting: (a) *supply of spare parts, including diagnostic tools, technical manuals, catalogues etc. for the aftermarket usage* and (b) *provision of aftersale services, including servicing, maintenance and repair services for vehicles*. Further the Commission held that a ‘cluster market’ exists for all the spare parts for each brand of cars, manufactured by the OEMs, in the Indian automobile market. The Commission rejected the OEM’s systems market definition primarily on two grounds—firstly, the consumers/buyers in the primary market (*manufacture and sale of cars*) do not undertake (and are not capable of undertaking) whole life cost analysis when buying the automobile in the primary market and secondly, *reputation effects* do not deter the OEMs from setting supra competitive price for the secondary product. The Commission, relying on the hard reality as depicted by the facts, concluded that in-spite of reputational factors, as argued by the Opposite Parties, each OEM has in practice substantially hiked up the price of the spare parts (usually more than 100% and in certain cases approx 5000%); thereby rebutting the theory that reputational concerns in the primary market usually dissuade the OEM from charging exploitative prices in the aftermarket.



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8.1.4 With regard to the relevant geographic market, the Commission held that the relevant geographic market consists of the entire territory of India as a car owner can get his car serviced or repaired from repair shops located across the territory of India.

8.1.5 The Commission is of the view that the relevant market definition with respect to the present Opposite parties would be the same as provided in the Main Order. Therefore the relevant market in the present case would be as follows:

- (i) *manufacture and sale of cars in India,*
- (ii) *sale of spare parts in India.*
 - a. *supply of spare parts, including diagnostic tools, technical manuals, catalogues etc. for the aftermarket usage in India and*
 - b. *provision of aftersale services, including servicing of vehicles, maintenance and repair services in India*

Assessment of Dominance of OEMs

8.1.6 In its Main Order, the Commission noted that 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 enables an enterprise to manipulate the relevant market in its favour to the economic detriment of its competitors and consumers. The Commission noted that 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, thus diminishing the inter-brand substitutability of spare parts among cars manufactured by different OEMs.

8.1.7 It was further revealed during the investigation of the DG that each OEMs had entered into various agreements with their overseas suppliers or OESs or



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both to ensure that they 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. The Commission also took into account the DG's finding that various multi brand repairer/maintenance service providers were unable to cater to the demand of the customers to service their automobile because of the non-availability of the spare parts of the OEMs in the open market.

8.1.8 Taking into consideration the aforesaid, the Commission held 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 of its brand of automobiles. The Commission discarded the argument raised by various OEMs that they hold a miniscule market share in the primary market of sale of cars and therefore, miniscule share in the aftermarket. It was observed by the Commission, that 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, irrespective of the market share they hold in the primary market.

8.1.9 Similarly, with respect to Hyundai, Reva and Premier also, the Commission is of the view that considering the technical compatibility between the products in the primary market and the secondary market, they hold 100% market share and are dominant in the aftermarket of their respective genuine spare parts and diagnostic tools and correspondingly in the aftermarket of their respective repair services for their brand of automobiles. Considering the adoption and application of after markets theory in defining the relevant market in the present case, the argument put forward by Reva and Premier in their respective applications filed under Regulation 26 of the General regulations is liable to be rejected. Since each OEM is dominant in the aftermarket irrespective of the market share it has in the primary market,



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there is no reason why Reva and Premier should be excluded from the array of Opposite Parties. Those applications are, therefore, rejected.

8.1.10 As per the specific findings of the DG report, the present Opposite Parties have ensured through their agreements with the local OESs and overseas suppliers that the independent repairers are not able to effectively compete with the authorized dealers in the secondary market for repairs and maintenance services by denying them access to the required spare parts and diagnostic tools to complete such repair work. Finally, the warranty conditions which the present Opposite Parties impose on their consumers dissuade them from availing the services of independent repairers. In conclusion therefore, the Commission has no hesitation in holding that Hyundai, Reva and Premier hold a position of strength which enables them to affect their competitors in the secondary market, i.e., independent service providers in their favour, thereby limiting consumer choice and forcing the consumers to react in a manner which is beneficial to them, but detrimental to the interests of the consumers.

Abuse of Dominant Position

8.1.11 A perusal of the agreements entered between OEMs (Hyundai, Reva and Premier) and local OESs and between OEMs and their respective overseas suppliers makes it abundantly clear that these OEMs have imposed restrictions on the supply of genuine spare parts to the independent repairers. In case of Premier, the DG has found that the LOI executed between Premier and the local OESs for supplying of spare parts for Premier's assembly line and aftermarket requirements contained clauses that restrict the OESs from supplying spare parts directly into the aftermarket. The clauses require that all requirements for spare parts shall be met through Premier and its authorized agents. In case of Reva, the DG has found a restrictive covenant



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in the purchase order placed by Reva on its local OES. Further in case of Hyundai, though the DG could not find a specific clause but the DG has found implied agreement on the basis of facts revealed during the investigation. The DG has examined the technology and royalty agreement entered between Hyundai and its overseas supplier, HMC, for supply of spare parts for its operations in India. Though the DG, on perusal of such agreement, could not discover the existence of any clauses which restricts the ability of the overseas supplier from selling directly into the aftermarket in India, the DG has reported the fact that the overseas supplier is the parent company of Hyundai and only supplies spare parts to MIL (a group company of Hyundai for dealing with the aftermarket requirements in India), indicates the existence of an arrangement between Hyundai and its overseas supplier for not supplying spare parts directly into the Indian aftermarket. Further, the DG has found that the basic purchase agreement (entered with the OESs by Hyundai for the supply of spare parts) and other purchase orders executed by Hyundai for procuring spare parts from various OESs in India contained clauses that restrict the OESs from supplying spare parts directly into the aftermarket which are based upon the drawings and designs of Hyundai.

8.1.12 The following table summarizes the findings of the DG with respect of the restrictive clauses in the OESs agreements with respect to each of the OEMs.

OEMs	Restrictive clause in OES Agreement/Purchase Orders/LOI
Hyundai	OES restricted from supplying to the aftermarket on the pretext of protecting the IPRs of the OEM.
Reva	OES restricted from supplying to the aftermarket on the pretext of protecting the IPRs of the OEM.
Premier	OES restricted from supplying to the aftermarket on the pretext of protecting the IPRs of the OEM.



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8.1.13 On the basis of the foregoing discussion, the Commission is of the view that the conduct of Hyundai, Reva and Premier amounts to a denial of market access to the independent repairers to procure genuine spare parts in the aftermarket. As discussed earlier, each OEM holds a dominant position 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 in the aftermarket. Therefore, the practice of the OEMs in denying the availability of its genuine spare parts severely limits the independent repairers and other multi brand service providers in effectively competing 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.

8.1.14 Further, the investigation by the DG has revealed that Hyundai and Reva earn a considerable mark up margin and the margin earned significantly varies across the spare parts. The DG has found that a substantial mark up was being earned in most of the top 50 spare parts sold by each of the OEMs. The following table illustrates the findings of the DG:

OEM	Range of Price Mark-up for top 50 spare parts based on Revenue Generated (in percent)	Range of Price Mark-up for top 50 spare parts based on Consumption (in percent)
Hyundai/HMIL	28.26 - 502.76	50.04 - 644.68
Reva	- 66.74 - 797.33 (38 out of top 50 spare parts)	- 66.74 - 1180.42 (42 out of top 50 spare parts)
Premier	N.A.	N.A.



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8.1.15 The above table clearly demonstrates that a substantial mark up is being earned on the price of spare parts i.e. there exists a considerable difference between the cost at which a spare part is sourced from the OESs and the overseas suppliers and the price at which it is made available to the consumers. Such high mark ups reflect the fact that the market for spare parts suffer from structural infirmities due to lack of competitive structure.

8.1.16 On the issue of leveraging, the Commission had held that since the car owners purchasing spare parts have to necessarily avail the services of the authorized dealers of the OEMs, OEMs have used their dominance in the relevant market of supply of spare parts to protect the relevant market for after sales service and maintenance thereby violating Section 4(2)(e) of the Act. Further, since the access to specialized diagnostic tools, fault codes, technical manuals, training etc. is critical for undertaking maintenance and repair services of such vehicles, the independent repairers are substantially handicapped from effectively attending to the aftermarket requirements of automobiles due to the lack of access to specialized diagnostic tools. Further, it may be noted that the facts pertaining to the present Opposite Parties are substantially similar to the other OEMs considered in the Main Order. Applying the same reasoning, therefore, the Commission is of the view that the conduct of the present OEMs is in contravention of section 4(2)(e) of the Act.

8.1.17 In view of the aforesaid, the Commission finds Hyundai, Reva and Premier to be indulging in abuse of their dominant position thereby contravening the provisions of section 4(2)(a)(i), 4(2)(c) and 4(2)(e) of the Act.

9. *Issue 2: Whether the present Opposite Parties have violated the provisions of section 3 of the Act?*

9.1.1 A perusal of the DG report shows that the OEMs source spare parts for their assembly line and aftermarket requirements from the overseas suppliers and



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other local OESs, pursuant to the agreements with such overseas suppliers and the local OESs. The OEMs then distribute the spare parts in the aftermarket and also provide after-sale repairs and maintenance services to their various models of cars through their network of authorized dealers. Therefore, as noted in the Main Order, the OEMs enter into three types of agreements: (a) agreements with overseas suppliers; (b) agreements with local OESs and (c) agreements with authorized dealers. The analysis of these agreements in respect of the present Opposite Parties i.e. Hyundai, Reva and Premier is entailed in the following paragraphs.

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

9.1.2 During the investigation, the DG has analyzed the importer agreements entered by the OEMs (Hyundai and Reva) with their overseas suppliers. The DG, in case of Hyundai, examined the technology and royalty agreement entered between Hyundai and its overseas supplier, HMC, for supply of spare parts for its operations in India. Though the DG, on perusal of such agreement, could not discover the existence of any clauses which restricted the ability of the overseas supplier from selling directly into the aftermarket in India, the DG has reported that, the fact that the overseas supplier is the parent company of Hyundai and only supplies spare parts to MIL (a group company of Hyundai for dealing with aftermarket requirements in India), indicates existence of an arrangement between Hyundai and such overseas supplier for not supplying spare parts directly into the Indian aftermarket. Further, in case of Reva, the DG has found that it has executed purchase orders with the overseas suppliers for supplying of spare parts for its operations in India. As per Reva's statements before the DG, the purchase order contained terms and conditions that govern the relationship between Reva and its overseas suppliers. On perusal of such purchase orders, it was



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found that such overseas suppliers were restricted from supplying spare parts (which have been made with the design of Reva) into the aftermarket in India.

9.1.3 Since Premier was found to be procuring all its spare parts from local OESs, there was no finding of the DG against Premier under this sub-head.

9.1.4 On the basis of DG's findings, it is evident that Hyundai and Reva have restricted their respective overseas suppliers from directly supplying spare parts in the aftermarket in India. Hyundai has claimed exemption for such agreements by citing the doctrine of 'single economic entity'. The concept of single economic entity is generally applicable only if there exists inseparability in the economic interest of the parties to the agreement. Therefore, it is a mixed question of law and facts, to be decided based on the facts and circumstances of each case. Considering the facts in this case, the agreement between Hyundai and HML may not be held violative of section 3 of the Act.

9.1.5 The purchase orders with respect to Reva are found to be between Reva and an independent overseas supplier. Therefore, the doctrine of single economic entity will not be applicable to Reva.

Analysis of agreements/arrangements between the OEMs and the OESs

9.1.6 The second category of agreements that the OEMs enter into are with the local OESs for the procurement of spare parts for both assembly line and aftermarket requirements. As noted in the order dated 25.08.2014, the spare parts supplied by the OESs can be broadly categorized under the following heads:



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- 1) Where the design, drawing, technical specification, technology, know-how, toolings (which are essentially large machines required for manufacture of the spare parts), quality parameters etc., are provided by the OEMs. The OESs 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 parts are developed by the OESs as per 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.

9.1.7 As per the DG's report, it has been observed that those 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. Although the present Opposite Parties have alleged that they do not restrict sale of spare parts after prior consent 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 into the aftermarket.

9.1.8 On the basis of the findings of the DG report and the submission made by the parties, the Commission is of the view that none of the present three OEMs allow their OESs to supply genuine spare parts directly into the aftermarket. Also, all the three OEMs have justified their restrictions on the basis of IPR protection and sought an exemption under section 3(5)(i) of the Act. Accordingly, the Commission deems it appropriate to assess whether



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such an exemption is available to these OEMs or not before concluding that the agreements between the OEMs and the OESs are in the nature of 'exclusive distribution agreements' and 'refusal to deal' as contemplated under section 3(4)(c) and 3(4)(d) read with section 3(1) of the Act respectively.

IPR exemption

9.1.9 All the present Opposite Parties have claimed IPR exemptions stating that on account of the provisions of section 3(5)(i) of the Act, the restrictions imposed upon the OESs from undertaking sales, of their proprietary parts to third parties without seeking prior consent would fall within the ambit of reasonable condition to prevent infringements of their IPRs. The Commission has already clarified in its Main Order that while determining whether an exemption under section 3(5)(i) of the Act is available or not, 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.

9.1.10 After analysis of the material placed on record with regard to the other 14 OEMs in the Main Order, the Commission had held that the exemption enshrined under section 3(5)(i) of the Act was not available to those OEMs for the following reasons:

- OEMs had failed to submit the relevant documentary evidence to successfully establish the grant of the applicable IPRs, in India, with respect to the various spare parts.



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- OEMs had failed to show that their restriction amounted to imposition of reasonable conditions, as may be necessary for protection any of their rights.

9.1.11 In the light of these observations, therefore, the Commission will ascertain as to whether the exemption under section 3(5)(i) of the Act would be available to Hyundai, Reva and Premier.

9.1.12 At the outset it may be noted that as per the observations of the DG and the submissions made by the present Opposite Parties, none of them own any registered IPR on any of their spare parts as such in India. It has been admitted by Hyundai and MIL that they do not possess any valid IPRs in India except for its trademark/logo. The DG has further reviewed the license agreement entered into between Hyundai and HMC and opined that such agreement does not specify the technologies, patents, knowhow, copyrights and other IPRs which are being granted to Hyundai. Similarly, Reva and Premier have also admitted that none of their spare parts are covered by IPRs in India.

9.1.13 Further, it needs to be clarified here that though registration of an IPR is necessary, the same does not automatically entitle a company to seek exemption under section 3(5)(i) of the Act. The important criteria for determining whether the exemption under section 3(5)(i) is available or not is to assess whether the condition imposed by the IPR holder can be termed as “imposition of a reasonable conditions, as may be necessary for the protection of any of his rights”. The Commission is of the view that the concept of protection of an IPR is qualified by the word “necessary”. So the relevant question is whether in the absence of the restrictive condition, would the IPR holder be able to protect his IPR.



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9.1.14 The Commission has dealt with this question in detail in its Main Order.

Suffice to conclude that mere 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, 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 without imposing the restrictive conditions. Furthermore, the Commission is of the view that none of the present three OEMs are eligible to seek exemption under section 3(5)(i) of the Act for the agreements entered between OEMs and OESs. As such, the contravention under section 3(4)(c) and 3(4)(d) read with section 3(1) of the Act for exclusive distribution agreement and refusal to deal stands established.

9.1.15 Before we part with this issue, it may be relevant to point out the contention made by Hyundai in this regard. It was averred by Hyundai that the designs, specifications, drawings and technologies provided by Hyundai to its OESs are protected by unregistered copyright and trade secret. In addition to Hyundai/ HMC drawings and specifications which are entitled to copyright protection, Hyundai claimed that its drawings/know-how/specifications would also be conferred IP-protection by virtue of being confidential information. To substantiate its claim, Hyundai cited the judgment of the Delhi High Court in *Cattle Remedies and Anr. Vs. Licensing Authority/Director of Ayurvedic and Unani Services*, wherein it has been observed that apart from specific statutes relating to trade mark, copyright, design and patent, etc., trade secrets are also a form of IP. The contention of Hyundai is without any merit and is liable to be rejected. With regard to the trade secrets and confidential knowledge, the Commission is of the view that they are not among the listed categories of IPR laws and hence Hyundai cannot claim any exemption under section 3(5)(i) of the Act.



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

9.1.16 During the course of the investigation, the DG has examined the conduct of Hyundai, Reva and Premier with respect to their dealing with their authorized dealers and the terms and conditions of the agreements with them for the sale of automobiles in the primary market and the sale of spare parts and provision of maintenance services in the secondary market. From the perusal of the agreements, the DG has reported the following observations:

9.1.17 The DG has opined that though Hyundai has alleged that there is no restriction on the Authorized dealers to make over the counter sale of the spare parts, diagnostic tools etc., it could not substantiate its claims.

9.1.18 With regard to Reva, the DG has concluded that the LOI issued to the authorized dealers did not impose any restriction on the over the counter sale of such spare parts. The DG has also observed that the data furnished by Reva suggested that the sale of such spare parts was taking place over the counter. However, taking into account the submissions of independent repairers that such spare parts were available only to a limited extent and not freely, the DG has concluded that there is an implied understanding between Reva and its authorized dealers regarding non-supply of spare parts over the counter.

9.1.19 Similarly in case of Premier, the DG has reported that Premier has stated that it allows over the counter sale to the independent repairers of its spare parts, such claim however remains unsubstantiated.



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9.1.20 The findings of the DG with regard to Hyundai, Reva and Premier have been summarized in the table below.

Agreement between OEMs and their authorized dealers				
OEMs	Over the Counter sale of Spare Parts	Availability of Diagnostic Tools	Warranty Conditions	Ability of Dealers to deal with competing brands
Hyundai	No clause * Hyundai has submitted data to indicate that counter sales as percentage of total sales were in the range of 45% to 74% across dealers	Hyundai has contended that such diagnostic tools are available in the open market through specialized vendors but the same remained unsubstantiated	Warranty invalidated if repaired by independent repairer	Restricted
Reva	No clause* DG has reviewed certain over the counter sale invoices dated November 2011	Only available to authorized dealers	Warranty invalidated if repaired by independent repairer	Restricted
Premier	No clause* Since all Premier cars are under warranty period the need of counter sales have not arisen	Open to technologically supporting the independent repairers but since all Premier cars are under warranty they are not being catered by independent repairers yet.	Warranty invalidated if repaired by independent repairer	Not restricted



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9.1.21 It should be noted that as per the provisions of section 3(4) of the Act, only agreements which cause or are 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 19(3) of the Act.

9.1.22 The Commission has taken note of the justifications offered by the Opposite Parties for imposing restrictions through agreements on the authorized dealers with respect to over the counter sales. The justifications provided by them were as follows:

- (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.

9.1.23 It may be noted that these justifications have already been rejected by the Commission in respect of the other 14 Opposite Parties in the Main Order. Therefore, there is no need to go into the detail of the propriety of such justification with regard to the present three Opposite Parties.



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9.1.24 Additionally, it was found that all these OEMS had stringent warranty conditions which required their customers to only get their automobile repaired through their authorized service network of dealers otherwise their warranty would be invalidated.

9.1.25 Therefore, the Commission is of the view that the present Opposite parties, either specifically through their agreements or otherwise through understanding with their dealers, have restricted/prohibited the sale of spare parts over the counter, thereby resulting in prescribing exclusive distribution agreements and refusal to deal in terms of Section 3(4)(c) and 3(4) (d) of the Act.

9.1.26 Further the present Opposite Parties, either specifically through their agreements or otherwise through their understanding with their dealers, require them to source spare parts only from them or their approved vendors. These agreements are found to be in the nature of exclusive supply agreements in terms of Section 3(4)(b) of the Act.

ORDER

10. In view of the aforesaid discussions and for reasons recorded in this order as well as the general findings in its Main Order, the Commission is of the considered opinion that the three Opposite Parties viz. Hyundai, Reva and Premier have contravened the provisions of sections 3(4)(b), 3(4)(c), 3(4)(d), 4(2)(a)(i), 4(2)(c) and 4(2)(e) of the Act, as applicable.
11. It may be noted that the Commission in the Main Order has provided the following directions to the Opposite Parties under section 27 of the Act:-



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- 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 the 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 the public domain, and also host on their websites, information regarding the spare parts, their MRPs,*



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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.

12. The above stated directions apply to the present Opposite Parties with the same force and the Commission hereby directs them to abide by the same with immediate effect. As regards the imposition of the penalty under section 27 of the Act, the Commission has already taken into account the aggravating factors and mitigating factors that apply to the automobile sector generally and the present Opposite Parties specifically. Apart from the general factors taken into account in the Main Order, the Commission notes that there are other specific mitigating factors that are applicable to Premier and Reva.

13. The Commission is of the view that though Premier was found to be dominant in the aftermarket for its genuine spare parts and diagnostic tools and correspondingly in the aftermarket for the repair services of its brand of automobiles, its conduct remained untested during the DG investigation. It is to be noted that at the relevant time period of the investigation, all Premier cars were under warranty and as such the conduct of Premier with respect to abuse of dominance remained untested. Furthermore, Premier did not impose any restrictions on its authorized dealers to deal with vehicles of competing brands. In the case of Reva, the Commission has noted that with respect to the agreements entered with the authorized dealers, the DG during the investigation has found that its spare parts were, to some extent, available over the counter.



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14. The mitigating factors stated above work in favor of Premier and Reva. The Commission finds it appropriate to not to impose any monetary penalty on Premier and Reva, though other directions reproduced in para 11 above would apply to them in the same manner as other Opposite Parties in the Main Order.
15. Hyundai has, *inter alia*, urged before the Commission that its case is entirely different from the other OEMs and, therefore, it deserves a reduced penalty. It has been contended that the excessive pricing by the other OEMs was extremely high as compared to Hyundai. It was further urged that it is the very first competition law infringement case against Hyundai and it has effectively cooperated with the DG and also with the Commission. Hyundai also submitted that it allowed over the counters sales partially. It was also contended that the automobile sector is being investigated for the first time and, therefore, no fine should be levied. It may be noted that most of the factors cited by Hyundai are general in nature which do not qualify for a reduced penalty.
16. In view of foregoing, the Commission is of the opinion that a penalty of 2% of the total turnover in India may be imposed on Hyundai. As such, the penalty imposed on Hyundai is as follows:-

Name	Turnover for 2009-10 (in Rs. crores)*	Turnover for 2010-11 (in Rs. crores)*	Turnover for 2011-12 (in Rs. crores)*	Total Turnover for 3 years (in Rs. crores)*	Average turnover (in Rs. crores)*	Penalty @ 2% of the average Turnover (in Rs. crores)*
Hyundai	20269.37	20269.71	22499.99	63039.07	21013.02	420.2605

*last decimal point in the figures has been rounded off



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17. Resultantly, a penalty of Rs. 420.2605 crores (Rupees Four Hundred and Twenty Crores, Twenty Six Lakhs and Five Thousand only)— calculated at the rate of 2% of the average income of Hyundai for three financial years is hereby imposed on it.
18. The directions of the Commission contained in paragraph 11 and 12 of this order will have to be complied with by the present Opposite Parties in letter and spirit. Each OP is directed to file an individual undertaking, 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 the 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 have to be paid by Hyundai within 60 days of the receipt of this order.
19. The Secretary is directed to inform the parties accordingly.

Sd/-
(Ashok Chawla)
Chairperson

Sd/-
(S. L. Bunker)
Member

Sd/-
(Sudhir Mital)
Member

Sd/-
(Augustine Peter)
Member

Sd/-
(U. C. Nahta)
Member

New Delhi
Dated: 27-07-2015