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Shamsher Kataria v. Honda Siel Cars India Ltd. – Great End, but Means?

Ayushi Singhal (West Bengal National University of Juridical Sciences) · Tuesday, May 9th, 2017

I thank my friend and senior, Sahithya Murali, for meaningful suggestions on a draft of this blog.

I. Introduction

The car spare-parts market in India is a closed one, because car manufacturers mandate that the authorized dealers source their spare parts only from the Original Equipment Manufacturers (OEMs) or the approved vendors, and the spare parts are not sold in the open market. The Competition Commission of India ('CCI') in the case of *Shamsher Kataria v. Honda Siel Cars India Ltd. and others*,[i] regarded as the first spare-parts case of India, has held that these agreements were anti-competitive.

It further held that the Indian car spare-parts market forms a separate market from that of cars, *inter alia*, as the consumers do not engage in whole life costing while buying cars, and the OEMs, who were generally the car manufacturers monopolized this spare-parts market.

The OEMs were abusing this dominance, by restricting independent repairers and other non-authorized repairers from accessing the secondary market and marking up the prices of spare-parts to the extent of 5,000 per cent. Further, the OEMs did not allow independent service providers access to their spare parts, thus protecting their position in the after services market as well. This decision was affirmed on appeal to the Competition Appellate Tribunal ('COMPAT'), the COMPAT only differing on the quantum of penalties.

II. Analysis of the COMPAT order

While I support the conclusion of the commission, I believe that the analysis provided by the commission to reach the conclusion is inadequate. Further, the penalties imposed by the Commission are also unreasonable for the reasons I detail below.

First, with respect to the conclusion of relevant market, the Commission does not consider any economic evidence relevant to India to reach a conclusion that the consumers in *India* are unlikely

to make a whole-life cost analysis of the cars purchased.[ii]

The court relied on the decision in *Eastman Kodak Company v. Image Technical Services Inc.*[iii] to reach the conclusion that Indian consumers might not make a whole-life cost analysis since doing so requires a substantial amount of raw data and requires one to undertake sophisticated analysis. Firstly, the analysis in the Kodak judgment itself has been criticized by various scholars.[iv] Further, the empirical studies[v] cited by the court do not relate to car markets and include the caveat that the observations reached by the studies might indeed differ from situation to situation. This is specifically so in light of the Commission's own acknowledgement that the analysis would depend from product to product (¶20.5.29). There also exist contrary studies to the effect that the consumers indeed make whole life cost analysis in many cases.[vi]

Not to mention that the studies cited by Commission date back to 1979-1982 ignoring the fact that consumers today are much more aware. There was one more aspect that was ignored by the commission. CCI in paragraph 20.5.33 notes that "consumers tend to buy cheaper models with higher operating costs than those that would be efficient in terms of lifecycle costs, and therefore end up paying higher lifecycle costs". Illustratively, it is possible that the competition in the primary market leads to a situation where increase in the prices of secondary products makes the primary product uncompetitive, unless this rise in the secondary market is used to compensate the decrease in price of the primary product. This would ensure that the prices of the primary product and secondary product taken cumulatively are competitive.

Further, even if life-cycle calculation is not done by the consumer, the competitors might perform such an analysis, and compete accordingly, which might result in the supplier of the primary and secondary products not enjoying high overall profits, even though the prices of the aftermarket are high. That is, stiff competition in the primary market can result in a decrease in the price of primary products, such that the overall price being charged to the consumers is competitive, even when the consumers are not taking into account this overall price while making decisions concerning purchase of the primary product. The supplier might believe that the lower market prices of primary products would compensate for the higher prices charged on secondary products. This can be identified by calculating the return on investment which the supplier is receiving on the overall market, and whether this is abnormally high for the particular industry sector, this margin can also be compared to that of other similar sectors, or the margin of other products in the same market, unless they are being sold at unfair prices as well.

This link between the aftermarket and primary market would generally function in a standard case, unless this link is disturbed when the supplier changes his policy at a sudden and raises prices in the aftermarkets. This policy is called 'installed-base opportunism'.

The burden of proving that this link no longer exists is on the Commission, as the Competition Act, 2002 at the end of the day is a penal statute, and the Commission, as in this case has powers to impose massive penalties with respect to anti-competitive activities on firms. However, as explained above, concrete analysis on actual consumer behavior was not made by the Commission.

Second, the orders which the court has made against the OEMs do not appear economically sound.

For instance, the COMPAT has directed the Ministry of Road Transport and Highways to create a program for standardization of automobile parts. While the objective of this direction might be to increase the supply of spare parts in the market, but even if some spare parts are to be standardized,

it impinges on the property rights and commercial freedom of the car manufacturers. It is not a stretch to say that certain kinds of spare parts also add to the quality of a car. Instead, making information regarding interoperability of spare parts (on the lines of software interoperability) available publically can be a viable alternative.

Similarly, the COMPAT has directed that the OEMs should not put any restriction on the Original Equipment Suppliers with respect to the supply of spare parts in the open market and warranty on a product is to be denied only when such certified repairers make faulty repairs. This imposes a heavy evidentiary burden on the OEMs to prove that the repairs have indeed been faulty. It is more suitable to take the approach of the EU where a qualitative criterion is prescribed by the OEM and all firms that meet this criterion can join the authorized repair network.[vii] This ensures that the investigations with respect to faulty repairs need not be carried out, and the warranty of the primary product remains the same irrespective of the firm from which repair services are taken.

Thus, while the objective of the COMPAT seems laudable, the manner in which it has sought to achieve it, will only put additional burden on both the consumer and the OEMs, and is not economically the most efficient. Certain car manufacturers have appealed to the High Court against the CCI order and we can only hope that the directions made by the COMPAT will be modified.

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[i] C-03/2011. This has been affirmed by the Competition Appellate Tribunal subsequently in an order dated December 9, 2016, except on the issue concerning quantum of penalty, an explanation of which is not relevant for the instant discussion.

[ii] The burden of proof in this regard indeed rests on the Commission; see, European Federation of Ink and Ink Cartridge Manufacturers (EFIM), Case COMP/C-3/39.391 EFIM.

[iii] 504 U.S. 451 (1992).

[iv] See, for e.g., Justice Scalia's dissenting opinion in the case; Jonathan L Gleklen, *The ISO Litigation Legacy of Eastman Kodak Co. v. ImageTechnical Services: Twenty Years and Not Much to Show for It*, 27(1) Antitrust 56 (Fall 2012).

[v] Dermot Gately, Individual Discount Rates and the Purchase and Utilization of Energy using Durables: Comment, 11 Bell J. Econ. 373 (1980), Jerry A. Hausman, Individual Discount Rates and the Purchase and Utilization of Energy-using Durables, 10 Bell J. Econ. 33 (1979), Jerry A. Hausman and Paul L. Joskow, Evaluating the Costs and benefits of Appliance Efficiency Standards, 72 Am. Econ. Rev. 220 (1982) (as cited in the order of the Commission, ¶20.5.33).

[vi] European Commission Regulation 1400/02, see also Automotive Sector Groups of Houthoff Buruma and Liedelerke Wolters Waelbroeck Kirkpartick, Flawed Reform of the Competition Rules for the European Motor Vehicle Distribution Sector, 24(6) European Competition Law Review (2003).

[vii] Commission Notice – Supplementary guidelines on vertical restraints in agreements for the sale and repair of motor vehicles and for the distribution of spare parts for motor vehicles OJ [2010] C 138/16.

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