A STUDY ON COMPETITION ISSUES IN THE AUTOMOTIVE SECTOR

REPORT BY THE COMPETITION AUTHORITIES OF BRICS WORKING GROUP ON AUTOMOTIVE SECTOR

Conselho Administrativo de Defesa Econômica

Fair Competition For Greater Good

competition commission south africa

MESSAGES FROM HEADS OF COMPETITION AUTHORITIES

BRAZIL

Alexandre Cordeiro Macedo, President, Administrative Council for Economic Defense (CADE), Brazil

Dear Colleagues,

As antitrust authorities, we must be prepared for constant changes in the market, with a focus on protecting free competition. This is our main mission, but also our biggest challenge. In this sense, international cooperation plays a key role in fostering the dialogue and exchange of experiences between agencies around the world.

There is no doubt the automotive industry is of global interest. However, it has always been a primary sector to developing countries, considering it is an important source of revenue and employment for a state. Thus, a competitive automotive industry generates social benefits that should not be disregarded by the BRICS economies.

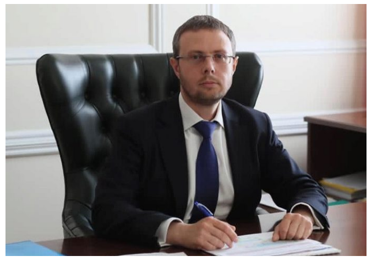
Nevertheless, with globalization, this sector has undergone multiple transformations in recent years. In this context, the role of competition authorities is crucial to improve tools, rules and guidelines to help us keep pace with these changes and have a more competitive and dynamic market that stimulates innovation and responds effectively to the interests of both the business community and the general population.

The present Study on competition issues in the automotive sector is another step forward for the BRICS competition authorities. It is a major contribution that examines this sector in different countries, identifying common features, as well as particularities. Moreover, the comparative analysis shows us new paths that may ultimately lead us to potential solutions to industry bottlenecks.

We have in our hands a document that helps us not only understand how each decision or new rule can affect the automotive market, but that also reaffirms to us the importance of competition policy established through international cooperation.

RUSSIA

Maxim Shaskolskiy, the Head of the Federal Antimonopoly Service (FAS), Russia



Dear Colleagues,

The development and maintenance of competition environment in the automotive markets are of the most crucial aims of most competition authorities. It has an impact on protecting interests of national manufacturers, promoting the role and place of the country in the system of world economic relations, generating employment and, therefore, ensuring the welfare of the country's population. A competitive automotive industry is a strategic element of the BRICS economies.

The globalization of production leads to significant renovation of the structure of the global automotive industry. As a result of this trend, competition authorities all around the world have faced emerging challenges such as abuse of dominant market position by major players of the industry, frequent cartel agreements, M&As that possibly violate national competition legislation.

In this regard, competition authorities are elaborating new instruments for detecting and suppressing violations of competition legislation in the automotive sector. The BRICS countries also adopt various pro competitive responses and consolidate the methods of countering anti-competitive practices.

The current Study on competition issues in the automotive sector prepared by the BRICS competition authoritiesprovides a comparative analysis of the general characteristics of this market in the BRICS countries, as well as examines specific problems of competition in the automotive markets and elaborates their possible solutions.

I am sure that the information reflected in the Study will be useful for both the competition authorities and the business community and will become a practical guide in the field of regulation of automotive markets.

INDIA

Ashok Kumar Gupta, Chairperson, Competition Commission of India (CCI)

Dear Colleagues,

I am pleased to release the BRICS report on "A Study on Competition Issues in the Automotive Sector", for which the Competition Commission of India was the project lead along, with Competition Commission of South Africa as the co-lead.

The cooperation amongst BRICS competition regulators has come a long way since the first BRICS conference held in Kazan, Russia, in 2009. The constitution of working groups by members on contemporary antitrust issues has led to fruitful deliberations that have resulted in usable work products.

The automotive sector is one of the key drivers of growth and development of any economy and, as such, it is important that there is fair competition across the value chain so that all stakeholders can avail of the benefits of competitive markets.

In the run-up to releasing the report, extensive coordination and a lot of hard work have been put in by colleagues from BRICS competition agencies despite the constraints posed by the pandemic. The report is well-researched and lucidly written, bringing to the fore the competition issues, experiences, and approaches of BRICS competition authorities in the sector. One of the highlights of the report is the section on emerging trends and issues in automotive markets, which has extensively delved into the issues and challenges that competition authorities are likely to face in the light of rapid technological advancements and emergence of digital and data driven markets in the automotive industry.

I am confident that the report will serve as a rich source of guidance on anti-trust matters and help in understanding the nuances of competition issues specific to the sector. The report will become a ready reckoner not only for BRICS competition authorities but also for all the stakeholders of the competition law fraternity.

I compliment and congratulate the colleagues of the BRICS competition authorities who have contributed towards bringing out this high quality work product.

Namaskar!

CHINA

Madam Gan Lin, Head, State Administration for Market Regulation (SAMR)

Dear Colleagues,

Automobile industry, an important national economic pillar closely relating to technological innovation, economic development and people's livelihood, plays an important role in promoting economic growth, technological progress, employment and social development. China is the world's largest auto market. The Chinese government attaches great importance to ensuring fair competition in the automobile market. We have issued the Anti-Monopoly Guidelines for the Automobile Industry, and have carried out a series of anti-monopoly enforcement activities to promote high-quality development of the automobile industry.

At present, the automotive industry is changing rapidly to be more intelligent, interconnected, electrified and sharable. The technical structure of complete vehicle has experienced major changes. The upgrade from traditional fuel vehicles to the next generation of smart and new energy vehicles is accelerating, resulting in a rapid-developing and fast-adapting competitive landscape. The Study on Competition Issues in the Automotive Sector, prepared by the BRICS Competition Authorities, not only explores the market structure, competition issues and typical cases of the automotive industry, but also presents useful discussions on new industry trends and emerging issues, thus systematically addressing the current new challenges for anti-monopoly law enforcement in the automotive industry. As another achievement of the BRICS Competition Authorities' cooperation, the Report offers wisdom and solutions of BRICS regarding automotive industry, an important field for anti-monopoly legislation and enforcement, contributing to the maintenance of fair competition in the automotive market.

In the context of economic globalization and the internationalization of corporate competition, deepening exchanges and cooperation in the field of competition policies and anti-monopoly of various countries is an irreversible trend. We, attaching high importance to this ends, is willing to work with the competition authorities of BRICS members and other countries to strengthen coordination of anti-monopoly legislation and enforcement and jointly maintain fair competition in the global market, so as to create a fair, transparent and predictable environment where various market entities can invest and thrive, and have normative and healthy development, so as to promote technology innovation, industrial transformation and high-quality development and to safeguard the interests of consumers.

SOUTH AFRICA

Tembinkosi Bonakele, Commissioner, Competition Commission South Africa

Dear Colleagues,

The automotive sector is critical for the South African economy. The broader automotive industry's contribution to South Africa's gross domestic product (GDP) reached 4.9% in 2020 down from 6.4% in 2019.The Department of Trade Industry and Competition ("DTIC"), has paid a great attention to this sector and developed the South Africa's automotive master plan which among other things seek to grow South African vehicle production to 1% of global output, increase local content in South African assembled vehicles to up to 60% and improve automotive industry competitiveness levels to that of leading international competitors.

This project focused on merger regulations, enforcement and advocacy work. On the competition end, the CCSA assessed and made recommendations for global OEMs strategic consolidations. The CCSA also successfully prosecuted cartel cases involving supply of various auto parts and components. In the recent past, CCSA was engulfed with public complaints pointing to potential exclusionary conduct at all levels of the automotive value chain. The Commission sought to resolve potential anticompetitive behavior through collaboration and advocacy initiatives with industry stakeholders. After four years of engagement with the sector starting in 2017, the Commission has concluded and published the Guidelines for Competition in South African Automotive Aftermarket in January of 2021. The Guidelines provide practical guidance for the automotive aftermarkets industry which are intended to promote inclusion and to encourage competition through greater participation of SMEs and HDP groups.

The Covid-19 pandemic reined hard on the automotive sector in South Africa. Vehicle exports from South Africa declined by 29.95% between 2019 and 2020, largely due to various lockdown regulations. SMEs and HDP participants were the most affected during this period. The advent of the pandemic is likely to reverse the gains already made in the sector and may potentially jeopardize the ambitions of the Automotive master by the DTIC. This calls for proactive deliberations on economic development framework as well as Competition framework front. The CCSA, through its regulatory powers will continue to ensure that this crucial sector of the South African economy is as competitive and inclusive as possible.

I must highlight that this project is not the first of its kind. I am happy that all BRICS member countries once again came together to deliberate on a project of this magnitude. I wish to thank all BRICS member countries for their continued contribution, and I hope that projects of this nature will continue to open a platform to share and learn from each other's experience. Lastly, I would like to send my sincere gratitude to the CCI for co-chairing this successful project with CCSA.

Acknowledgement of the BRICS Team that provided the final shape to the BRICS AWG Report

CADE Brazil

1. SérgioLourençoBezerra Ferreira Reis
2. Ravvi Augusto de Abreu CoutinhoMadruga
3. Leandro dos Reis Lucheses
4. JoãoAurélio Mendes Braga de Sousa

FAS Russia

1. Anastasia Dokukina, International Relations of the FAS Russia
2. Darya Tsyganova, International Relations of the FAS Russia
3. Elena Filashina, Industry Control of the FAS Russia
4. Nikita Filippov, Industry Control of the FAS Russia

CCI India

1. Jyoti Jindgar Bhanot, Adviser (Eco), Anti Trust Division, CCI
2. Dr Sanjay Pandey, Adviser (Law), International Cooperation Division, CCI
3. Dr K.D Singh, Director (Law), Anti Trust Division, CCI
4. Shekhar, Joint Director (FA), Anti Trust Division, CCI
5. Ashutosh Kumar, Joint Director (Eco), Anti Trust Division, CCI
6. Kamal Sultanpuri, Deputy Director (Law), International Cooperation Division, CCI
7. Arpan Sharma, Deputy Director (Law), Anti Trust Division, CCI
8. Sanskriti Jain, Deputy Director (Law), Anti Trust Division, CCI
9. Ayush Arora, Research Associate (Law), Anti Trust Division, CCI

SAMR China

1. Zhao Haohan

CCSA South Africa

1. ThembaMahlangu – Principal Analyst: Mergers Division
2. SiphoMthombeni – Principal Analyst: Advocacy Division
3. SthabisoMkwanazi – Economist: Economic Research Bureau
4. ThembekileTshabalala – Senior Investigator: Cartel Division
5. Precious Mathibe – International Relations Specialist: Office of the Commissioner

CONTENTS

LIST OF ABBREVIATIONS

Abbreviation	Full Form
AAEC	Appreciable Adverse Effect on Competition
ABS	Automotive Body Sheets
AEB	Association of European Business
AI	Artificial Intelligence
AML	Anti-Monopoly Law
ANFAPE	National Association of Auto Parts Manufacturers
ANFAVEA	National Association of Automotive Manufacturers
APDP	Automotive Production Development Programme
APMMA	African Panel Beaters and Motor Mechanics Association
ARAI	Automotive Research Association of India
ASEAN	Association of Southeast Asian Nations
B&R	Belt and Road
BEE	Broad-Based Black Economic Empowerment
BIS	Bureau of Indian Standards
BMW	Bayerische Motoren Werke
BRICS	Brazil, Russia, India, China, and South Africa
BS-VI	Bharat Stage- VI
CADE	Administrative Council for Economic Defense
CCI	Competition Commission of India
CCSA	Competition Commission of South Africa
CV	Commercial Vehicle
DTIC	Department of Trade Industry and Competition
EAEU	Eurasian Economic Union
EDD	Economic Development Department
EPS	Electronic Power Steering
EPS	Electric Power Steering
EVs	Electric Vehicle
FAS	Federal Antimonopoly Service
FIAMPL	Fiat India Automobiles Private Limited

FIPL	Ford India Private Limited
GDP	Gross Domestic Product
GMSA	General Motors South Africa Proprietary Limited
HCV	Heavy Commercial Vehicle
HDIs	Historically Disadvantaged Individuals
HDP	Historically Disadvantaged Persons
ICN	International Competition Network
IGBT	Insulated Gate Bipolar Transistor
IMI	Isuzu Motors India
IPR	Intellectual Property Rights
ISPs	Independent Service Provider
JV	Joint Venture
LCV	Light Commercial Vehicle
LPR	Lesser Penalty Regulations
M&A	Merger and Acquisition
MBR	Motor Body Repairers
MCU	Microcontroller Unit
MHD	Micro Hybrid Drive
MIDP	Motor Industry Development Programme
MRP	Maximum Retail Price
OECD	Organisation for Economic Co-operation and Development
OEM	Original Equipment Manufacturer
OES	Original Equipment Supplier
OTC	Over the Counter
PV	Passenger Vehicle
QCI	Quality Council of India
R&D	Research and Development
RFI	Request for Information
RFQ	Request for Question
RPM	Resale Price Maintenance
RSA	Road Side assistance
SAAM	South African Automotive Masterplan

SAMR	State Administration for Market Regulation
SCN	Show Cause Notice
SEAE	The Secretariat for Economic Monitoring of the Ministry of Finance, Brazil
SIAM	Society for Indian Automobile Manufacturers
SME	Small and Medium Enterprises
SMME	Small, Medium and Micro Enterprises
TCC	Cease and Desist Agreements
UV	Utility Vehicle
V-VFMP	Voluntary Fleet Vehicle Modernisation Program

CHAPTER 1 EXECUTIVE SUMMARY

1. The automobile sector is one of the most important sectors in the economy of any country, and assumes more importance for the economy and the development of a nation when manufacturing operations are also present in the country. BRICS countries occupy a prominent place in the global automotive industry, accounting for a significant proportion in the manufacturing as well as consumption of automotive vehicles. This not only marks the importance of the automotive industry to their respective economies but also to world economy.

2. The sector is regulated by various laws, rules and regulations. Additionally, anti-competitive conducts are dealt with under the respective competition / anti-trust law of the concerned jurisdiction. As the sector has witnessed anti-competitive activities such as cartelisation, vertical restraints, abuse of dominance, etc. in various automotive segments including aftermarkets, the primary aim of the study is to identify, on the basis of experience, the prevalent competition issues and the approaches adopted to address these by BRICS countries in a harmonious way. To curb such conduct / activities, BRICS countries have not only issued diverse remedies, but some have also come out with Guidelines / Code of Conduct, etc.

3. Acknowledged as one of the pillars of competition laws / anti-trust laws, the role of advocacy in promoting healthy competition in the automotive industry cannot be overemphasised. Historically, BRICS countries have promoted competition and competition culture in the automotive industry through various means such as conferences, workshops, guidelines/ code of conduct, etc.

4. Supplementing these tools of enforcement and advocacy would go a long way in addressing the potential structural and behavioural competition issues in the industry.

5. The automotive industry is not untouched by the technological developments in information technology and data science. Technological advancements and its use and fusion with the automotive industry has led to smarter and more connected vehicles. These developments and advancements are used by car manufacturers to improve many aspects of their businesses such as design and productions as well as sales and marketing and also to gain insights into their business to remain competitive. The use of

data for various purposes has become critical from manufacturing to customer service to business development. Therefore, it will not be wrong to claim that this is the age of automotive innovation accordingly, the report also aims to explore the broader challenges of advanced digital technologies for competition authorities. The report engages with crucial areas which are bound to arise from time to time, such as advancing technological developments in the automotive sector, new and complex issues like denial of data access, charging of monopolistic and unfair prices for granting access to data, tying in of various products and services in the automobile ecosystem and personalised pricing based on big data collected that makes it relatively easier to discern data usage patterns associated with the car owner.

6. The study cannot be complete if it does not discuss the interface between Intellectual Property Laws (IPR) and anti-trust laws. Although, it appears that these are contradictory in nature but they are not, it has been widely recognised that both complement each other, e.g., competition laws help facilitate innovation, and therefore, investment, in a dynamic competition, thus breaking the chains of static and rigid competition. The report identifies certain IPR related issues in the automotive sector, and the need of the hour seems to be to harmonise and balance the IPR of the owners and, at the same time, apply the same in a manner that does not cause competition concerns in the automotive sector.

7. There have been number of reports on the automotive sector, but what distinguishes the present report is that it has comprehensively dealt with potential competition issues in the sector in light of the role of emerging digital technologies, with a special focus on BRICS countries. The work of this project began in 2018, following the heads and representatives of the five BRICS competition authorities recognising the need to study the sector, followed by the concept paper prepared by CCI with the support of CCSA.

8. The report delves into each of the above-mentioned areas in fair detail in dedicated and separate chapters. The chapter-wise executive summary of the report, given below, captures the major highlights of each chapter.

INTRODUCTION TO THE AUTOMOTIVE MARKET

9. The automotive industry plays an important role in development and is recognised as one of the drivers of economic growth, contributing significantly to the overall gross

domestic product (GDP) of most nations. According to one report, BRICS countries are among the top 15 sellers and producers of new vehicles globally, and therefore, occupy a significant place in the global automotive industry.

10. Chapter I of the report explores in detail the structure of the industry by examining the forward and backward linkages within the overall supply chain. Looking at the individual industry structures in BRICS countries, the constituents of the industry can be segregated into the following three broad categories: (i) Original Equipment Manufacturer (OEM): Manufacturers of passenger and commercial vehicles; (ii) Original Equipment Supplier (OES): Firms that manufacture and sell their products to OEMs; and (iii) Aftermarket: Automotive parts and accessory sales by independent retailers and repair shops. Thus, the supply chain in the automotive industry ranges from OEMs and automotive component manufactures to dealerships/retailers.

11. The report describes the country-wise industry structure as well as the importance of the industry to BRICS countries based on statistics like the number of vehicles manufactured and sold.

12. As the automotive industry is evolving with advancements in technologies including digital products, the report also focuses on and provides insights into newer concepts such as connected cars, autonomous and electric vehicles and related issues. The report observes that these new technologies have the potential to affect not only the internal operating model of OEMs and suppliers but also use by the customers.

BRAZIL

13. The Brazilian market has more than 27 automotive manufacturers, including those that produce agricultural machines and cargo vehicles. These manufacturers follow various business models—some act as assemblers within the country, while others import vehicles for commercialisation. There also exists a hybrid system, wherein some car brands of a manufacturer are assembled in Brazil and others are imported.

14. The Brazilian auto parts market is divided into three main segments: (i) original equipment, commercialised by assemblers; (ii) independent auto parts, produced by different companies in the market; and (iii) reconditioned or used parts.

15. As far as aftermarket is concerned, it is held by the dealerships, which offer maintenance services for vehicles sold by the respective brands (as described above), and by the vast chain of automobile repair workshops and automotive parts manufacturers.

RUSSIA

16. Russia has domestic enterprises that have been producing cars under their own brand as well as foreign companies which are present through two modes: (i) those with localised production and (ii) those with official representative offices in the Russian Federation with authorisation to import cars and sell them. The automotive sector in the Russian Federation comprises automakers, distributors, dealers and end-users.

17. In the automobile spare parts sector, spare parts for cars can be divided into three main categories: (i) Original spare parts: Spare parts manufactured by the car manufacturer; (ii) Identical spare parts: Spare parts manufactured by the car manufacturer or others, fully consistent with original spare parts but not marked with the trademark of the car manufacturer; and (iii) Spare parts of appropriate quality: Spare parts of the same quality as the original spare parts, not marked with its trademark or manufactured by the manufacturer of original spare parts or another manufacturer in accordance with the standards of the car manufacturer.

INDIA

18. The automobile industry in India has grown rapidly over the last decade. India is one of the fastest growing markets in the world for automobile and auto-components, with well-developed manufacturing facilities, R&D and testing centres.

19. The automotive supply chain consists of a number of entities, from those which supply raw materials to deliver final product to customers. There are inter-linkages between these entities and they are categorised on the basis of their position in the supply chain, which comprises broad segments of OEMs, components manufacturers/assemblers (Tier 1), second tier suppliers (Tier 2) and third tier suppliers (Tier 3).

20. In addition to the above, there exists an aftermarket which can be divided into two segments: (i) The supply of spare parts, including diagnostic tools, technical manuals

and catalogues for the aftermarket usage; and (ii) The provision of aftersales services, including servicing, maintenance and repair services of vehicles.

CHINA

21. China's automobile industry's supply chain consists of various types of businesses at the upstream, midstream and downstream levels, including the production of motor vehicle spare parts, complete vehicle supply, motor vehicle sales, aftermarket services, used vehicles and other businesses. From the perspective of upstream and downstream levels, the active participants in China's automobile industry are: (i) Spare part suppliers; (ii) Motor vehicle suppliers and Motor vehicle distributors; and (iii) Aftermarket service providers.

SOUTH AFRICA

22. The automotive sector is critical for the South African economy. It comprises (i) Original equipment manufacturers (OEMs); Original equipment suppliers (OESs); and the Aftermarket, which is responsible for the manufacture and sale of automotive replacement parts and accessories.

LEGAL FRAMEWORK IN BRICS COUNTRIES

23. The chapter discusses in detail the laws, rules and regulations applicable to the automotive industries, in each of the BRICS countries. The report finds that, with the evolution of the industry alongside digital transformation, the emergence of EVs and newer business models, the necessity for laws and regulations to keep pace with these developments have increased.

BRAZIL

24. The general laws affecting the automobile industry in Brazil are the Brazilian Antitrust law, Consumer Rights Code and Industrial Property Law.

25. The specific laws and regulations for the automobile sector are: (i) Brazilian Road Traffic Code, which dictates the relationship between automotive vehicle manufacturers and their dealers/distributors; (ii) Route 2030 Program, a public policy initiative aimed at developing the Brazilian automotive market, amongst other things;

and (iii) Disassembly Law, which provides regulations for automobile vehicles as well as the allocation of parts, individually or in sets, which may be used for replacement.

RUSSIA

26. Under Russia's regulatory framework, the automobile sector is governed by numerous branches of law, including civil, administrative and criminal law. One such law is the antimonopoly legislation, the violation of which is regulated by the Federal Antimonopoly Service (FAS) Russia.

27. The anti-monopoly regulation of the automobile market in Russia can be divided into two main categories: those dealing with the violation of anti-monopoly legislation and those dealing with M&As.

INDIA

28. In India, the Motor Vehicles Act, 1988, and the Central Motor Vehicles Rules, 1989, framed there under lays down the regulatory framework that governs safety standards and emission norms for automobiles. Further, with regard to the automobile industry, the Ministry of Road Transport and Highways notified the Bharat Stage (BS)-VI emission norms in 2020 to safeguard citizens from pollution. Additionally, fuel efficiency norms have been formulated by the Bureau of Energy Efficiency and notified under the Energy Conservation Act, 2001.

29. The Competition Act, 2002, has been enacted to regulate competition in markets. Its aims and objectives are as follows: (i) To prevent practices having adverse effect on competition; (ii) To promote and sustain competition in markets; (iii) To protect the interests of consumers; and (iv) To ensure freedom of trade carried on by other participants in markets.

30. Section 3 of the Competition Act deals with anti-competitive arrangements while Section 4 deals with abuse of dominance. Under Sections 5 and 6 of the Act, read with Sections 30 and 31 of the Act, CCI regulates 'combinations', i.e., acquisition of one or more enterprises by one or more persons or merger or amalgamation of enterprises that exceed the threshold limits specified in the Act in terms of assets or turnover. Lastly, under Section 49 of the Act, CCI undertakes competition advocacy.

CHINA

31. The Anti-Monopoly Law (AML) of the People's Republic of China was implemented in 2008 in the field of anti-monopoly. The AML is composed of administrative laws and regulations, and includes departmental regulations, anti-monopoly guidelines and normative documents.

32. For the purpose of providing clear guidance to undertakings, preventing and curbing anti-competitive behaviours in the automobile industry, reducing costs of both administrative law enforcement and compliance of undertakings, the Anti-Monopoly Commission of the State Council formulated and promulgated the anti-monopoly guidelines for the automobile industry.

SOUTH AFRICA

33. In South Africa, the Motor Industry Development Programme (MIDP), followed by the Automotive Production Development Programme (APDP), were introduced as incentive schemes for the Motor Vehicle Industry.

34. The antitrust law in South Africa is the Competition Act, No. 89 of 1998, under which the statutory body, the Competition Commission of South Africa (CCSA), was constituted. According to the Competition Act, the CCSA is responsible for the investigation, control and evaluation of restrictive practices, the abuse of dominant position and mergers. The Competition Act also established the Competition Tribunal, which is responsible for adjudicating such matters, and the Competition Appeal Court, which hears appeals.

COMPETITION ISSUES IN THE AUTOMOTIVE SECTOR

35. The chapter explores the prevalent and potential competition issues in the industry and reveals some of the most common characteristics that make this sector vulnerable to anti-competitive arrangements, which are as follows:

    (i) Risk of cartelisation owing to few global OESs for each component which in turn is because of, *inter alia*, the high degree of specialisation and capital-intensive nature of the industry.

(ii) High entry barriers due to capital-intensive nature as well as high degree of specialisation.

(iii) Exercise of countervailing buying power by OEMs over distributors/dealers. At times, there may exist hub-and-spoke cartels, with an OEM as the hub and its distributors as the spokes that follow the anti-competitive diktats of the hub.

(iv) In the aftermarket, the consumer of an automobile of a particular brand may get locked-in for spare parts and services with that OEM only, giving the OEM the opportunity to abuse its dominant position vis-à-vis such consumers.

36. In this chapter, given the interface between different players in the automotive sector, viz., OESs, OEMs, distributors and aftermarket service providers, the major competition issues that have been dealt with by competition authorities are discussed under the following heads:

(i) Issues of cartelisation, especially cartels in the automotive parts, which cause reduction in competitiveness within the automotive industry.

(ii) Vertical restraints including restraints upon OESs and/ or dealers in the form of resale price maintenance (RPM), exclusivity agreements, tying/tie-in arrangements, etc.

(iii) Dominance and its abuse, including issues in the aftermarket such as insufficient or absence of competition in the aftermarket for spare parts, repair and maintenance services. Further, the customer may get locked-in after buying a car of a particular brand, and cannot switch to another one.

CASES INVOLVING THE AUTOMOTIVE SECTOR

37. This section discusses the relevant case laws and the approaches adopted thus far by BRICS competition authorities under the merger and conduct cases. The cases included in this chapter relate to anti-competitive agreements, abuse of dominance and mergers. Although the cases mentioned relate primarily to passenger vehicles, other cases from the automobile sector have also been included, since they may have implications or indirect effects on the passenger vehicles segment. This chapter also highlights multi-jurisdictional filings of merger cases, underscoring the need for international co-

operation while reviewing such merger cases. Undoubtedly, there are international cartel cases that have a multi-jurisdictional impact on competition.

Merger Cases

BRAZIL

38. The important merger cases dealt with by the CADE are Valeo Holding GmbH and FTE Group Holding GmbH, Fiat Chrysler Automobiles N. V. and Peugeot S. A. and Tupy S. A. and Teksid S.p.A.

RUSSIA

39. Important cases handled by the FAS are *Fiat–Peugeot Citroen* and *Ford Sollers.*

INDIA

40. CCI has received many combination cases relating to the automotive sector. Some of these cases were cleared with remedies/modifications. Important cases dealt with by CCI include: (i) 100% acquisition of WABCO Holdings Inc. (WABCO) by ZF Friedrichshafen AG; (ii) Acquisition of shareholding in ANI Technologies Private Limited and Ola Electric Mobility Private Limited by Hyundai Motor Company and Kia Motors Corporation; (iii) Merger between Peugeot S. A. and Fiat Chrysler Automobiles N. V.; and (iv) Acquisition of shares in Suzuki Motor Corporation (SMC) by Toyota Motor Corporation (TMC) and in TMC by SMC.

CHINA

41. The automobile industry is one of the most active areas for merger control notification in China. Typical cases include: (i) Novelis's acquisition of the equity of Aleris; (ii) Infineon Technology Company's acquisition of the equity of Cypress Semiconductor Corp.; and (iii) ZF Friedrichshafen AG's acquisition of the equity of Wabco Holdings Inc.

SOUTH AFRICA

42. The Commission assessed over 50 merger notifications from 2015–2020. These transactions took place at various levels of the value chain, which include, among others, spare parts, sales of new motor vehicles, sales of used motor vehicles and others. Important transactions handled by the CCSU include: (i) Peugeot SA/The Opel Business of General Motors Holdings LLC; (ii) Opel Automobile GmbH /General Motors South Africa Proprietary Ltd., in relation to its responsibility for the Opel Distribution Network and the Chevrolet Aftersales Distribution Network; and (iii) Isuzu SA/UD Trucks SA.

Conduct Cases

BRAZIL

43. The General Superintendence of CADE initiated investigations into allegations of cartels between different companies involved in the aftermarket and the OEM market. The anti-competitive conduct under the radar of CADE ranges from concerted activities in the supply chain of the various automotive parts, *viz.*, engine pistons, bearings, pins, connecting rods, ring carriers, filters, bearings, motor valves, valve guides, valve seats, airbags, seat belts, steering wheels, spark plugs, rings and sealing gaskets, piston engine rings of clutch facings and thermal systems, which include radiators, capacitors, air conditioning, heating, ventilation systems and windshield wipers.

RUSSIA

44. FAS conducted an investigation and dawn raid of the Ford Sollers Holding LLC (the only distributor of these vehicles in the Russian Federation) and found that Ford Sollers violated the Federal Law "On Protection of Competition" by co-ordinating the economic activity of economic entities in the Russian Federation. The Antimonopoly Service established that the company had been sending informational letters to the dealers on the costs of service maintenance of Ford cars, which resulted in maintaining and fixing prices for the service maintenance of Ford cars.

45. Proceedings were terminated due to voluntary elimination of the violation; in particular, the company published information on the possibility of dealers independently fixing prices for car service maintenance.

INDIA

46. Till date, CCI has decided several antitrust cases pertaining to the automotive sector. CCI has investigated cartel allegations in the supply of automotive parts, some of which were based on disclosures made by way of filing lesser penalty applications. Investigations have also been made to look into vertical restraints such as resale price maintenance, tie-in arrangements and exclusivity clauses. Further, cases pertaining to the abuse of dominance by OEMs with respect to locked-in customers, in the after market of spare parts and services market, have also been dealt with.

CHINA

47. The antitrust cases in the automobile industry investigated by China's antitrust law enforcement authorities mainly focus on monopoly agreements, including horizontal and vertical monopoly agreements. According to statistics, in recent years, 18 cases of monopoly agreements concerning the automobile industry have been handled and concluded. The investigation ranges from investigation into cross-border cartels to complete vehicle sales and service maintenance prices, resale price maintenance and conduct limiting minimum resale price.

SOUTH AFRICA

48. The investigation conducted by South African authorities revolves around the supply of automotive parts to panel beaters. Between August 2014 and March 2016, the CCSA initiated 238 complaints comprising 92 components. These complaints include 62 respondents such as Denso Corporation, Mitsubishi Electric Corporation, Robert Bosch GMB, Hitachi Company Limited, Aisan Industry Company Limited, Yazaki Corporation, Maruyasu Industrial Company Limited, Keihin Corporation and others. The 92 automotive components affected by the collusion include, but are not limited to, inverters, rear sunshade ECU, motor generator and motor generator control systems, airbag control systems (including components), airbag sensors, airbag ECU, air cabin filters and smart key systems (including remote keyless entry and ignition).

ROLE OF ADVOCACY IN THE AUTOMOTIVE SECTOR

49. Competition advocacy is considered one of the main pillars of all BRICS competition agencies and aims to create, expand and strengthen awareness of competition in the market. It is based on the wisdom that only enforcement measures may not be sufficient, and therefore, an informed exercise of advocating competition awareness to the stakeholders must also be undertaken.

BRAZIL

50. Underscoring the importance of advocacy, in a recent case, different commissioners of CADE pointed out the necessity of competition advocacy in order to update Brazilian Industrial Property Law and avoid future competition issues on the same topic. In light of the several cases involving the auto-parts segment, CADE has established a formal link with the National Association of Automotive Manufacturers (ANFAVEA) in an effort to explain the anti-competitive practices being investigated, their causes, negative impacts on the market, *etc.*

RUSSIA

51. As part of the car industry's self-regulation with the methodological support of FAS Russia, in 2013, the Association of European Business (AEB) developed a code of conduct for automakers in the Russian Federation that regulates the basic requirements for dealers, services and use of spare parts. The code of conduct touches upon key aspects of business relations between automobile manufacturers/distributors on the one hand, and dealers/independent service stations on the other. The introduction of the code has led to a significant decrease in the number of complaints from dealers and independent service stations regarding violations of anti-monopoly legislation by distributors, including in terms of refusals to cooperate with independent service stations in the Russian Federation as well as the creation of non-discriminatory conditions for interactions between car manufacturers and official dealers.

INDIA

52. Section 49 of the Competition Act, 2002, mandates CCI to take suitable measures for the promotion of competition advocacy, creating awareness and sensitising about competition issues. CCI has held various workshops, seminars and conferences with the Chamber of Commerce, trade associations and government entities to disseminate

knowledge about competition law provisions. Specifically, for the automotive sector, the Society of Indian Automobile Manufacturers (SIAM), in association with CCI and the Automotive Component Manufacturers Association of India (ACMA), organised a workshop on competition issues in the automotive industry in 2019. The workshop was aimed at proactively engaging with different stakeholders in the automotive sector to come up with feasible and practical solutions. CCI's primary objective, with respect to promoting competition in the automotive sector, has been to correct the distortions in the aftermarket, provide corrective measures to make the market more competitive and eradicate anti-competitive practices.

CHINA

53. The China Competition Policy Forum has been successfully held eight times since 2012, with more than 300 representatives from different countries, regions and fields participating in each forum. Ten typical cases of the annual antitrust law enforcement are released, widely publicised and reported by the media, thus strengthening the interpretation of the law by cases in order to create a social atmosphere conducive to fair competition and further demonstrate the influence of antitrust law enforcement. It also holds special training courses on AML facing private, state-owned and foreign-invested enterprises and other market entities to strengthen training and guidance on the antitrust compliance of enterprises, as well as law enforcement seminars for Belt & Road (B&R) countries to enhance their mutual understanding on anti-monopoly laws and policies.

54. Following the general principles and methods specified by the AML, and considering the characteristics of the automobile industry, the Anti-Monopoly Guidelines for the automobile industry start with the key problems highlighted by antitrust law enforcement authorities, such as market definition, monopoly agreements, abuse of dominant market position, abuse of administrative power to eliminate or restrict competition and other competitions, and further clarifies the analysed ideas and underlying factors, provides clear guidance for the undertakings of the automobile industry, enhances the transparency of antitrust law enforcement in China's automobile industry and reduces the compliance costs of motor vehicle undertakings while ensuring scientific and effective supervision to guide them in order to conduct legal and compliant operations.

55. In January 2021, the Commission published the Guidelines for Competition in South African Automotive Aftermarket. The Commission initially facilitated an advocacy program towards an industry voluntary Code of Conduct.

56. The issued guidelines provide practical guidance for the automotive aftermarkets industry, intended to promote inclusion and encourage competition through greater participation of small businesses as well as historically disadvantaged groups. The guidelines further seek to achieve the stated objectives by encouraging stakeholders to adopt the following measures:

- Widen the pool of approved dealers and approved motor-body repairers;
- Promote the entry (ownership) of HDIs as approved dealers;
- Ensure that ISPs can undertake in-warranty service, maintenance and repair work;
- Allow for greater consumer choice and product competition in the retail of service plans and maintenance plans; and
- Ensure the fair allocation of work by insurers to service providers on insurance panels.

EMERGING TRENDS AND ISSUES IN THE AUTOMOTIVE SECTOR

57. The fast pace at which autonomous electric vehicles are growing at present, there are bound to be concerns relating to IP, data privacy and risk-shifting for warranty issues that would need to be addressed to settle uncertainties amongst stakeholders. Further, it is pertinent to point out that data from the automobile industry is significant for insurance, advertising and energy firms.

58. Technological innovations such as autonomous (self-driven) vehicles (an integral component of the connected vehicle ecosystem), electric vehicles (EVs) and emission norms are leading to increased interactions among stakeholders, such as web/telecom companies and OEMs, to provide data-based services and access to the connected vehicles technology. New business models such as shared mobility or pay-per-use are also emerging, with increasing acceptability among customers. Further, the adoption of

new technologies and business models may require interoperability of infrastructure (like charging stations in the case of EVs) to alleviate cost impact on consumers.

59. It is relevant to understand the kinds of data that are generated by any vehicle. Broadly speaking, there are three kinds of data generated by any vehicle: (i) Diagnostic data; (ii) Navigation data; and (iii) Media and infotainment data.

The Role of Data

60. In the present day and age, data serves a multitude of objectives, particularly for e-commerce companies, from being able to refine products and services through constant iterations based on feedback from collected data, to pivoting to new markets if the data suggests an opportunity in an adjacent market. However, numerous issues may surface, a few of which are highlighted below:

- Ownership/right to use of data generated by internal car systems;
- Use of data collected for specific, pre-defined and lawful purposes;
- Free and clear consent to the OEM, and whether such consent can be withdrawn.

Stakeholders in the Ecosystem of Car-Generated Data

61. Automobile and data intersection, as witnessed in the current innovation in the sector, may invite the attention of hosts of stakeholders, ranging from OEM/car manufacturers, regulatory authorities and navigation apps providers, to data security companies, health tracker device making companies, telecom companies, insurance companies, media companies and data backup companies.

Competition Issues that Can Arise from the Data Perspective in the Vehicle

62. Generally speaking, undertakings use data as products, inputs or entry thresholds for competition. Case-by-case analysis is required for assessing competition issues related to the useof data. These issues may arise as conventional competition concerns in the form of leveraging, wherein the data collected by the car would only be used by OEMs; discriminatory pricing, where, even if the data is made available by the OEMs, can easily supply it at monopolistic and excessive prices; denial of market access, wherein, since the OEMs collect data, they can deny it to others; tie-in arrangements, without

legitimate and objective justifications, with various products and services being integrated in the automobile ecosystem, giving rise to competition concerns and personalised pricing, where, with big data being collected by the OEM, it would be relatively easy to discern data usage patterns associated with the car owner.

Inter-Operability of Charging Infrastructure

63. EVs are gaining momentum in the market, led by growing concerns for environment and energy security, coupled with the evolution of technological advancement and business models. There are several advantages to this: compared to the requirements of designated locations for conventional fuelling, these charging stations can be set up at homes, residential colonies, office complexes, shopping malls, etc.

64. For the mass adoption of EVs, a widespread and easily accessible charging network is critical. However, this may face two challenges: (i) the adoption of standardised, uniform charging ports and similar charging stations for EVs; and (ii) laying this infrastructure on a shared basis.

65. In this regard, two issues emerge relating to competition at the intersection on at least two fronts, i.e., automobile and electricity: (i) Barriers to entry to the charging infrastructure such as high connection costs and exclusive contracts; and (ii) from the consumer perspective, availability of choices of repairers.

EMERGENCE OF NEW BUSINESS MODELS

66. The emergence of new business models, which include shared mobility models, i.e., models based on asset (vehicle) owned or not, may be a common route for many users to personal but temporary access to the asset. This can be in the form of subscription/leasing/rental modes. The most popular amongst these is ride splitting, which is used by cab aggregators. These are usually e-commerce platforms through which service providers gain visibility and reach out to the end-consumer (in this case, the passenger).

67. This business model caters to both individual and corporate mobility requirements and adds to transformation within the urban infrastructure. However, ease of convenience to the passenger is one thing and facing severe criticism from the local and unorganised

sector is another. Of late, passengers have raised concerns about certain unregulated aspects such as surge pricing, alleging charges levied in excess of what is reasonable.

BRAZIL

68. In the context of Brazil, in 2018, CADE published Working Paper No. 001/2018, "Competition Effects of the Sharing Economy in Brazil: Has Uber's Entry Affected the Cab-hailing App Market from 2014 to 2016?" The paper assessed the competition effects of Uber's entry into the incumbent cab-hailing app market. Notably, such innovations generated benefits for consumers and encouraged the entry of suppliers in the ridesharing market, while also resolving some market issues in the sector and rendering the current regulation of taxi services outdated.

RUSSIA

69. For the aggregator model, FAS Russia cited certain developments. In November 2017, FAS Russia approved the Yandex/Uber merger with remedies, according to which the combined company was to provide the most complete and accessible information to users about the legal entity carrying out transportation while preserving travel history without prohibiting partners, drivers and passengers from working with other taxi aggregators.

INDIA

70. In the Indian context, CCI has received as many as 10 cases till date in the radio taxi industry. These have been filed by traditional radio taxi players against online cab aggregators (Ola and/or Uber) alleging abusive low pricing strategies (predatory pricing) by the cab aggregators.

71. In one case concerning abuse of dominant position by a domestic cab aggregator (namely, Ola), CCI directed the matter to be investigated by the Director General (DG). Based on factors such as lack of strong network effects and absence of entry barriers, and noting that the market was still at the nascent stage and still unfolding, CCI found that Ola did not hold a position of dominance in the relevant market and was not able to act independently of the competitive forces in the market.

72. Besides, in the year 2017–2018, CCI looked at cases where dominance by Ola and Uber had been alleged collectively and/or as part of the same "group" pursuant to common shareholding by some investors (e.g., Softbank). However, there was no material on record to suggest that competition between Ola and Uber had been compromised because of common investments.

73. In addition to the above, a study on cab aggregators is also in progress under the aegis of CCI to understand competition issues, including surge pricing.

INTERFACE WITH IPR

74. The interface between the protection of IP rights and measures taken by the IP rights holder (like OEMs) presents a dichotomy between the IP and competition laws in different jurisdictions. The protection of IP rights in the form of exclusive distribution, tie-in arrangements, causing restrictions in terms of production and supply, etc., drew the attention of competition agencies worldwide.

75. The rationale for such practices is attributed to: (i) safeguarding the interests of OEMs due to concerns about the proliferation of spurious/fake products and (ii) protecting the interests of consumers. Otherwise, spurious/fake products may affect the efficiency, fitness and longevity of the vehicle, which ultimately affect the brand image of the OEM/brand.

76. The ultimate goals of both are the same but the approaches are different. The IP rights aim towards promoting and encouraging innovation based on recovering cost and expenditure incurred by the innovator in R&D. On the other hand, competition in the market also seeks to promote and incentivise innovation by ensuring a fair competitive market for producers and service providers. Accordingly, there is a need to strike an appropriate balance between IPRs and antitrust policy.

77. An intersection of competition law and IP rights in the automotive industry poses interesting challenges, ranging from IP rights over mechanised products, technologies and future data generated via smart apps (as may be installed in the vehicles) and autonomous (self-driven) vehicles. Vehicle information is essential for correct diagnosis of vehicles. Access to such data may be required by owners (generators), players in aftermarkets for repair and maintenance and law enforcement. Therefore,

handling issues related to autonomous vehicles may require a mature position of antitrust agencies in the event of exclusionary practices in respect of aftermarket players.

78. Moreover, it is important to understand that IP rights are more complex than patent systems and involve copyright and protection of software, data and several other aspects.

79. With improvements in technology, the use of data by apps and agents in the automotive sector may increase in the next few years, especially considering the growth and importance of artificial intelligence in the market. Therefore, it is important that when "cars talk to each other" they are not only able to understand the information being received but also simultaneously provide information accessible to others.

80. The Indian Competition Act also provides that the provisions prohibiting anti-competitive agreements would not restrict the right of IPR holders to restrain infringement of or impose reasonable conditions, as may be necessary, for protecting any of its rights, which have been or may be conferred under certain specified intellectual property rights statutes. Broadly, competition issues that may arise in the automobile sector are as follows:

- OEMs can impose vertical restraints upon OESs with respect to grant of access to their brand of spare parts
- OEMs can restrict access of independent repairers to the OEM's diagnostic tools/training manuals, etc.
- Data-related IPR issues

81. In the antitrust legislation and law enforcement for China's automobile industry, the connection and coordination of antitrust and intellectual property protection policies are paid special attention to jointly promote the sustained and healthy development of the automobile industry.

82. Taking the vertical monopoly agreement as an example, according to the anti-monopoly guidelines for the automobile industry, motor vehicle suppliers usually designate the sources from which their motor vehicle brand logos will be purchased for

the purpose of protecting intellectual property rights. In order to guarantee brand image, motor vehicle suppliers generally agree upon or specify quality-related standards in relation to the design, decoration and office facilities of the business premises of distributors and repair and maintenance service providers through agreements or business policies.

83. In addition, according to the anti-monopoly guidelines of China for the automobile industry, commissioned processing arises out of circumstances where spare parts manufacturers produce motor vehicle spare parts in accordance with the requirements of motor vehicle manufacturers by utilising the intellectual property rights owned by the motor vehicle manufacturers and the OEM agreement they have entered into.

WAY FORWARD

84. With the emergence of the newer technologies, the automotive market is undergoing a paradigm shift in the way the business is being carried on. With the pace in t digitalisation and in light of the upcoming digital and data driven markets in the automotive industry, the industry is facing challenges in terms of supply chain management, acquisition of customers, customer relationship management or the interface with the software and data centric organisation.

85. In a nutshell, the traditional ways of doing business are being replaced by newer ways with the assistance of technologies. Like any other industry, it is also undergoing a period of shift and transformation due to the impact of data- centric and data- driven technologies. Accordingly, this may necessitate appropriate changes in the existing legal framework or institutional structure for meeting and addressing newer situations and circumstances. Not just legislative actions, but advocacy and enforcement tools also assume greater importance considering the pace and impact of such technological changes.

86. It is important for antitrust agencies to monitor the automotive market and ascertain if the market practices involving new technologies are competitive, and if they are not, it is necessary to understand how to enforce decisions that re-establish competition and, at the same time, not inhibit the advancement of technology. In addition, effective advocacy programmes and initiatives would also help bridge the gap between the law and its awareness and promote and protect competition in new-age markets.

87. Thus, the most desired course of action to address these challenges would be to stay abreast of market developments and remain a step ahead in matching the pace in creating solutions.

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CHAPTER 2 OBJECTIVE AND METHODOLOGY

1. BRICS Competition Agencies had signed a Memorandum of Understanding (MoU) on co-operation in the field of competition law and policy in May 2016 [In 2020 extended for an open-end period] to enhance co-operation and interaction *inter se*. In accordance with this MoU, four Working Groups had been constituted on important industries/ sectors *viz.* Pharmaceuticals, Food, Automotive and Digital Markets. These Working Groups have collaborated with each other to adopt best practices.

2. Under the aegis of Automotive Working Group of BRICS, the agencies decided to carry out a study "A Study on Competition Issues in the Automotive Sector" with CCI as Chair with Competition Commission of South Africa (CCSA) as Co-chair. Accordingly, a concept paper for this study was prepared by CCI, in consultation with the CCSA based on the experience gained from cases dealt in the sector and after reviewing relevant literature available in the field. The relevant literature for the preparation of the report includes information available on websites, orders available in the public domain, sector reports, association reports, ICN documents, OECD documents and other research papers published in various journals. After identifying the competition issues in this sector, information was sought from BRICS competition agencies *via* written input. In this regard, a questionnaire was circulated amongst BRICS competition agencies seeking their responses on various competition issues in the automotive sector related to the objective of the study. Thereafter, conference calls were also organised with BRICS competition agencies to discuss the objective of the study and the proposed structure of the report. The structure of the report was finalised upon reaching a consensus based on these discussions and responses. Accordingly, the questionnaire responses received from the BRICS competition agencies have been collated in the form of a report. This has been further supplemented with information available in the public domain. Information given in the chapters though is generic, except to the extent given in country specific sections. Also, issues highlighted in paragraphs does not necessarily implies that they may be prevalent and or present in each jurisdiction.

3. This study seeks to identify competition issues based on the experience of the BRICS competition authorities in the sector and brings out the approaches adopted by the

agencies to address these. The report also seeks to capture the implications from competition law standpoint of the technological developments, trends and new business models emerging in the sector. As the industry is diverse & dynamic, it would be difficult to assess competition concerns arising out from all segments in a single study. Therefore, the study has primarily focused on to identify the existing and potential competition issues arising out of the passenger car industry.

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CHAPTER 3 INTRODUCTION TO THE AUTOMOTIVE MARKET

1. Automotive industry is recognised as one of the important pillars of any economy. According to the data released by International Organization of Motor Vehicle Manufacturers in 2019, BRICS countries are among the top 15 sellers and producers of new vehicles globally. Moreover, these countries are amongst the fastest-growing emerging markets, and are in top 10 producers of passenger cars in 2019[1]. The literature suggests that Automotive Sector has strong forward and backward linkages with several major sectors of the economy, which leads to strong multiplier effect on industrial growth. Therefore, the industry is recognised as one of the drivers of economic growth contributing significantly to the overall GDP of most of the nations. This sector is also identified as a sector with a high potential to increase exports and employment[2].

2. The automotive industry commenced in the 1860s with hundreds of manufacturers developing the horseless carriage in the brass era and since then the global automotive industry has undergone significant changes with the invention and development of the automobile technology. The industry has transformed from being dominated by the USA in the early 1900s to being divided amongst various countries, each with their own unique strengths and weaknesses contributing towards certain manufacturing techniques and styles[3].

3. The automotive industry has witnessed era of industrialisation, gloabalisation and now the digital transformation i.e. digitalisation. The industry has been in a state of constant change since the start of the "Industrialisation Era" that began in the 1920s and lasted until the 1970s[4]. Post World Wars, rapid modernisation was evident in the passenger cars with the development of road transport. Initially, few manufacturers were there such as General Motors, Ford and Chrysler. However, after the oil crisis of 1970s and the increase in demand of more economical designs, companies such as Toyota, Mazda, Mitsubishi, Suzuki and others started manufacturing more fuel efficient vehicles and

[1] https://www.oica.net/category/production-statistics/2020-statistics/
[2] https://www.ilo.org/wcmsp5/groups/public/
[3] http://self.gutenberg.org/articles/eng/History_of_the_automobile
[4] https://www.capgemini.com/wp-content/uploads/2021/01/Capgemini_New-Balance-in-the-Automotive-Industry_pov_20210129.pdf

became the leader in automobile industry[5]. Manufacturing and production processes have been enormously improved in terms of their efficiency and effectiveness through automation of operations, reductions in the length of vehicle cycles, and increased specialisation. Over time, there was increase in the standardisation, platform sharing and computer aided designs. Within this era, the industry had a clear product focus and specialised its operations with regard to the purchasing, logistics, engineering, and manufacturing phases of the product.

4. A considerable part of this growth of auto industry is concentrated in a small number of developing countries. These includes Latin America (mainly Argentina, Brazil and Mexico), the ASEAN countries, Eastern Europe, China and India[6]. The era of globalisation saw the end of geographic boundaries thereby lifting the restrictions and limitations on sourcing, logistics, manufacturing, and sales. By opening up world markets and establishing international trade alliances, products have been made available to customers all over the world and OEMs have benefited from local advantages through access to new talent, materials, and demand. This has given OEMs the chance to develop from national or international producers focusing on specific markets into global or multinational players[7].

5. The automotive industry comprise wide range of companies and organisations involved in the design, development, manufacturing, selling and after sales services of motor vehicles. The automotive industry can be segregated into following three broad categories[8]:

   (i) Original Equipment Manufacturer (OEM): This category of firms comprises manufacturers of passenger and commercial vehicles. These firms assemble and sell vehicles under their own brand name.

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[5] Nag, B., Banerjee, S., & Chatterjee, R. (2007). Changing features of the automobile industry in Asia: Comparison of production, trade and market structure in selected countries

[6] https://www.unido.org/sites/default/files/2009-12/Global_automotive_industry_value_chain_0.pdf

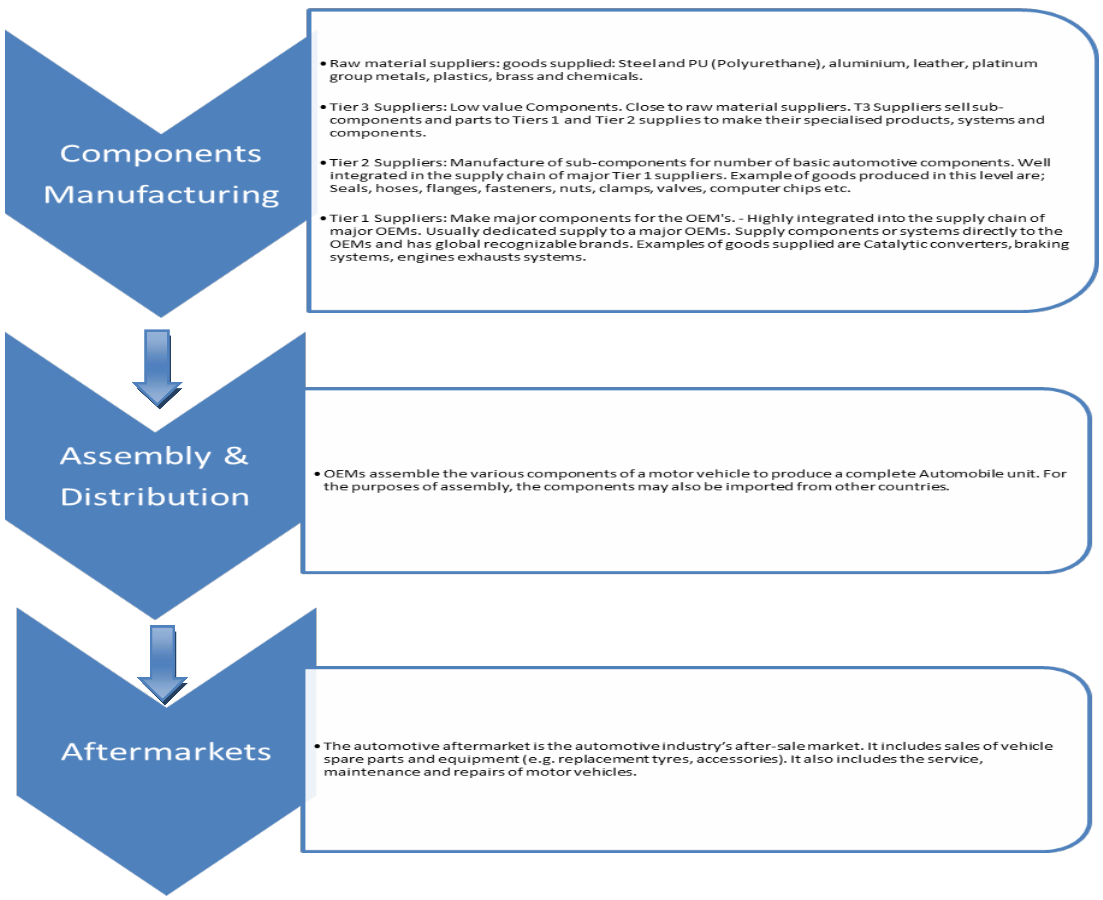
[7] Humphrey, J., & Memedovic, O. (2003).

[8] Barnes, J., & Morris, M. (2008). Staying alive in the global automotive industry: what can developing economies learn from South Africa about linking into global automotive value chains?.

(ii) Original Equipment Supplier (OES): – It include firms that manufacture and sell their products to the OEMs, as well as through the OEM's official dealerships or their own channels of distribution[9]

(iii) Aftermarket: It comprises of automotive parts and accessory sales, the larger retail groups, the independent retailers and repair shops.

6. Automotive component manufacturers supply components to OEMs, OESs and the independent aftermarket and retailers[10]. Thus, supply chain in automotive industry ranges from OEMs and automotive component manufactures to dealerships/retailers. The automotive component manufactures consist of broadly three tiers of manufactures, namely Tier 1, Tier 2 and Tier 3. The supply chain of automotive industry can be depicted through following figure:



Source: *Adapted from CCSA's Guidelines for Competition in the Automotive Aftermarket*

[9] Comrie, D., Terreblanche, J., Johnson, J., & Syman, J. (2013). Industry mapping and Supplier Diagnostic report.
[10] Naude, M. J., & O'Neill, C. (2011). The quest for survival in the South African automotive industry: A supply chain perspective.

7. The technology in the field of automotive sector has experienced radical technological innovations, producing safer cars, which are more comfortable and economical in recent years. The automotive engines have improved significantly, becoming more efficient and giving rise to hybrid and fully electric vehicles. These improvements have helped to diversify the market and allowed users to choose cars with less impact on the environment, in addition to enhancing user comfort.

8. The automotive industry has been undergoing constant change. Although, broadly changes have been improvements in the vehicle during the initial phases of development as well as recently have occurred at various levels such as design, engines hybrid and purely electric, fuel efficiency. Of late, the car manufacturers have also started making use of the technological developments and innovation from digital arena. Now, many of these improvements in the vehicle are the result of the collaborative efforts of OEMs and digital technology players. These developments are culminating in today's digital transformation characterised by disruptive innovations in the automotive market. A significant proportion of the portfolio has changed as the Digitalisation Era has given birth to digital products and services. The focus is now on making cars connected, autonomous and electric through application of new technologies. This digitisation of automobiles is gradually becoming the new normal in the automobile industry around the world. Auto manufacturers, through the application of new technologies such as artificial intelligence, internet of things, robotics, cloud computing and so on, are becoming more flexible, efficient, responsive and reshaping their business[11]. These autonomous cars create and maintain a map of their surroundings based on a variety of sensors situated in different parts of the vehicle. Recently Ford and Google joined hands to offer cloud-based data services such as built-in Google apps, including its map and voice technology. Ford will deploy Google's artificial intelligence technology to improve the efficiency of vehicle development, supply chain and manufacturing operations[12]. Such innovative collaborations between OEMs and Technology Companies also enables OEMs to address novel trends in the industry, such as, higher environmental and safety standards, on-demand rides *etc.*

[11] https://www2.deloitte.com/content/dam/insights/us/articles/automotive-news_industry-4-0-in-automotive/DI_Automotive-News-Supplement.pdf

[12] https://auto.economictimes.indiatimes.com/news/auto-technology/ford-google-join-hands-to-offer-cloud-based-data-services/80641809

These new technologies have affected not only the internal operating model of suppliers and OEMs, but also customers' use of products.

Box 1

Automobile & Economy

- The automobile industry has been accounting for **around 15% of Brazil's industrial GDP** since the start of the rapid growth of the industry two decades ago. According to 2017 data, the gross value added of the automobile production, which includes cars, trucks and busses was around USD 6.2bn. https://info.ceicdata.com › brazil-automotive-sector-poise
- The Indian automobile industry contributes **6.4 per cent to GDP**, around 35 per cent to manufacturing GDP, supports over 8 million jobs directly (OEMs, suppliers and dealers) and as many as 30 million more in the value chain. (https://indianexpress.com)
- China continues to be the world's largest vehicle market. In 2020, China's automobile production and sales are over 25 million units". https://www.privacyshield.gov › article › id=China-Autom...

- The automotive cluster is an important industrial sector in South Africa. The broader automotive sector accounted for 6.8% of gross domestic product (GDP) in 2018. https://www2.deloitte.com/
- In South Africa, the automotive industry contributes 6.4% to the country's gross domestic product (GDP) (4.0% manufacturing and 2.4% retail) and accounts for 30.1% of the country's manufacturing output.
https://www.gov.za/sites/default/files/gcis_document/202101/44103gon46.pdf

Market Structure of Automotive Sector

(A) Brazil

9. The Brazilian market has more than 27 automotive manufacturers, including manufacturers that produce agricultural machines and cargo vehicles. These automotive manufacturers follow various business models; some act as assemblers in the country, while others import to Brazil for commercialization. There is also a hybrid system, where some car brands of a manufacturer are assembled in Brazil and others are imported.

10. In 2019, there were approximately 44 million vehicles in Brazil, with an annual production of 2.9 million (with a peak of 3.6 million in 2013) and an annual exportation of 430 thousand vehicles. The numbers from 2020 and 2021 were affected by the pandemic which impacted the Brazilian economy and the logistics involving auto parts,

thus affecting the production and price of the industry. It is believed that soon the production will recover and the whole industry will get back on track.

11. Moreover, it is important to stress the importance of Mercosul, a common market in South America, in which cars produced within its members have the same treatment as the local production. There is a strong connection between Brazil and Argentina, and approximately 50% of Brazilian exports are for that commercial partner. There is also a significant integration in other segments such as auto parts. Brazil also has strong links with Mexico and exportation and importation from that country is significant. Besides that, Brazil exports its automotive products to other countries in Latin America and Africa.

12. Car manufacturers in Brazil generally enjoy a network of distributors/franchised dealers operating with a contractual structure, although some manufacturers act vertically. Considering the continental size of Brazil and that part of the population is spread all over the country, a key element for car manufacturers is the construction of a distribution network which is able to sell vehicles and offer maintenance and support to these vehicles. The construction of this network can be considered a strong barrier for the entrance of new players in the Brazilian market, especially if the new players aim to reach important markets in the countryside.

13. The fact that when Brazil opened its markets for the importation in the 1990's and several manufacturers mismanaged its chain and even left the country a few years later also affected the consumer view of new brands. If a consumer has to choose between the stability of a manufacturers that is in Brazil for 60 years or a new manufacturer, the consumer will put a big weight on the distribution network and the tradition of the manufacturer. Thus, consumer behavior can also be considered an issue regarding the entry of new companies. In the medium term this perception may change considering that Ford, a traditional manufacturer, has stopped its production in Brazil, and that Chinese and Korean manufacturers are gaining market on a daily basis.

14. One relevant point is that in the 1970's, when Brazilian market was very concentrated in a few cargo and car manufacturers, the unstable nature of the contractual relationship between manufacturers and dealers caused an intense judicial litigation in this area. To avoid the perpetuity of this issue, this subject was taken to the Brazilian Congress, in

1979 Law 6.729/79 was approved, which aimed at establishing criteria for a balanced relationship among manufacturers and its dealers. This law is still in force.

15. Adopting a model similar to other countries, the Brazilian auto parts market is divided into three main segments. The first is the segment of original equipment, commercialised by the assemblers. These parts are purchased from auto part suppliers and become predominantly identified with the assembler's brand. They are distributed by the assembler's commercial network in the country. The second segment concerns the independent auto parts, produced by different companies in the market (including assemblers' suppliers) and distributed directly by the manufacturers through their commercial network or in independent stores. The third is the segment of reconditioned or used parts, commercialised in the informal market and often associated with scrapyards and other informal means of acquisition. Law 12.977/14, approved in 2014, regulates the dismantling of motor vehicles as well as the destination of parts or group of parts used for reposition.

16. Furthermore, as usual in supply chain approaches, this big industry is conceptually viewed as a Tiered Supply Chain Management. This means that many companies that sell parts are grouped in a sector (suppliers' tiers) defined by their level of proximity to the assemblers (Original Equipment Manufacturers - OEMs).

17. The schematic model below shows that there are three tiers of auto parts suppliers, which offer products to assemblers. They can be defined as follows:

Tier 1: generally, global companies manufacturing on mass production sells directly to assemblers and take part in the efforts to develop/supply new products. These products are, as a rule, complete parts, tested and ready for installation. These companies act in segments of electric and electronic systems, tires, suspension, among others.

Tier 2: companies that supply components, unassembled isolated parts to tier 1 companies.

Tier 3: companies that supply raw material for tiers 1 and 2.

18. The after-market is conducted by the dealerships, which offer maintenance services for the vehicles sold by the respective brands (as described above), and by the vast chain of automobile repair workshops and automotive parts manufacturers. As this market is

considered to have a low level of concentration, it was not the target of robust competition reviews until now.

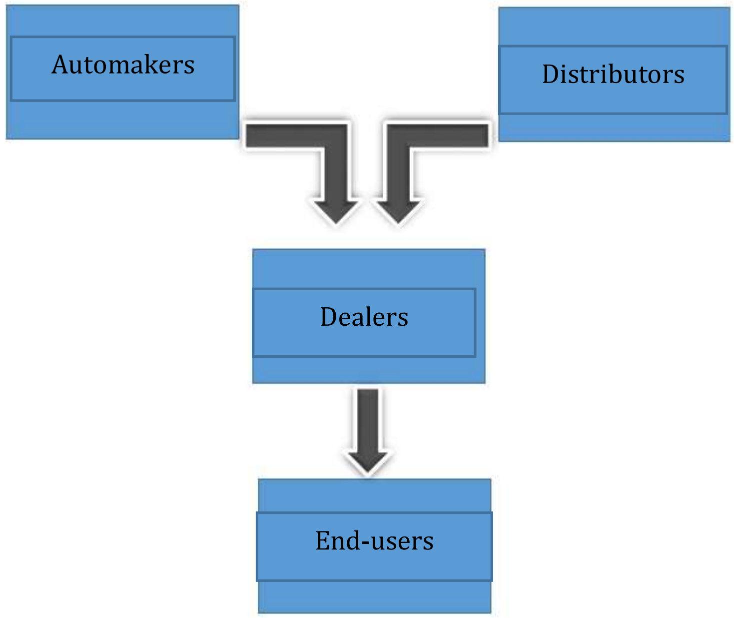
(B) Russia

19. Domestic enterprises that produce cars from the times of the USSR in the territory of the Russian Federation under their own brand (Avtovaz CJSC - Lada cars, UAZ LLC - UAZ cars).

20. Foreign companies that, within the framework of investment projects, localised the production of certain car models in the Russian Federation, including the production of automotive components: fuel tanks, engines, transmissions, *etc.* (Volkswagen Group Rus LLC - Volkswagen Tiguan and Polo models, as well as Skoda Rapid and Octavia models; Toyota Motor Rus LLC - Toyota Camry, RAV4; HMMR RUS LLC - Hyundai Solaris, Creta; Renault RUSSIA JSC, Avtotor JSC, *etc.*).

21. Foreign companies that have official representative offices in the Russian Federation are authorised to sell cars (hereinafter - Distributors) and importing them from the territory of foreign countries. All such companies are members of the Association of European Business (hereinafter AEB) involved in selling cars of the brand for instance DAC, Lifan, Geely, *etc.*

22. The structure of the car sector in the Russian Federation is outlined in the table beneath.



23. Regarding the automobile spare part sector, in accordance with paragraph 9 of the Code of Conduct for automakers, spare parts for cars can be divided into three main groups:

- **Original spare parts -** spare parts manufactured by the car manufacturer or for the car manufacturer on behalf of the manufacturer / order of the manufacturer of original spare parts, as well as distributed by the participants of the Code of Conduct for automakers (hereinafter referred to as the Participants) or other official distributors of the car manufacturer and marked with the car manufacturer's trademark;

- **Identical spare parts -** spare parts manufactured by the car manufacturer or for the car manufacturer on his behalf / order by the manufacturer of original spare parts, fully consistent with original spare parts, but not marked with a trademark of the car manufacturer, as well as distributed by the Participants or other official distributors of the car manufacturer;

- **Spare parts of appropriate quality -** spare parts of the same quality as the original spare parts, but not distributed by the Participants or other official distributors of the car manufacturer, not marked with its trademark, and manufactured either by the manufacturer of original spare parts or by another manufacturer in accordance with the standards of the car manufacturer, as well as for which there are documents confirming the approval of their use from the relevant automaker. The responsibility to prove the appropriate quality of such spare parts rests with the respective supplier of such spare parts or a dealer.

- To perform warranty and other types of repairs paid by car manufacturers, dealers and (or) service stations use only original and (or) identical spare parts. After the warranty period for cars has elapsed, authorised dealers are allowed to use spare parts of appropriate quality to perform maintenance and non-warranty repairs.

24. There were about 1.76 million units of new passenger cars sold in 2019 in the Russian Federation. The trend in vogue in this industry is the facilitation through a single multiplatform that allow for the production of different models and brands of cars using the same facilities, thereby increasing the scale of production and, as a result, reducing cost. The sales of passenger car in last five years are mentioned below:

Table 1: *Production and Sales of Passenger Cars in last five years*

Year	Production (10,000 vehicles)	Sales (10,000 vehicles)
2015	138.29	160.51
2016	130.77	142.57
2017	155.15	159.57
2018	177.05	180.05
2019	172.33	175.95

- **Auto producers and distributors** sell their products to end-users through companies that are official representatives of automobile companies with which they have dealer agreements (hereinafter - Dealers).

- **The market of after-sales service** is competitive in the territory of the Russian Federation. However, analysing the world statistics in the automobile sector, we assume that competition issues may probably arise in the after-sales service markets (spare parts, repairs, maintenance), since original equipment manufacturers (OEMs) seek to limit consumer actions in choosing independent parts suppliers, rather than dealers, approved or "authorised" by the manufacturer.

(C) India

25. India’s indigenous passenger car industry was launched in the 1940s with the establishment of Hindustan Motors and Premier Automobiles Limited. These two companies together garnered most of the market share till the 1970s.The market for automobiles was also not very big given the low rate of economic growth during that period. It was in 1980s that the two firms, Hindustan Motors and Premier, were challenged by a new entrant, Maruti Udyog Limited. In 1981, Maruti Udyog Limited went into a joint venture with the Suzuki Motor Corporation of Japan to manufacture vehicles.

26. Beginning in the middle of 1991, the Government of India made some broad-ranging changes in its economic and industrial policies in the direction of further liberalisation. By the end of the decade, passenger cars industry witnessed liberalisation and many major MNCs including Daewoo, Peugeot, General Motors, Mercedes-Benz, Honda, Hyundai, Toyota, Mitsubishi, Suzuki, Volvo, Ford and Fiat were operating at a significant scale in the market and also started operations in the middle-sized car segment.

27. By the turn of the 21st century, there emerged a huge amount of optimism for developing India into a low-cost small car making hub for domestic and international markets. The small-car segment did particularly well and India’s potential as a global hub for manufacturing in this segment began to be recognised. Global affiliations and tie ups slowly enabled technology upgrading and the expansion of scale of production in the industry. Now, India is one of the fastest growing market for automobile and auto-components in the world with well-developed manufacturing facilities, R&D and testing centres.

28. Automobile industry in India has grown faster in last decade. This is particularly attributable to the rising middle class income in the recent past and consequent rise of the demand of personalise vehicles. This could also happen because of the economic reforms which increased the inflow of Foreign Direct Investment in this segment and thus Indian producers are increasingly pulled into global value chain.

The sales of passenger car in last five years are mentioned in Table below:

Table2: *Production and Sale Trend of Passenger Cars*

Year	Production (10,000 vehicles)	Sales (10,000 vehicles)
2014-2015	322	260
2015-2016	347	279
2016-2017	380	305
2017-2018	402	329
2018-2019	403	338
2019-2020	343	277

Source: *SIAM, Automobile Domestic Sales Trends*

29. The above table shows increasing trend of production, sale and export of passenger vehicle from 2014-15 to 2018-19. However, there is a slight decline in production as well as Sale and export of Passenger Vehicles declined in 2019- 2020 over the same period last year.

Supply Chain in Automobile Industry in India

30. As automotive supply chain consists of number of entities, starting from supplying raw material to delivery of final product to customers. These entities are inter linked and categorised based on their position in supply chain. The OEM's, keeping only their core competencies, subcontract all other activities to Tier 1 manufacturers. Tier-1 companies followed the same strategy of OEMs & outsource many components to other firms, termed as Tier-2. This supply chain is comprised of following broad segments:

- Original Equipment Manufacturers (OEMs) – This segment of firms comprises manufacturers of passenger and commercial vehicles. OEMs are the final assemblers and own brand names like Ford, Honda, Hyundai, Maruti, Mahindra, Tata Motors, Toyota *etc.* OEMs are the drivers of efficiency and innovation throughout the value chain and are considered to be the most important chain in the Automotive Industry. The OEMs, keeping only their core competencies, subcontract all other activities to tier-1or tier-2 suppliers[13].

[13] IBEF, 2009. Auto Components. https://www.ibef.org/download/Auto_Component_171109.pdf

- Components Manufacturers/Assemblers (Tier-1) - Tier-1 supplier generally adopts, as a value chain cluster, a hub-and-spoke model where a number of smaller companies supply product to it and it majorly sub-assembles the components for OEMs. They have the skills and resources to supply the critical components that OEMs need. It includes sub-systems manufacturers/assemblers like engine and power line, brake system, gear system, fuel injection system[14]. Some of the leading Tier-1 suppliers in India include Bosch, Delphi, Visteon and Denso *etc.* Additionally, there is a well-developed domestic component and ancillary industry with some suppliers already meeting global technical and quality standards at the Tier-1 level[15].
- Second Tier Suppliers (Tier 2): The second-tier suppliers include those companies, which supply the first-tier manufacturer with principal components based on their print. They are generally small sized local companies, who do not have either the financial or technical resources to supply integrated systems to vehicle manufacturers. These firms themselves do not sell directly to OEMs.
- Third Tier Suppliers (Tier 3): The tier-3 suppliers are mostly metal forming, foundry, forging and heat treatment units. Tier 3 suppliers have low level manufacturing and technological capabilities and mainly dominated by unorganised firms.

31. Thus, the manufacturers of auto parts could be either a Tier 1 or Tier 2 supplier. The difference between the two kinds of manufacturer is that a Tier 2 supplier manufacture sub-components which could be used in a basic component while a Tier 1 supplier manufactures major components which could be based on the designs supplied by the OEMs and thus may involve dedicated supply to an OEM. The OEMs may themselves carry out the last limb of manufacturing, like machining, for critical components. When an auto-part is finally ready, the OEMs assemble them and produces automobiles and motor vehicles. The OEMs then reach out to their integrated and/ or third-party dealers, who distribute the automobiles to the end customers, *i.e.*, the consumers.

[14] Riat, R.S. 2019. Rationalization & Tierization of Indian Automotive Industry: Challenges for Indian Tier 2/3 Suppliers. Sixteenth AIMS International Conference on Management. http://www.aims-international.org/aims16/16ACD/PDF/A-224-Final.pdf

[15] khusroo Chisthy, S. Issues and Challenges in the Indian Auto Component Industry with Special Reference to Indo Thail And Fta.

After market

32. Apart from above, there exists an Aftermarket in the Automobile Industry. Aftermarket is secondary market in the automotive sector which deals with remanufacturing, distribution, retailing, and installation of all vehicle parts and equipment, once the vehicle has been sold by the original equipment OEM to the customer.[16] Aftermarket for passenger vehicle sector in India can be divided under two segments:

- Supply of spare parts, including the diagnostic tools, technical manuals, catalogues *etc.* for the aftermarket usage; and
- Provision of after sale services, including servicing of vehicles, maintenance and repair services.

(D) China

33. The automobile industry serves as an important pillar industry of the national economy and an important livelihood industry to enhance people's sense of happiness and gain. Besides, it plays a critical role in the promotion of economic growth, technological innovation, employment and social development, amongst others. According to China's national standards, "Motor vehicle" means a power-driven vehicle that is not supported by rails and has four or more wheels. Motor vehicles are mainly used for carrying people and/or goods, towing vehicles that carry people and/or goods, and for special purposes. Motor vehicles can be classified into two categories, i.e. passenger cars and commercial vehicles.

34. Since 2009, China's automobile production and sales have ranked first in the world consecutively. In 2019, China's automobile production and sales reached 25.721 million and 25.769 million respectively, among which, passenger cars accounted for 83%, commercial vehicles accounted for 17%, Chinese brand passenger cars accounted for 39.2% of the total sales of passenger cars, and the sales of the top ten enterprises accounted for 90.4% of the total sales of automobiles.

[16] Retrieved from https://glencallum.co.uk/automotive-aftermarket-set-boom-10-years/

Table 3: *Production and Sale Trend of Passenger Cars*

Year	Production (10,000 vehicles)	Sales (10,000 vehicles)
2015	2450.33	2459.76
2016	2811.9	2802.8
2017	2901.5	2887.9
2018	2780.9	2808.1
2019	2572.1	2576.9

Source: *China Association of Automobile Manufacturers.*

35. China's automobile industry has a relatively complete and mature supply chain that consists of various types of businesses at the upstream, midstream and downstream levels, including production of motor vehicle spare parts, complete vehicle supply, motor vehicle sales, aftermarket services, used vehicles and many other businesses. Undertakings include state-owned enterprises, private enterprises, foreign-invested enterprises and joint ventures. From the perspective of upstream and downstream levels, the active participants in China's automobile industry are:

- Spare part supplier, which makes or supplies components for the initial assembly of motor vehicles and spare parts for the aftermarket for motor vehicles.
- Motor vehicle supplier, which provides distributors with resources in relation to motor vehicles. Motor vehicle suppliers include motor vehicle manufacturers, undertakings that assume interests in the sale of motor vehicles from motor vehicle manufacturers and distribute motor vehicles, and undertakings that import motor vehicles from overseas.
- Motor vehicle distributor, which engages in the distribution of motor vehicles and the provision of services for motor vehicles. In practice, a motor vehicle distributor may also serve as a repair and maintenance service provider. However, motor vehicle sales and aftermarket services may also be separated from each other.
- Aftermarket service provider, which provides maintenance, repair and other services for motor vehicles.

36. Motor vehicle manufacturing is the core of the development of automobile industry, which has significant economy of scale and scope, and is the most critical link of the whole industrial chain. Therefore, the motor vehicle market has objectively formed an ecosystem with motor vehicle suppliers as the core. Motor vehicle suppliers are naturally in a strong position, while motor vehicle distributors and spare part suppliers are in a subordinate position. Currently, the competition in the sales market for new motor vehicles in China is relatively intense. However, lock-in effects and compatibility issues existing objectively in the aftermarket for motor vehicles may restrict or weaken the effective competition in the aftermarket and harm the interests of consumers.

(E) South Africa

37. The automotive sector is critical for the South African economy. The broader automotive industry's contribution to South Africa's gross domestic product (GDP) reached 4.9% in 2020 down from 6.4% in 2019. The Department of Trade Industry and Competition ("DTIC"), has paid a great attention to this sector and developed the South Africa's automotive master plan which among other things seek to grow South African vehicle production to 1% of global output, increase local content in South African assembled vehicles to up to 60% and improve automotive industry competitiveness levels to that of leading international competitors.

38. In automotive industry the Supply chain is divided into suppliers of components, modules (or sub-assemblies) or systems. Usually, Components suppliers would constitute Tier 3, Sub-assembles would be on Tier 2 and Systems on Tier 1 level. Tier 3 are mainly Component suppliers which are responsible for commodities in the sense of build to print parts. Value add is low. Second and lower tier levels normally operate in a regional or local environment. Tier-2 suppliers, without supplying directly to OEM companies, are the key suppliers to Tier-1 suppliers.

39. The structure of South Africa Automotive Industry, comprising both manufacturing and after market chains are as follows:

- Original equipment manufacturers (OEMs), comprises passenger car, commercial vehicle and bus manufacturing, as well as sales, primarily through dealerships.
- Original equipment suppliers (OESs) with regard to automotive parts and accessories usually manufacture and supply directly to the OEMs for their service networks. Due to this, vehicles are assured reliability with the brand of the vehicle, which may be serviced for nine to ten years, post-production.
- The independent aftermarket is responsible for the manufacture and sale of automotive replacement parts and accessories. The aftermarket includes re-manufacturing, distribution, retailing and installing motor vehicle parts and products other than the original parts and accessories; and are sold directly to the consumer through independent retailers and repair shops.

40. In the recent past, the Competition Commission of South Africa (CCSA) was engulfed with public complaints pointing to potential exclusionary conduct at all levels of the automotive value chain. The Commission sought to resolve potential anticompetitive behavior through collaboration and advocacy initiatives with industry stakeholders. After four years of engagement with the sector starting in 2017, the Commission has concluded and published the Guidelines for Competition in South African Automotive Aftermarket in January of 2021. The Guidelines provide practical guidance for the automotive aftermarkets industry which are intended to promote inclusion and to encourage competition through greater participation of small and medium enterprises (SMEs) and HDP[17] groups.

41. The Covid-19 pandemic reined hard on the automotive sector in South Africa. Vehicle exports from South Africa declined by 29.95% between 2019 and 2020, largely due to various lockdown regulations. SMEs and HDP participants were the most affected during this period. The advent of the pandemic is likely to reverse the gains already made in the sector and may potentially jeopardise the ambitions of the Automotive master by the Department of Trade, Industry and Competition (DTIC). This calls for proactive deliberations on economic development framework as well as Competition framework front. The CCSA, through its regulatory powers will continue to ensure that

[17] Means persons who were disadvantaged by unfair discrimination on the basis of race, gender, or disability before the Constitution of the Republic of South Africa, 1996 came into operation)

this crucial sector of the South African economy is as competitive and inclusive as possible.

42. South Africa has 6 different categories of vehicles that are sold and manufactured in the country. These are;

- Passenger cars (PAS),
- Light commercial vehicles (LCV),
- Medium commercial vehicles (MCV),
- Heavy Commercial vehicles (HCV),
- Extra heavy commercial vehicles (XHV), and
- Buses (BUS).

43. The table below shows new sales of each vehicle category from year 2014 to 2020. In 2019, new PAS sales contributed 66.23% to total sales of new vehicles. LCV accounted for 28.55%, MCV recorded 1.62% and HCV contributed 0.94%. These figures indicate that the overall new vehicle sales are heavily dependent on passenger cars and light commercial vehicles. These two categories accounts for 94.78% of new vehicle sales.

44. It is widely accepted the Covid 19 pandemic and associated lockdowns and restrictions had raging impact on different sectors, services and manufacturing markets. The automotive sector in South Africa was severely affected by the Pandemic. The table below shows that sales of new vehicles declined by 29.10%. PAS declined by 30.56%, LCV declined by 27.60% and MCV declined by 22.49%.

45. Comparing 2014 and 2019, new vehicle sales statistics show that in 2019, sales were already lower than they were in 2014. Between 2014 and 2019, sales of PAS had declined by 19.04%, LCV were down by 11.82% and MCV had declined by 21.17%. In total, new vehicle sales were 16.71% down between 2014 and 2019.

Table 4: *Sales of new vehicles in South Africa*

Market	2014	2015	2016	2017	2018	2019	2020
PAS	438 942	412 478	361 264	368 114	365 247	355 379	246 784
LCV	173 759	174 701	159 283	163 317	159 525	153 221	110 929
MCV	11 024	10 394	8 315	7 890	7 885	8 690	6 736
HCV	5 441	5 670	5 556	5 305	5 374	5 044	4 098
XHV	13 840	13 286	11 853	11 978	13 126	13 350	11 194
BUS	1 253	1 119	1 276	1 099	1 070	928	708
Total	644 259	617 648	547 547	557 703	552 227	536 612	380 449

Source: Automotive Industry Portal MarkLines. Available at: https://www.marklines.com/en/statistics/flash_sales/salesfig_southafrica_2015.

46. The table above shows sales of new vehicles in South Africa. The table indicates that between 2014 and 2016, sales of new vehicles were already on a downward trajectory. The Automotive Business Council, NAAMSA[18], was of the view that low vehicle sales were as a result of slowdown in domestic economy, increases in interest rates, pressure on consumers' disposable income and new vehicle inflationary pressures.[19] From 2016 to 2019, new vehicle sales figures however remained fairly stable. For the period 2019 to 2020, sales were significantly lower because of Covid-19 Pandemic and associated lockdowns regulations.

47. The table below shows the statistics of the manufacturing front of the industry. In 2019, PAS manufactured or assembled in the country accounted for 55.61% of the total vehicles manufactured in South Africa. LCV accounted for 40.58% and XHV accounted for 2.03%. Similar to sales of new vehicles, manufacturing data indicates that vehicle manufacturing in South Africa are largely skewed towards PAS and LCV. The Covid 19 pandemic also had its tall on manufacturing of vehicles in South Africa. Manufacturing of passenger cars decreased by 31.97% between 2019 and 2020. LCV and MCV declined by 27.01% and 25.39% respectively during the same period. In total, manufacturing of vehicles decreased by 29.54% between 2019 and 2020.

Table 5: *Locally Built / Assembled vehicles*

Market	2014	2015	2016	2017	2018	2019	2020
PAS	277 931	339 847	334 730	330 575	320 383	348 665	237 214
LCV	255 629	243 534	235 333	242 300	261 086	254 417	185 691
MCV	6 319	6 189	5 388	4 800	4 949	5 440	4 059
HCV	5 352	5 741	5 481	5 234	5 472	4 986	3 812
XHV	12 131	12 008	10 972	11 332	12 606	12 732	10 558

[18] National Association of Automotive Manufactures of South Africa.
[19] NAAMSA comments on vehicle ales for 2015. Available at: https://carinsurance.arrivealive.co.za/naamsa-comments-on-vehicle-sales-for-december-2015.php. Accessed on [09/09/2021].

BUS	896	870	804	808	880	772	489
Total	558 258	608 189	592 708	595 049	605 376	627 012	441 823

Source: Lightstone/ NAAMSA

48. The table above shows a trend of vehicles manufactured in South Africa. Unlike sales of new vehicles, manufacturing statistics indicates that manufacturing of cars between 2014 and 2019 was on a moderate upward trajectory, at least for PAS and LCV. It is also seem from the above table that manufacturing of XHV was also on an upward trajectory. Between 2014 and 2019, manufacturing of PAS was up by 25.45% and XHV was up by 4.95%. LCV declined by 0.47% and MCV decreased by 13.91 during the same period. Overall, manufacturing of vehicles increased by 12.32% between 2014 and 2019.

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CHAPTER 4 LEGAL FRAMEWORK IN BRICS COUNTRIES

(A) Brazil

1. The Brazilian framework for the automobile industry in Brazil is regulated through general laws and regulations as well as specific laws and regulations which are focused on the automotive market. While the former aim to produce effects in all economic sectors/industries, the latter seek to regulate the automotive sector.

2. An important general law, considering the objective of this work, is Law 12.529/2011, which structures the Brazilian Antitrust System comprising the competition law enforcement authority CADE and establishes investigation procedures for anti-competitive conducts and mergers;

3. Besides the antitrust system, above mentioned, it is also important to mention the Brazilian Consumer's Rights Code, Law 8.078/1990, which provides rules for consumer protection and, in a certain way, helps the enforcement of competition rules. For example, tie-in, in some cases, can be considered an antitrust infringement, but sometimes it is difficult to investigate and condemn such practice, considering the legal standards and the proofs standards based in the rule of reason. However, in consumer law, although its objective is different, the analysis and standards necessary for tie-in cases are much lower, opening space for a condemnation or a negotiation of a solution in a tie-in conduct which is primarily a consumer matter but will also have competitive reflections. In an effort to coordinate consumer and antitrust issues, CADE has a cooperation agreement with the SENACON, which is part of the Ministry of Justice.

4. Moreover, another relevant general law is the Industrial Property Law, Law 9.279/1996, which aims the protection of trademarks, patents, and industrial designs. Brazil has joined the TRIPS Agreement at the WTO (World Trade Organization) and many aspects of the law that came into force in 1996 reflects that perspective.

5. Although matters involving intellectual property (IP) and antitrust are not a new topic, since it is being developed for a while in analysis involving several markets. We noticed that in the last years matters which need a harmonisation between IP and antitrust surged and demand answers from authorities around the world. It is not different in Brazil since CADE had to rule in a case involving design protection as well as in other cases which directly and indirectly involve IP protection and licences. It is important to stress that matters involving IP and antitrust tend to continue since new technologies are being developed and new players in technology and ecommerce may start to operate in this market more intensively. Considering the importance of this topic in Brazil, CADE has also signed a cooperation agreement with the Brazilian Patent and Trademark Office, INPI (National Institute of Industrial Property).

6. Moving forward from the general rules to the specific laws and regulations for the automobile sector, it is important to mention the Brazilian Road Traffic Code, Law 9.503/1997, which organises the traffic system and establishes rules for vehicle safety. As the regulation creates standards and obligations it is important to monitor the market as to ascertain if there are anticompetitive issues emerging. For example, the Traffic Code established more strict rules for obtaining a driver's license. Since there were investigations and condemnations of Driving Schools in cartel cases, it was important to ascertain if these new rules would stimulate cartels or other anticompetitive conducts.

7. Another specific law, Law 6.729/1979, sets rules to structure the relationship between automotive vehicle manufacturers and their dealers/distributors. It was presented a deeper analysis of this law in another topic but it is important to highlight that it has competitive impacts since it limits certain practices that could be considered cost-effective such as direct sales from manufacturers to consumers through the internet. Even when the consumer uses the manufacturer website to model a car, it is necessary the intervention of a dealer in the buying process.

Box 2

With regard to IP and antitrust, CADE and INPI (Brazilian Patent and Trademark Office) have a cooperation agreement which provides basis for the exchange of technical information between the agencies

8. Another important legal ground in this market involves governmental laws and programmes which aim to develop the Brazilian automotive industry, such tool has been used by several governments recently. Although most of the issues which area addressed in these laws do not affect the antitrust area directly, it is important to observe that it has an impact on competition and it is possible that its implementation brings matters that should be analysed by the antitrust system. The last law with this profile is Law 13.755/2018, which creates the Route 2030 Program, a public policy with the objective of developing the Brazilian automotive market, amongst other things. It sets the requirements for trade and importation and tax regime and tax breaks for cars and auto parts that are locally made. The Route 2030 Program succeeded the Auto-Innovate Program (Law 12.715/2012), which was in force from 2013 until 2017 and was based on promoting investments in research and development in exchange for concession of tax incentives to the automotive industry.

9. As a last example of specific rules, it is worth mentioning, Law 12.977/2014, Disassembly Law, which regulates the use of disassembly parts for automobile vehicles as well as for the allocation of parts, individually or in sets, which may be used for replacement. The activities related to "junk yards" were problematic since some of them had connections with the black market and were involved in selling parts from cars which were steeled or robbed. Society as whole was losing with the illegal activities and insurance in cities like Rio de Janeiro and São Paulo were very costly. The creation of specific legal grounds and a better enforcement changed the market, stablishing a market apart of the black market.

(B) Russia

10. Under Russia's regulatory framework, the automobile sector is governed by numerous branches of law, including civil, administrative and criminal law. One such law is the antimonopoly legislation Federal Law 135, the violation of which is regulated by the Federal Antimonopoly Service ('FAS') Russia.

11. The antimonopoly regulation of the automobile market in Russia can be divided into two main categories. Firstly, those dealing with the violation of antimonopoly legislation, wherein, over the past 5 years, FAS Russia has been holding investigations against Avtovaz CJSC and Ford Sollers Holding LLC, an automaker and distributor,

respectively. Secondly, those that deal with M&As, wherein, over the past three years, applications for transactions between business entities operating in the car market have not been submitted to FAS Russia.

12. One of the issues faced by the automobile sector in Russia is the parallel import of automobile spare parts into the territory of the Russian Federation. Currently, the Eurasian Economic Union (EAEU), of which Russia is a part, has a regional principle of exhaustion of rights, by virtue of which the use of a trademark by other persons with respect to goods that have been introduced into civil circulation in the territory of EAEU member states directly by the rights holder or with his consent, in accordance with Section 5 of Annex No. 26 to the Treaty on EAEU, is not a violation of exclusive right to a trademark.

13. This principle of exhaustion of rights affects a variety of sectors of the economy and a wide range of people. An analysis of the practice of FAS Russia over the years has shown that monopolisation of the right to import into the territory of the Russian Federation by Western manufacturers has the disadvantage of not only forcing consumers to purchase these goods from established official suppliers, often at inflated prices, but also allowing the copyright-holder to manipulate the assortment of branded goods in the territory at his discretion in a particular country, restricting the import of certain popular models or not providing certain functions.

14. Thus, in order to eliminate unnecessary barriers to the development of entrepreneurship in Russia, FAS Russia has initiated the process of introducing relevant changes to the regulatory documents of the EAEU.

(C) India

15. In India, the Motor Vehicles Act, 1988 and the Central Motor Vehicles Rules, 1989 framed thereunder lay down the regulatory framework which governs the safety standards and emission norms for automobiles. Under this Act[20], the law relating to motor vehicles is consolidated and principles relating to driving licence, registration of motor vehicles, control of traffic, construction and maintenance of motor vehicles, insurance against third-party, *etc.*, have been laid down. Recently, to mitigate the

[20] Available at https://www.indiacode.nic.in/bitstream/123456789/9460/1/a1988-59.pdf

occurrence of road accidents, the government has adopted a multi-pronged approach and amended the Central Motor Vehicles Act, 1988 through the Motor Vehicles (Amendment) Act, 2019[21].

16. Further, with respect to the automobile industry, the Ministry of Road Transport and Highways notified the Bharat Stage (BS)-VI emission norms[22] on 22nd May 2020 to safeguard citizens from pollution. Additionally, fuel efficiency norms have been formulated by the Bureau of Energy Efficiency and notified under the Energy Conservation Act, 2001[23]. Furthermore, the Voluntary Fleet Vehicle Modernisation Program (V-VFMP)[24] is aimed towards encouraging people to get their vehicles scrapped and replace them with modern, more fuel-efficient and less polluting vehicles by offering tax and other benefits. The National Electric Mobility Mission Plan 2020 has also been envisaged to promote hybrid and electric vehicles[25] focusing on the demand and supply side incentives while advancing on-road vehicles to go for hybrid kits. In August 2021, the Government of India has announced Vehicle Scrappage Policy[26] with an aim to phase out old and unfit vehicles in an environment friendly manner. The National Policy seeks to provide a new identity to the auto sector and promote a circular economy, making the process of economic development more sustainable and environment friendly. The policy provides for scrapping of old, unfit and polluting vehicles by creating an infrastructure for automated testing of vehicles that have completed the registration period.

17. The Competition Act, 2002 (Act)[27] has been enacted to regulate competition in the markets. Its aims and objectives are (i) to prevent practices having adverse effect on competition, (ii) to promote and sustain competition in markets, (iii) to protect the

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[21] Available at https://egazette.nic.in/WriteReadData/2019/210413.pdf

[22] https://morth.nic.in/sites/default/files/notifications_document/GSR%20308%20%28E%29%2022%20May%202020%20Emission%20Standards%20Bharat%20Stage%20VI%20%28BS-VI%29%20for%20Quadricycle.pdf

[23] Available at https://beeindia.gov.in/content/fuel-efficiency#:~:text=The%20fuel%20consumption%20standards%20would,into%20force%20from%202022%2D23.&text=The%20second%20standard%20assumes%20car,100km%20at%20this%20average%20weight.

[24] https://morth.nic.in/sites/default/files/Concept_Note_on_Voluntary_Vehicle_Fleet_Modernization_Programme.pdf

[25] https://dhi.nic.in/userview/index?mid=1347

[26] https://timesofindia.indiatimes.com/business/india-business/vehicle-scrappage-policy-details-benefits-rules-and-more/articleshow/85309762.cms

[27] Available at https://www.cci.gov.in/sites/default/files/cci_pdf/competitionact2012.pdf

interests of consumers, and (iv) to ensure freedom of trade carried on by other participants in markets.

18. Under Section 7 of the Act, the statutory body entrusted with the implementation of the Act is the CCI. Further, under Section 41 of the Act, the investigative arm of the CCI is the Director General.

19. As far as substantive provisions of the Act are concerned, Sections 3 and 4 of the Act, *inter alia,* prohibit entering into anti-competitive agreements and abuse of dominant position, respectively. Furthermore, under Sections 5 and 6 of the Act, read with Sections 30 and 31 of the Act, CCI regulates 'combinations', i.e., acquisition of one or more enterprises by one or more persons or merger or amalgamation of enterprises that exceed the threshold limits specified in the Act in terms of assets or turnover. Lastly, under Section 49 of the Act, CCI undertakes competition advocacy.

20. Section 3 of the Act states that enterprises, persons or associations of enterprises or persons shall not enter into agreements in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which cause or are likely to cause an "appreciable adverse effect" on competition in India. Such agreements, under Section 3 (2) of the Act, would consequently be considered void.

21. The species of agreement, which would be presumed to have an 'appreciable adverse effect on competition' would be those agreements, which, (i) directly or indirectly determine sale or purchase prices; (ii) limit or control production, supply, markets, technical development, investment or provision of services; (iii) share the market or source of production or provision of services by way of allocation of geographical area of market or type of goods or services, or number of customers or any other similar way; or (iv) directly or indirectly result in bid rigging or collusive bidding. The exception to this presumptive rule exists for agreements resulting in joint ventures which enhance efficiency in terms of production, supply, distribution, storage, acquisition or control of goods or services.

22. To encourage wrongdoers to come forward and report anti-competitive agreements, including cartels, under Section 46 of the Act, CCI has a robust lesser penalty programme. As per Section 46, CCI may, if it is satisfied that any producer, seller, distributor, trader or service provider included in any cartel which is alleged to have

violated Section 3, has made a full and true disclosure in respect of the alleged violation, and such disclosure is vital, impose upon such producer, seller, distributor, trader or service provider a lesser penalty.

23. Other type of anti-competitive agreements are those which have been provided under Section 3(4) of the Act and include agreements amongst enterprises or persons at different stages or levels of the production chain in different markets, in respect of production, supply, distribution, storage, sale or price of, or trade in goods or provision of services. These include (a) tie-in arrangements; (b) exclusive supply agreements; (c) exclusive distribution agreements; (d) refusal to deal; and (e) resale price maintenance. Such agreements shall be in contravention of Section 3 (1) if they cause or are likely to cause an "appreciable adverse effect on competition" in India. These agreements are subject to a rule of reason test, meaning that appreciable adverse effect on competition has to be shown by weighing the pro and anti-competitive factors mentioned in Section 19 (3) of the Act *namely* (a) creation of barriers to new entrants in the market; (b) driving existing competitors out of the market; (c) foreclosure of competition by hindering entry into the market; (d) accrual of benefits to consumers; (e) improvements in production or distribution of goods or provision of services; or (f) promotion of technical, scientific and economic development by means of production or distribution of goods or provision of services.

24. Section 3 (5) of the Act provides that nothing contained in Section 3 (that prohibits anti-competitive agreements) shall restrict the right of IPR holder to restrain any infringement of, or to impose reasonable conditions, as may be necessary, for protecting the rights under the specified intellectual property rights statutes. Further, it provides that the restrictions on cartels do not restrict the right of any person to export goods from India to the extent to which the agreements relate *exclusively* to the production, supply, distribution or control of goods or provision of services for such export.

25. Section 4 provides that no 'enterprise' or 'group' shall abuse its dominant position in the relevant market. Dominant position is the position of strength enjoyed by an enterprise in the relevant market, which enables it to operate independently of competitive forces prevailing in the market, or affect its competitors or consumers or

the relevant market in its favour. There shall be an abuse of dominant position if an enterprise indulges into:

(a) directly or indirectly imposing unfair or discriminatory:

(i) condition in purchase or sale of goods or service; or

(ii) price in purchase or sale (including predatory price) of goods or services,

excluding unfair or discriminatory condition or price adopted to meet the competition;

(b) limiting or restricting:

(i) production of goods or provision of services or market therefore; or

(ii) technical or scientific development relating to goods or services to the prejudice of consumers;

(c) indulging in practice(s) resulting in denial of market access in any manner;

(d) makes conclusion of contracts subject to acceptance by other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts;

(e) using dominant position in one relevant market to enter into, or protect, other relevant market.

26. Abuses as specified above fall into two broad categories: exploitative (for example, imposition of unfair conditions, excessive or discriminatory pricing) and exclusionary (for example, denial of market access, leveraging).

27. For assessment under Section 4, a four-pronged approach is adopted by CCI. Firstly, it is seen whether the alleged abuser is an 'enterprise', within the meaning of Section 2 (h) of the Act or a group of enterprises; secondly, a 'relevant market' in terms of Section 2 (r), (s) and (t) is delineated considering the factors stated under Section 19 (6) and 19 (7) of the Act; thirdly, in such market, the dominance of the alleged abuser is analysed which means a position of strength which enables the enterprise to (i) operate independently of competitive forces prevailing in the relevant market; or (ii) affect its competitors or consumers or the relevant market in its favour analysed; and lastly, the nature of the alleged abusive conduct.

28. Section 2 (h) of the Act gives a wide definition to the term 'enterprise'. It includes all firms/ individuals engaged in any kind of commercial activity. It also covers a department of government engaged in commercial activity. However, it makes an

exception for the activities relatable to sovereign functions of the government including all activities carried on by the departments of the Central Government dealing with atomic energy, currency, defence and space.

29. In terms of Section 2 (r) of the Act, a relevant market is to be defined by the CCI with reference to the relevant product market or relevant geographic market or both the markets. In terms of Section 2 (t), "relevant product market" means a market comprising all those products or services which are regarded as interchangeable or substitutable by the consumer, by reason of characteristics of the products or services, their prices and intended use. Section 19 (7) of the Act gives the factors which the CCI will consider while defining the relevant product market *viz*. (i) physical characteristics or end-use of goods; (ii) price of goods or service; (iii) consumer preferences; (iv) exclusion of in-house production; (v) existence of specialised producers; and (vi) classification of industrial products.

30. In terms of Section 2 (s) of the Act, "relevant geographic market" means a market comprising the area in which the conditions of competition for supply of goods or provision of services or demand of goods or services are distinctly homogenous and can be distinguished from the conditions prevailing in the neighbouring areas. Section 19 (6) of the Act gives the factors which the CCI will consider while defining the relevant geographic market *viz*. (i) regulatory trade barriers; (ii) local specification requirements; (iii) national procurement policies; (iv) adequate distribution facilities; (v) transport costs; (vi) language; (vii) consumer preferences; and (viii) need for secure or regular supplies or rapid after-sales services.

31. For assessment of dominant position of an enterprise/ group in any relevant market, the factors to be considered stated in Section 19 (4) of the Act include (a) market share of the enterprise; (b) size and resources of the enterprise; (c) size and importance of the competitors; (d) economic power of the enterprise including commercial advantages over competitors; (e) vertical integration of the enterprises or sale or service network of such enterprises; (f) dependence of consumers on the enterprise; (g) monopoly or dominant position whether acquired as a result of any statute or by virtue of being a Government company or a public sector undertaking or otherwise; (h) entry barriers including barriers such as regulatory barriers, financial risk, high capital cost of entry, marketing entry barriers, technical entry barriers, economies of scale, high cost of

substitutable goods or service for consumers; (i) countervailing buying power; (j) market structure and size of market; (k) social obligations and social costs; (l) relative advantage, by way of the contribution to the economic development, by the enterprise enjoying a dominant position having or likely to have an appreciable adverse effect on competition; and (m) any other factor which the Commission may consider relevant for the inquiry.

(D) China

32. China's automotive sector, as one of the pillar industries in the national economy, is comprehensively supervised by several government departments. The Anti-Monopoly Law (AML) of the People's Republic of China has been implemented since 2008 in the field of anti-monopoly and is now a relatively complete anti-monopoly legal system, with the AML at the core and composed of administrative laws and regulations, with departmental regulations, anti-monopoly guidelines and normative documents.

33. Anti-competitive behaviours prohibited by the AML include reaching monopoly agreement by undertakings, abuse of dominant market position and concentration of undertakings which has or may have the effects of eliminating or restricting competition. The antitrust law enforcement authorities have formulated departmental regulations and normative documents such as Interim Provisions on Prohibition of Monopoly Agreement, Interim Provisions on Prohibition of Abuse of Dominant Market Position and Interim Provisions on Review of the Concentration of Undertakings on the basis of relevant provisions of the law. The Anti-Monopoly Commission of the State Council, by summarising the experience of law enforcement, has formulated guidelines such as Anti-Monopoly Guidelines for the Intellectual Property Industry, Guidelines for Commitments of Undertakings in Monopoly Cases and Guidelines on the Application of the Leniency Program to Cases Concerning Horizontal Monopoly Agreements, to explain the antitrust law enforcement ideas and principles and give clear guidance to undertakings.

34. The AML prohibits administrative authorities and organisations empowered by laws and regulations with the function to administer public affairs from abusing their administrative power to eliminate or restrict competition. According to the provisions of the AML, the State Administration for Market Regulation ('SAMR') formulated the

Interim Provisions on Prevention of Abuse of Administrative Power to Eliminate or Restrict Competition, which refined various forms of administrative anti-competitive behaviours. On 1st June 2016, the State Council issued the Opinions on Establishing a Fair Competition Review System in the Development of the Market System, which makes provisions on the establishment and implementation of a fair competition review system and establishes 18 standards for government actions from four aspects: market access and exit, free flow of goods and factors, impact on production and operation costs, and impact on production and operation behaviours, so as to prevent the introduction of policies and measures eliminating and restricting competition from the source.

35. For the purpose of providing clear guidance to undertakings, preventing and curbing anti-competitive behaviours in the automobile industry, reducing costs of both administrative law enforcement and compliance of undertakings, the Anti-Monopoly Commission of the State Council formulated and promulgated the Anti-Monopoly Guidelines for the Automobile Industry according to the AML on the basis of summing up the experience of law enforcement and drawing lessons from the mature practices of other countries. The main design for the system of the Anti-Monopoly Guidelines for the Automobile Industry includes: the definition of relevant markets in the automobile industry, including sorting out of the ideas about definition of the relevant product market and relevant geographic market, and discrimination of specific factors that need to be considered in the definition of motor vehicle distribution market and aftermarket for motor vehicles; the monopoly agreement issues in automobile industry, mainly comprising three parts: the relationship between prohibition and exemption of monopoly agreement, horizontal monopoly agreement in the automobile industry and vertical monopoly agreement in the automobile industry; abuse of dominant market position in the automobile industry focusing on the production and circulation of spare parts for motor vehicles and abuse of dominant market position in the aftermarket for motor vehicles; abuse of administrative power to eliminate or restrict competition in the automobile industry, listing the common abuse of administrative power to eliminate or restrict competition in the automobile industry, especially the behaviour of restricting non-local vehicles from entering the used vehicle transaction; and other competition issues such as the review of the concentration of undertakings and assessment of OEM agreements for spare parts.

36. Article 13 of the AML prohibits horizontal monopoly agreements, i.e., competing undertakings are prohibited from reaching any monopoly agreement. Article 14 of the AML prohibits vertical monopoly agreements, i.e., undertakings are prohibited from reaching any monopoly agreements with their trading counterparts. Article 15 sets out circumstances and conditions where monopoly agreements can be exempted. An undertaking that argues that neither Article 13 nor Article 14 of the AML applies to an agreement shall prove that the agreement falls under those specified in Article 15 of the AML.

37. As far as horizontal monopoly agreements are concerned, based on the current business model and practice of the automobile industry, the acts involving horizontal monopoly agreement in the industry can be formed because of fixed prices, limited quantity, market division, technology restrictions and boycott. As horizontal monopoly agreements pose great direct harm to market competition and consumer welfare, it is only necessary to meet the basic requirements of the AML and the Interim Provisions on Prohibition of Monopoly Agreements to judge and define the nature of the acts involving horizontal monopoly agreements. From the empirical perspective, the following two aspects are considered in research and judgement of horizontal monopoly agreement issues in the automobile industry:

   (a) The acts involving horizontal monopoly agreements in the automobile industry occur in the production stage, sales stage and aftermarket stage. First, the body of the agreement may be motor vehicle enterprises and spare parts suppliers competing with each other; second, from the perspective of the purpose of implementation, a clear agreement may be required between motor vehicle enterprises sharing a competitive relationship; third, from the perspective of implementation methods, the agreement reached between motor vehicle enterprises may involve price monopoly agreement as well as non-price monopoly agreement; and finally, from the perspective of the effects of implementation, the monopoly behaviour of motor vehicle enterprises may be based on the agreement purpose, causing damaging results, i.e., determining whether the horizontal monopoly agreement between motor vehicle enterprises is based on the purpose standard or the effect standard.

(b) Certain types of horizontal agreements, such as research and development agreements, specialisation agreements, technology standardisation agreements, joint production agreements and joint procurement agreements, can enhance efficiency and promote competition in general as well as increasing consumer welfare. For instance, horizontal agreements concluded for research and development and production of new-energy vehicles can enable the undertakings to share investment risks, enhance efficiency and promote social public interests. Therefore, relevant undertakings in the automobile industry may prove, in accordance with Article 15 of the AML, that Article 13 of the AML shall not apply to certain agreements.

(c) When analysing and assessing a vertical monopoly agreement, the first step is to determine whether the agreement is prohibited by Article 14 of the AML. The next step is to assess whether the agreement can be presumably exempted pursuant to Article 15 of the AML. Vertical monopoly agreements can be formed as either direct restrictions (e.g., stipulating resale prices of distributors through contract clauses) or indirect restrictions (e.g., fixing profit margins and discount levels of distributors; limiting the price change range; withdrawing rebates to, refusing to provide supply to or prematurely terminating authorisation to distributors who failed to follow the suggested prices as identified by price monitoring measures).

(d) Acts involving vertical price monopoly agreement: Article 14 of the AML lists two kinds of acts involving vertical price monopoly agreement, namely, fixing the price of reselling goods to a third party and restricting the minimum price of reselling goods to a third party. The adverse effects of resale price restrictions include, among others, the maintenance of high prices, facilitation of horizontal collusion, weakening inter-brand and intra-brand competition and exclusion of competitors. If an undertaking can prove that such price restrictions will not substantially restrict competition in the relevant market and will allow consumers to share the benefits arising therefrom, it may, in accordance with Article 15 of the AML, argue for exemption.

(e) Acts involving vertical non-price monopoly agreement: Article 14 of the AML does not specify the form of vertical non-price monopoly agreement but generally expresses it as “other monopoly agreements recognised by the antitrust law enforcement authority of the State Council". Currently, there is no antitrust law enforcement case against vertical non-price monopoly agreements in China, but that does not indicate that it does not experience the effects of eliminating and restricting competition.

(E) South Africa

38. In South Africa, the Motor Industry Development Programme (MIDP) ran initially from 1995 to 2012, followed by the Automotive Production Development Programme (APDP), which was introduced in 2013 and was set to run until 2020. The MIDP permitted the discounted import of components and Completely Built Units in the industry via export benefits in the form of duty rebates. The APDP is a production incentive scheme for the motor industry aimed at promoting production volumes in the specified motor vehicle industry, promoting added value in the automotive component industry, thus creating employment across the automotive value chain.[28]The contributions of the automotive industry in South Africa cannot be overlooked in sectors of employment and economic development of the country. Thus, in order to further boost this industry, the Department of Trade and Industry commissioned the development of a South African Automotive Masterplan (SAAM) in 2016.

39. The antitrust law in South Africa is the Competition Act, No. 89 of 1998, under which the statutory body, Competition Commission of South Africa (CCSA), was constituted. According to the Competition Act, the CCSA, is responsible for the investigation, control and evaluation of restrictive practices, abuse of dominant position, and mergers. The Competition Act also establishes the Competition Tribunal which is responsible to adjudicate such matters; and for the Competition Appeal Court which hears appeals. The purpose of this Act is to promote and maintain competition in South Africa in order (a) to promote the efficiency, adaptability and development of the economy; (b) to provide consumers with competitive prices and product choices; (c) to promote employment and advance the social and economic welfare of South Africans; (d) to expand opportunities for South African participation in world markets and recognise the role of foreign competition in South Africa; (e) to ensure that small and medium-sized enterprises have an equitable opportunity to participate in the economy; and (f) to

[28]https://www.sars.gov.za/customs-and-excise/registration-licensing-and-accreditation/automotive-production-and-development-programme-apdp/

promote a greater spread of ownership, in particular to increase the ownership stakes of historically disadvantaged persons. The Competition Act applies to all economic activity within, or having an effect within, the country.

40. Section 4 of the Act prohibits restrictive horizontal practices. In terms of section 4(1) of the Competition Act 'an agreement between, or concerted practice by, firms, or a decision by an association of firms, is prohibited if it is between parties in a horizontal relationship and if –

(a) it has the effect of substantially preventing or lessening competition in a market, unless a party to the agreement, concerted practice, or decision can prove that any technological, efficiency or other pro-competitive, gain resulting from it outweighs that effect; or
(b) it involves any of the following restrictive horizontal practices:
(i) directly or indirectly fixing a purchase or selling price or any other trading condition;
(ii) dividing markets by allocating market shares, customers, suppliers, territories or specific types of goods or services; or
(iii) collusive tendering.

41. Section 5(1) of the Act prohibits restrictive vertical practices that have the effect of substantially preventing or lessening competition in a market, unless a party to the agreement can prove that any technological, efficiency or other pro-competitive, gain resulting from that agreement outweighs that effect. Section 5(2) prohibits the practice of minimum resale price maintenance.

42. Section 8 of the Act prohibits abuse of dominance including:

(a) Excessive pricing
(b) Refusal to give access to an essential facility
(c) Exclusionary conduct including: inducement, refusing to supply a scarce good, tying and bundling, predatory pricing, buying up scarce supply of intermediate good and services and margin squeeze.

43. Section 9 of the Competition Act prohibits price discrimination by a dominant seller.

44. CCSA has launched investigations into anti-competitive arrangements (price fixing, market division and collusive tendering) in the automotive sector for the manufacture of automotive components. The respondents, who are all competitors in the market for the manufacture and supply of automotive components, are alleged to have either concluded general agreements or engaged in discussions regarding specific customers with regard to how to respond to requests for annual price reductions from OEMs, or discussed and agreed about how to respond to Requests for Quotation issued by OEMs with respect to a particular component.

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CHAPTER 5 COMPETITION ISSUES IN THE AUTOMOTIVE SECTOR

1. Like any other sector, automotive sector, due to its specificities and structure is susceptible to anti-competitive conduct. The information on the automotive sector of the BRICS countries and their respective supply chains given in Chapter 3 indicates the similarities in the competition issues that may emerge. Some of the most common characteristics which render this sector susceptible to anticompetitive arrangements are as under:

   (a) Considering the capital-intensive nature of automotive production line may lead to high entry barriers, as well as the high degree of specialisation arising from reasons of consumer safety, there are limited OEMs in the market, thereby making the market oligopolistic in nature and vulnerable to cartelisation. However, it is pertinent to mention here that not every type of horizontal agreement is in violation of competition law provisions, in view of the fact that certain agreements such as research and development agreements, specialisation agreements, technology standardisation agreements, joint production agreements and joint procurement agreements, can enhance efficiency and promote competition in general as well as increasing consumer welfare.

   (b) Given the high specialisation, capital-intensive nature and continuous technological innovations involved in the manufacturing of automotive components, there are few global OESs for each component, thereby making the market oligopolistic in nature leading to risk of cartelisation.

   (c) Distributors/dealers have to source the vehicles from OEMs, which make them dependent on the OEMs and, as such, they are prone to follow the directions of OEMs, which may be anti-competitive in nature. At times, hub-and-spoke cartels, involving an OEM as the hub and its distributors as the spokes following the anti-competitive *diktats* of the hub, also exist.

   (d) In the aftermarket, restraints may be imposed by OEMs involving the sale of spare parts or provision of aftermarket repair services. Once a consumer purchases an automobile of a particular brand, it gets locked-in for aftermarket purchases such as spare parts and services with that OEM only, giving the OEM an opportunity/ability to abuse its acquired dominant position *vis-à-vis* such consumers.

2. In this chapter, given the interface between different players in the automotive sector, *viz.*, OESs, OEMs, distributors and aftermarket service providers, the major competition issues that have been dealt by the competition authorities are discussed under the following heads:

Issues of cartelisation

3. Globally, cartels have frequently been revealed in the procurement of automotive components by OEMs. This is due to the following reasons:[29]

   (a) Procurement patterns by automotive companies are predictable;

   (b) Competitive Requests for Quotations (RFQ) are issued, but there are few, and often the same qualified bidders, in each round;

   (c) Qualification to supply poses a barrier to entry for suppliers;

   (d) Collaborative development leads to information sharing; and

   (e) Qualified suppliers are under pressure to bid; if the qualified vendor does not participate in the bid, it may lose its qualified status.

4. The entry barriers for suppliers of automotive components to OEMs, which lead to the operation of few OESs, is also one of the significant reasons for making this sector susceptible to collusive or concerted actions. Reasons for such entry barriers in the sector are as follows[30]:

   (a) Each customer selects a limited number of suppliers for each type of component;

   (b) It takes years to get qualified and gain access to supply contracts;

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[29] The Automotive Cartel Investigation First Lessons for the Future; Latham & Watkins, accessed at https://www.lw.com/presentations/automotive-cartel-investigation-2012

[30] *ibid*.

(c) Contracts are for long periods and there is little opportunity to contest between multi-year events; and

(d) Entry attempts are risky, and displacement of suppliers is rare, leading to an environment where existing suppliers are inherently protected from competition.

5. Bid rigging, one of the forms of cartelisation, is also seen in this sector, and usually, there are following factors that make the market conducive for bid-rigging[31]:

(a) Existence of few sellers;

(b) Products where the ultimate decision of the customer is based primarily on price;

(c) High barriers to entry;

(d) Repeat purchases or bidding events (competitors get to know each other and also get information about award price in previous tenders); and

(e) Contacts, or opportunities for contacts, amongst competitors.

Vertical Restraints

6. As the automotive supply chain has several levels, the sector witnesses many vertical arrangements. In competition terms, any agreement amongst enterprises or persons at different stages or levels of the production chain in different markets, in respect of production, supply, distribution, storage, sale or price of, or trade in goods or provision of services is a vertical arrangement. In view of the several levels in the supply chain, the industry is susceptible to anti-competitive vertical restraints. Vertical restraints are termed differently in different jurisdictions.

7. However, not all vertical agreements may be anti-competitive. There can be plausible efficiency justification that such agreements may bring which are weighed against the harm, in order to gauge the net effects that these may create. At times, such agreements may be justified given their necessity to achieve desired efficiencies.

8. Some of the most notable forms of vertical restraints are set out below:

[31] *ibid.*

(a) Resale Price Maintenance (RPM)

(i) Resale Price Maintenance (RPM) includes any agreement to sell goods on the condition that the prices to be charged on the resale by the purchaser shall be prices stipulated by the seller unless it is clearly stated that prices lower than those prices may be charged[32].

(ii) In the automotive sector, the OEM, while supplying automobiles to its distributors/dealers, may at times impose a condition to not make sales thereof to end-consumers at prices below those prescribed by the OEM. In other words, the maximum discount permissible to be extended by the distributors/dealers to the consumers may be fixed by the OEM in order to maintain price parity between dealers. Such RPM may even be enforced at the instance of distributors/dealers by the OEM. Since there also exists the involvement of OEM, RPM may also take the form of a hub-and-spoke cartel.

(iii) RPM is particularly problematic since it may help maintain the collective interest of downstream players, i.e., the distributors, to maintain higher resale prices, resulting in consumer harm. This is a form of cartel, since the impetus to indulge in RPM by the OEMs is at the behest of downstream dealers to stipulate the price at which other dealers can sell.

(iv) Another likely anti-competitive effect of RPM is that it can prevent effective competition both at the intra-brand level as well as at the inter-brand level. When a minimum resale price maintenance is imposed by the manufacturer of a particular brand, distributors are prevented from decreasing the sale prices. In other words, the mechanism does not allow the dealers to compete effectively on price. The stifling of intra-brand competition results in higher prices for consumers. It may also lead to higher prices across all brands, because preventing price competition on a popular brand would result in higher prices of competing brands as well, including those that have not adopted RPM. Thus, RPM may have the effect of reducing inter-brand as well as intra-brand price competition. Another trend being observed, of late, is the enforcement of RPM by OEM through the appointment of mystery shoppers to police dealers who monitor the implementation of RPM imposed by the OEM.

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[32] Section 3 (4) of the Competition Act, 2002

(b) Tying/Tie-in arrangements

A tie-in arrangement includes any agreement that requires a purchaser of goods, as a condition of such purchase, to purchase some other goods[33]. In the auto industry, OEMs may have tie-in arrangements under which they may either force dealers to purchase less popular models of automobiles along with more popular models, or the dealers may induce customers to purchase other items of a brand prescribed by the OEM along with the vehicle such as: car insurance, lubricants & oils, and servicing. Usually, prescribing such complementary goods/services may foreclose the market for alternative providers of such products or services.

(c) Exclusive Distribution Agreement

OEMs may put restraints in the form of limitation of production or supply of any goods or stipulates allocation in an earmarked area or market for dealing with goods by its distributor; such agreements are termed as exclusive distribution agreement. Such limitations usually impair the right of a seller in dealing with the goods. For territorial restriction, the OEMs (supplier) may agree to provide products on the condition that distribution is to be permitted within a particular territory.

(d) Exclusive Dealership

OEMs may also insist upon an exclusivity clause in their dealership agreements with dealers under which they may restrain the car dealership from taking up dealership of any competing OEMs. Again, while this may not be anti-competitive in itself, a lot would depend on the market power of both the OEM and the dealership to assess whether there may be any AAEC. OEMs may not explicitly provide for such restrictions in the dealership agreements and may instead resort to warnings, penalties or intimidation or prior approval. Further, though authorised repairers may not be prevented from repairing the brands of different OEMs, most of them may typically concentrate their activities on a single brand or model. This may be due to the fact that car manufacturers have increased requirements for tooling, signage, training and other forms of corporate identity. Further, it is also conceivable that an OEM may appoint its

[33] *ibid.*

own company as a dealer and favour it in terms of the discounts provided *vis-à-vis* other third-party dealers.

Box 3
In the motor vehicles market in China, vertical monopoly agreements can not only take the form of distributorship agreements but also be concluded through business policies, circulars, bulletins and notices, amongst other forms. There has been considerable focus of theoretical research and law enforcement practices on territorial and customer restrictions in practice, the imposition of indirect vertical restrictions on the aftermarket for repair and maintenance services and for the distribution of spare parts by way of quality warranty clauses and other vertical restrictions in relation to the sales and service capabilities of distributors and repair and maintenance service providers.

(e) Exclusive Supply Agreement

(i) OEMs may enter into numerous types of supply agreements, most common ones are: (a) agreements with OESs and local equipment suppliers; and (b) agreements with authorised dealers.

(ii) With respect to agreements between OEMs and OESs who are local equipment suppliers, unless the OEMs are able to show that protection of their established IPR, is the reason for putting a restraint, if restraints on local OESs by OEMs are found w.r.t. sale of spare parts/its designs and/or diagnostic tools *etc.*, it may constitute a vertical restraint, such as refusal to deal and/or exclusive supply arrangements.

(iii) Lastly, agreements between OEMs and their authorised dealers, if found to be containing clauses restricting over-the-counter sale of spare parts, requiring dealers to source spare parts only from OEM-approved vendors or restricting them from dealing with cars of competing brands without the OEM's consent, may also constitute vertical restraint like refusal to deal and/or exclusive supply and/or exclusive distribution arrangements. In fact, restricting the availability of genuine spare parts in the market may give rise to the market of spurious goods and also allows OEMs to mark up the prices high of spare parts while making a sale, thus causing consumer harm.

(f) Issues in Aftermarket

(i) OEMs source spare parts for their assembly line and aftermarket requirements from overseas suppliers and other local OESs pursuant to agreements with such overseas suppliers and domestic OESs. The OEMs then distribute the spare parts to the aftermarket and provide for aftersales repairs and maintenance of their various models of cars through a network of authorised dealers. The authorised dealers and OEMs enter into dealership agreements to regulate the terms and conditions, pursuant to which the authorised dealers sell spare parts and provide maintenance services in the aftermarket.

(ii) The market for spare parts, accessories, and other replacement components, along with repair and maintenance services for motor vehicles, is called the 'aftermarket' in the auto sector. An automobile has a long lifespan. As such, from a consumer's perspective, its aftermarket gains extreme importance given the high switching cost of the automobile. Once a consumer purchases an automobile from a particular OEM, and if restrictions as discussed above are placed by OEMs, the consumer may find himself in a tight spot to avail replacement/spare parts for the automobile only from that particular OEM.

(iii) Another competition issue faced by the auto industry is with respect to OEMs entering into agreements with OESs, restricting the latter from supplying replacement components to third-parties without the OEMs' consent. Further, OEMs also do not allow their authorised dealers to sell spare parts, tools, repair manuals, *etc.*, over the counter.

(iv) Non-availability of these may inhibit the ability of independent repairers to attend to aftermarket requirements. Although some of these restrictions could be justified on account of Intellectual Property Rights (IPR), trademarks, *etc.*, from a competition law perspective, this may lead to little competition in the market for spare parts as well as the market for repair and maintenance.

(v) It is pertinent to mention here that competition issues related to aftermarket can also be dealt under abuse of dominance, however, considering it to be a common feature of all automotive markets and its importance, a separate section has been devoted to this.

Abuse of Dominant Position

(a) Defining a 'Relevant Market'

(i) The primary purpose of defining a 'relevant market' is to systematically identify the competitive constraints faced by the enterprises concerned. There are two sources of competitive constraints: demand substitutability and supply substitutability.

(ii) Demand substitutability constitutes the most immediate and effective disciplinary force on suppliers, particularly in relation to their pricing decisions. On the other hand, competitive constraints arising from supply substitutability are less immediate and require the analysis of additional factors. This is due to the fact that, when supply substitutability would imply the need to significantly adjust existing tangible and intangible assets, additional investments, strategic decisions or time delays, it may not be feasible to consider substitutability at the stage of market definition.

(iii) The car manufacturing market is traditionally categorised under the following heads:

- Primary Market: Consisting of the manufacture and sale of passenger vehicles; and
- Secondary Market or Aftermarket: Consisting of complementary or secondary products and services that are complementary to and follow on from the primary product.

(iv) An aftermarket may not exist as a separate relevant market in every instance where a primary product and a secondary product are involved. For example, a razor and its blades may not necessarily be in an aftermarket structure. If the razor-manufacturing company increases the price of its blades and the consumer cannot use blades of any other brand with that particular razor, in such a scenario, the relevant question that needs to be asked is: Can the consumer switch to another razor brand without incurring substantial switching costs?

(v) One of the criteria for deciding whether the primary and secondary products form part of a 'one systems' market or two separate markets is the cost of the primary product. If the owner of the primary product can easily switch to another competing primary product without substantial switching costs or financial burden, the primary product and secondary product may be clubbed to form a ‘systems market’. However, if this is not possible, as in the automobile market, the primary market and the secondary market/aftermarket need to be defined separately. Another criterion for deciding the same is whether or not consumers in the primary market undertake a whole life cost analysis when buying the product in primary market; if yes, a single market may be defined, and if not, separate markets may be defined[34].

(vi) In India, in a case involving OEMs, OESs, dealers and independent repairers, two markets, namely, primary market of car manufacturing and secondary markets *i.e.* aftermarkets[35] were defined due to the following reasons:

- There is technical compatibility only between the products in the primary market and the secondary market of each OEM; as a result, each OEM is shielded from any competitive constraints in the aftermarket from its competitors in the primary market. Therefore, the consumer of a particular model of car manufactured by an OEM cannot switch to spare parts manufactured by another OEM.

- A majority of the consumers are private individuals who generally may not possess the sophistication required to undertake whole life cost analysis. Therefore, a purchaser of a product in the primary market would, to a great extent, be locked in with the primary product, and the feasibility of switching to another primary product to avoid an increase in price in the secondary market of spare parts or repair services is severely limited.

[34] Life cycle cost analysis evaluates life of a vehicle in economic terms, by relying on fixed and operational costs. In automotive sector this plays a pivotal role for customers in understanding a long term guarantee, accounting for possible system risks. Furthermore, helps consumers in evaluating service life dependency of vehicle versus purchasing a new one.

[35] In Re: Shri Shamsher Kataria vs Honda Siel Cars India Ltd. & Others., Case No. 3 of 2011, as available on http://www.cci.gov.in/sites/default/files/03201127.pdf, last accessed on Jan 07, 2021; Secondary market is divided into two segments: (i) Supply of spare parts, including the diagnostic tools, technical manuals, catalogues, *etc.*, and (ii) Provision of aftersales services, including servicing of vehicles, maintenance and repair services.

- Reputational effects may not be enough to deter an OEM in the primary market from increasing prices in the secondary market if the consumers of the OEM are 'locked-in' in the aftermarket.
- The OEMs ensure that independent repairers are not able to effectively compete with the authorised dealers of the OEMs in the secondary market for repair and services by denying them access to required spare parts and tools to complete such repair work.

9. It is noted that China's approach in defining relevant markets, defining relevant product market and relevant geographic market follows the general principles and methods set out in the AML and the *Guideline on the Definition of Relevant Markets*, while also taking into account the features of the automobile industry as well as the specific facts of each case. Substitutability analysis constitutes the main method for defining relevant product market in the automobile industry. When defining the relevant product market in a given case, factors including product characteristics, intended use and prices can be taken into account for demand-side substitutability analysis. Where necessary, supply-side substitutability analysis may be conducted. For example, distribution of motor vehicles has two aspects, namely, wholesale (from motor vehicle suppliers to motor vehicle distributors) and retail (from motor vehicle distributors to end-users). Based on the specific circumstances of each case, further segmentation may be necessary, so that the motor vehicle wholesale market and the motor vehicle retail market constitute relevant product markets respectively. The motor vehicle distribution market may be further segmented from the perspectives of demand-side substitutability and supply-side substitutability. The aftermarket for motor vehicles may be segmented into the aftermarket for the distribution of spare parts and aftermarket for repair and maintenance services respectively, and may also be further defined based on substitutability analysis. In terms of motor vehicle manufacturing and supply, the motor vehicle manufacturing market may be segmented into the supply of motor vehicle spare parts, supply of passenger cars and supply of commercial vehicles. Based on specific circumstances in each case, after demand-side substitutability analysis and supply-side substitutability analysis, motor vehicle components may be further segmented according to their types and functions; passenger cars may need to be further segmented according to factors such as model and brand price; and commercial vehicles may need

to be further segmented according to model, passenger carrying capacity and dead weight.

10. Similarly, substitutability analysis is also the fundamental method used to define the relevant geographic market in the automobile industry. Taking passenger cars as an example: From the perspective of supply-side substitutability, the market for the manufacture of passenger cars is globalised to a great extent. However, from the perspective of demand-side substitutability, competition landscape varies considerably among different countries in terms of their technological and trade barriers, motor vehicle taxes, distribution systems, prices and levels of market penetration of competitors, among others. Therefore, the market for manufacture of passenger cars may be defined as being nation-wide. With regard to the market for the distribution of passenger cars, motor vehicle suppliers generally carry out their wholesale business across the country, and therefore, the geographic market for wholesale of passenger cars may be defined as nation-wide. At the retail level, due to various restrictions on motor vehicle license plates, traffic policies for motor vehicles, aftermarket service and warranty terms and other items, combined with cost factors such as the time and transportation needed for vehicle shopping, end-users may not be able to purchase vehicles from far away. Therefore, the retail market for passenger cars may be defined as provincial or regional.

Box 4
Substitutability analysis constitutes the main method for defining relevant product market in the automobile industry. When defining the relevant product market in a given case, factors including product characteristics, intended use and prices can be taken into account for demand-side substitutability analysis. Where necessary, supply-side substitutability analysis may be conducted.

11. Due to differences in the natures of cases and assessment approaches, market definition plays varying roles in different types of monopoly cases. Cases concerning monopoly agreements and abuse of dominant market position focus on anti-competitive behaviours that have already occurred. Where competitors have already concluded horizontal monopoly agreements such as price fixing, market allocations or output limitations, it is generally not necessary to explicitly define a relevant market. However, for cases concerning abuse of dominant market position, defining a relevant market is generally the first step in finding the abuse of a dominant market position. Additionally, the role of market definition in the assessment of cases concerning

horizontal monopoly agreements and vertical monopoly agreements shall be recognised. When an undertaking argues that an agreement is not subject to Article 13 or Article 14 of the AML pursuant to Article 15 of the AML, it needs to prove that the agreement has satisfied the circumstances set forth in Article 15. Except for the circumstance of "safeguarding the legitimate interests in foreign trade and foreign economic cooperation", Article 15 requires that "proving the agreement concluded will not substantially restrict competition in the relevant market". Therefore, defining a relevant market becomes a necessary step for an undertaking to prove that its agreement can be statutorily exempted.

Box 5

South Africa

CCSA's approach in various automotive aftermarket cases has been to define the primary and the aftermarket as separate markets. The primary market (vehicles) has been dealt with in many cases and found to be a broad market, including various OEMs, and, in most cases, no competition concerns arise. On the other hand, the market definition for aftermarket tends to be narrower, and it has been found that a separate market exists for each manufacturer and that the geographic scope of that market is national. This is because, from a demand-side perspective, customers are unable to switch between parts of different manufacturers. For example, only BMW spare parts and components will fit BMW vehicles. `
http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DAF/COMP/WD(2017)14&doc Language =En

(b) Assessment of Dominance

(i) The underlying principle in the assessment of the dominant position is linked to the concept of market power, which allows an enterprise to act independently of competitive constraints. Such independence affords such an enterprise the capacity to affect the relevant market in its favour, to the economic detriment of its competitors and consumers.

(ii) In the automotive market, each OEM may control almost the entire production and supply of spare parts, which can be used to repair and maintain the respective models of cars manufactured by each OEM. Due to the technical specificity of the cars manufactured by each OEM, the spare parts of a particular brand of an automobile may not be used to repair and maintain cars manufactured by another OEM. Therefore, the owner of a car manufactured by OEM X cannot use the spare parts of a car manufactured by another OEM Y. In fact, even interchangeability of spare parts within different models of cars manufactured by a single OEM is also greatly limited. Therefore, X's consumers may be 'locked-in' with the OEM X in the aftermarket for spare parts, diagnostic tools and repair and maintenance services, of various models manufactured by the OEM X. Thus, in such a scenario, X would become dominant in the secondary market/aftermarket *vis-à-vis* the consumers. Since spare parts of one OEM are not interchangeable with that of another, each OEM may be shielded from any competitive constrains in the aftermarket from their competitors in the primary market.

(iii) Each OEM may, consequently, be a monopolist player and own a 100% market share of the spare parts and repair services aftermarket for its own brand of cars. Customers of automobiles manufactured by each OEM have to use spare parts compatible with such brands of automobiles and cannot substitute such spare parts with those supplied by other OEMs. Therefore, OEMs may face no constraints from existing supplies from actual competitors. Given the limited interchangeability of spare parts between automobiles manufactured by various OEMs, each consumer of an OEM may be completely dependent upon such enterprises.

Box 6

China

Article 17 of the AML prohibits undertakings with a dominant market position from abusing such a position; Article 18 sets out the underlying factors for determining the dominant market position of an undertaking; and Article 19 clarifies the circumstances under which the undertaking may be presumed to have a dominant market position.

Currently, the market for motor vehicle manufacturing in China is mostly of low or moderate concentration, the competition in the sales market for new motor vehicles is relatively intense and the market share and market power of undertakings are limited. Under such market conditions, it is difficult for undertakings in the sales industry for new motor vehicles to be recognised as having a dominant market position. The competition in the sales industry for new motor vehicles is relatively intense. However, lock-in effects and compatibility issues in the aftermarket for motor vehicles may restrict or weaken competition in the aftermarket and harm the interests of consumers. In accordance with the definition of the dominant market position specified in Article 17 of the AML and the underlying factors for determining the dominant market position of an undertaking specified in Article 18 of the AML, the motor vehicle supplier without a dominant market position in the sales market of new vehicles may be deemed to have a dominant market position in the aftermarket for motor vehicles of its own brand.

(c) Abuse of Dominance

(i) OEMs restricting their overseas suppliers from supplying spare parts directly to the domestic aftermarket or restricting their local suppliers/OESs from making over-the-counter sales of spare parts may amount to denial of market access to independent service providers, which is an exclusionary form of abuse.

(ii) Since an automobile is a highly technical product using superior electrical and engineering features, an owner of a car may not be able to fit the spare parts into the machine but require the services of a specialised technician. Such services are typically provided by either the authorised dealers/service workshops of the OEMs or by independent repairers or certain specialised multi-brand service providers. By denying independent repairers and multi-brand service providers access to the required spare parts and tools/manuals to complete such repair work, OEMs may ensure that independent repairers are not able to effectively compete with the authorised dealers of the OEMs in the secondary market for repairs and services and, as such, abuse their dominant position.

(iii) In the absence of availability of genuine spare parts and compatible diagnostic tools for effective repair work on the various models of automobiles manufactured by OEMs, independent repairers may be foreclosed to compete effectively with authorised dealers of the OEMs. Therefore, such practices of OEMs may amount to creation of entry barriers for independent service providers in the automobile aftermarket.

(iv) Moreover, such practices may allow OEMs to considerably mark up the prices of their spare parts, leading to them charging unfair prices from the consumers, which is a form of exploitative abusive conduct.

(v) Lastly, given the inter-linkages between repair/service markets and spare parts/diagnostic tools market, OEMs have a commercial incentive to leverage their dominance in the relevant market of spare parts/diagnostic tools to that of repairs and maintenance services. Therefore, in most cases, the owners of various brands of automobiles may be completely dependent on the authorised dealer network of the OEMs and may not be in a position to avail the services of independent repairers. In most cases, the users of cars wanting to purchase spare parts may have to avail the services of the authorised dealers of the OEM, as independent repairers may be substantially handicapped from effectively attending to the aftermarket requirements of automobiles due to lack of access to specialised diagnostic tools.

(vi) In the case of China, the Anti-Monopoly Guidelines for the Automobile Industry illustrates three common types of abuse of dominant market position in the automotive industry and explicitly proposes that motor vehicle suppliers:

- shall not, without justifications, restrict spare parts manufacturers from manufacturing dual-label parts.

- In addition to the spare parts manufactured under the OEM agreement, motor vehicle manufacturers with a dominant market position in the aftermarket for motor vehicles of their own brands shall not, without justifications, restrict spare part suppliers who produce components for the initial assembly of motor vehicles from manufacturing dual-label parts, i.e., motor vehicle manufacturers shall not prohibit spare-part suppliers who provide them with components for the initial assembly from affixing their own logos, trademarks or spare-part codes on the relevant components for the initial assembly. Giving guidelines for the production of dual-label parts is intended to enhance the abilities of both consumers and repair and maintenance service providers to identify same-quality spare parts so as to promote effective competition in the aftermarket for motor vehicles.

- shall not restrict distributors and repair and maintenance service providers from outsourcing and selling aftermarket spare parts, namely restricting motor vehicle distributors and repair and maintenance service providers from purchasing same-quality spare parts or purchasing original parts via other channels (including parallel-imported spare parts).

- The imposition of such exclusive procurement obligations by suppliers without dominant market positions on their distribution channels within a specified time period may improve the quality standards of the distribution network, help build up and maintain brand images and enhance brand appeal to end-consumers, thus increasing sales volume. However, if there are significant entries or expansion barriers in the relevant market, exclusive procurement obligations may foreclose competing suppliers, weaken the innovation incentive mechanism, increase the product price in the distribution channel and restrict the choices for consumers. In practice, when the motor vehicle suppliers with dominant market position in the aftermarket for motor vehicles of their own brands set unreasonable targets of sales volume for spare parts and inventory varieties and volume for the distributors, it is likely to substantially restrict motor vehicle distributors and repair and maintenance service providers from externally outsourcing spare parts. However, motor vehicle suppliers may, pursuant to applicable law, require members within their authorised system to exclusively use original spare parts and same-quality spare parts, and members within such an authorised system shall, pursuant to applicable law, guarantee consumers' rights of information as well as the traceability of the spare parts. Motor vehicle suppliers can also, pursuant to applicable law, require that members within the authorised system use re-manufactured spare parts and recycled spare parts in the course of their repair and maintenance only on the condition that consumers are informed and expressly choose the spare parts and that the traceability of spare parts are guaranteed. Re-manufactured spare parts refer to the components whose performance and quality meet the requirements of new prototype products after being manufactured using re-manufacturing technology and processes. Recycled spare parts refer to components which can still be of use after being dismantled from retired vehicles or being replaced from repaired vehicles.

- shall not restrict the availability of aftermarket repair and maintenance technology information, testing instruments and repair and maintenance tools.

(vii) Motor vehicle suppliers shall not restrict spare parts suppliers, distributors and repair and maintenance service providers from selling aftermarket spare parts externally, including: In addition to the spare parts manufactured in accordance with OEM agreements, all spare parts are required to 'return to factory', namely restricting spare parts suppliers from supplying spare parts under their own brands to aftermarket channels; restricting cross-supply of aftermarket spare parts among distributors, repair and maintenance service providers and distributors and repair and maintenance service providers; restricting distributors and repair and maintenance service providers from selling the spare parts necessary for motor vehicle repair and maintenance service to end-users.

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CHAPTER 6 CASES INVOLVING AUTOMOTIVE SECTOR

1. This section discusses the relevant case laws and approaches adopted thus far by BRICS Competition Authorities in automobile sector. The cases included in this chapter relates to the anti-competitive agreements, abuse of dominance and mergers. Majority of the cases mentioned relate to passenger vehicle segment, however, few cases from other segments of automobile sector have also been included.

Merger Cases

A) Brazil

2. In the last years, CADE has analysed 29 operations involving the automotive market. Most of these operations involved auto parts manufacturers, a segment which has seen a consolidation process, vertically and horizontally, in the last 15 years in Brazil and around the world.

3. All of the operations and mergers analysed by CADE were cleared, most of them in fast-track proceedings and just a few of them were scrutinised under the ordinary procedure and analysed by CADE's Tribunal. Recent mergers involved international operations that have reflexes in the Brazilian market, a profile that demands careful considerations and a look on how other jurisdictions are deciding to avoid contradictions or an unnecessary burden on the merging companies.

Box 7

CADE cleared the merger between Fiat Chrysler and Peugeot. The merger was analysed under ordinary procedure in light of its complexity and the impact on auto parts and in some car segments, more specifically, light vans and cargo vans in which Fiat Chrysler and Peugeot had a market share around 95% of the market.

The operation was brought to the CADE Tribunal in a proceeding known as "avocation" which gave the opportunity for the Commissioners to express their opinions on the merger which resulted in the formation of the auto group Stellantis.

In a very interesting debate in which different perspectives where presented, the operation was cleared by the majority of the Commissioners. It was understood by this majority that although the transaction concerns well-known brands, the general overview in Brazil due to this international transaction is not alarming, considering the size of the Group PSA (Peugeot) in Brazil. According to the Tribunal, unlike past experiences when Brazil had basically four car assemblies, nowadays many firms operate in the country with strong competition level.

http://en.cade.gov.br/cade-unconditionally-clears-the-transaction-between-fiat-chrysler-and-peugeot

4. Considering mergers submitted through the ordinary procedure, which means that they are more complex than mergers submitted in fast-track procedure. To highlight three such mergers, i.e., the merger between Valeo Holding GmbH and FTE Group Holding GmbH (administrative proceeding 08700.006266/2016-56), Fiat Chrysler Automobiles N.V. and Peugeot S.A. (administrative proceeding 08700.002193/2020-18) and Tupy S.A. and Teksid S.p.A. (administrative proceeding 08700.002569/2020-86). The first two were unconditionally approved, and the merger between Tupy and Teksid due to competitive concerns over high concentration in the engine blocks and cylinder heads markets was approved with structural and behavioural remedies.

B) Russia

5. As regards M&As over the past three years, applications for transactions between business entities operating in the car market have not been submitted to FAS Russia.

Mergers that address the car market and associated markets

(i) Merger "Fiat" – "Peugeot Citroen"

(a) This particular global merger of two European car manufacturers affected the Russian antimonopoly jurisdiction, among others.

(b) The FAS Russia in April 2020 considered the application of a foreign legal entity, "Fiat Chrysler Automobiles N.V." (Fiat Chrysler Automobiles NV – FCA Group), on the acquisition of the rights to determine the conditions for conducting business activities registered in the Russian Federation: LLC PSMA Rus, LLC PEUGEOT CITROEN RUS, LLC Peugeot Citroen Leasing and LLC Bank PSA Finance RUS (PSA group).

(c) The intersection in the markets of cars and trucks was revealed on the basis of the analysis of the commercial activities of the participants in the transaction.

(d) According to the presentation for investors provided by FCA, the FCA group's share in the LCV + LCV2[36] market in the Russian Federation was 0.89% in

[36] Subcategory LCV1 includes cars with gross weight up to 2.7 tons, and subcategory LCV2, from 2.8 to 3.5 tons. In Russia, all small buses with a capacity of up to 18–19 passengers are also classified as LCV2 (LCV-ME). The total weight in this case can reach 6 tons. The definition of LCV is most consistent with a compact

2019. According to the same presentation, the PSA Group's share of the LCV + LCV2 market in the Russian Federation was 4.55% in 2019.

(e) According to PricewaterhouseCoopers' Survey in Russian Automotive Market in 2018 and its Prospects, the FCA's share of the LCV + LCV2 market was 0.8%, while PSA's share was 4.2%.

(f) The FCA presented its own review of the light vehicle market with regard to the intersection of the products of the Parties in the light vehicle segment. According to the review, the shares of FCA and PSA respectively in the light vehicle market in the Russian Federation constituted 0.1% and 0.4% in 2018 and 0.1% and 0.4% in 2019.

(g) At the same time, according to the European classification of cars, the Products of the Parties intersect only in the JEEP class (SUV-C). In the rest of the classes (with the exception of the aforementioned LCV1), there is no product intersection.

(h) Additionally, according to the Association of European Businesses (AEB), the share of FCA and PSA in the passenger vehicle market in the Russian Federation was 0.2% and 0.5% respectively in 2019.

(i) Thus, taking into account the abovementioned facts, this transaction would not lead to a significant change in the level of competition in the vehicle markets within the Russian Federation according to FAS Russia.

(j) Despite this opinion, FAS Russia conducted an additional analysis of the consequences of the transaction for the state and the development of dealer networks of the respective brands in the Russian Federation.

(k) For example, FAS Russia reviewed the provisions of standard dealer agreements related to their termination and prolongation and also received assurances from PSA and FCA that the transaction would not lead to a change in the brands' portfolios of the parties. It was set that the promotion and sales of cars under these brands would be carried out with strategies which, after the completion of the transaction each brand, would develop separately, including

delivery vehicle with a predominantly van body, with a powerful and economical engine and low operating costs, adapted for use in cities.

separate requirements for the dealers of each brand. Moreover, as a result of the transaction, the FCA doesn't intend to change the PSA dealer network in any way and will not terminate any agreements (including dealer agreements) already signed by the PSA group companies in the Russian Federation.

(l) Taking into account the abovementioned circumstances, FAS Russia set a decision to approve the specified transaction.

(ii) Merger "Ford" – 'Sollers"

(a) This transaction is linked with Ford leaving the Russian passenger car market and its focus on the LCV segment.

(b) FAS Russia considered the application of SOLLERS PJSC and Ford Russia Holdings B.V. (Ford Russia Holdings B.V.) in April 2020 for the conclusion of an agreement between competing economic entities on joint activities in the territory of the Russian Federation, providing for joint participation of the Parties in the management of Ford Sollers Netherlands B.V. (Ford Sollers Netherlands B.V.) and the acquisition of the rights by PJSC Sollers to determine the conditions for conducting business activities by Ford Sollers Holding LLC, Ford Sollers Yelabuga LLC and Ford Sollers Auto components LLC registered in the Russian Federation.

(c) Within the framework of this merger, FAS Russia paid special attention to studying the provisions of the agreement on the joint activities of these companies in terms of joint production of cars in the LCV segment, including provisions on refusal to compete.

(d) When considering such agreements, FAS Russia proceeded from data on the aggregate share of the parties to the agreement on the product market in which economic activities were planned to be carried out.

(e) Additionally, the clauses of the agreement providing for the refusal of the parties to compete should meet the following requirements:

- Comply with the goals of joint activities;
- Address only the market in which the parties to the Agreement operate within the framework of joint activities;
- Not stipulate unnecessary exchange of information; and

- Comply with time limits.

(f) According to the results of the analysis of the state of competition in the LCV market carried out by FAS Russia in accordance with the Order of the FAS Russia dated April 28, 2010 No. 220 "On approval of the Procedure for analysing the state of competition in the commodity market", and taking into account the information provided by manufacturers of light commercial vehicles, industry publications and the Association of European Businesses, the antimonopoly authority concluded that the joint share of the parties to the Transaction in the LCV market (including its segments) is less than 35% of the total market. At the same time, the provisions of the agreement regarding the refusal of the parties from competition comply with the specified requirements of the FAS Russia.

(g) Taking into account the above-mentioned circumstances, FAS Russia made a decision to approve the specified transaction.

C) INDIA

6. The CCI receives and reviews combination notices in terms of framework set out in the Act. CCI has received many combination cases relating to the automotive sector. Some combination cases received by the CCI, pertaining to automobile segment had been cleared without remedies / modifications. Some of them have been approved with modifications/remedies. Accordingly, few are highlighted below.

A. Important Combination cases approved by the CCI with modifications

(i) Global acquisition of WABCO Holdings Inc. (WABCO) by ZF Friedrichshafen AG (ZF)

(a) In 2020, CCI approved a combination involving 100% acquisition of WABCO Holdings Inc. (**WABCO**) by ZF Friedrichshafen AG (**ZF/ Acquirer**) (hereinafter, ZF and WABCO are collectively referred to as **Parties**). The Combination was approved by the Commission subject to the carrying out of voluntary modification(s)/ remedies offered by the Acquirer.

(b) Both WABCO and ZF, through their joint venture ('JV') Brakes India, were engaged in overlapping business activities relating to brake, clutch, steering and certain embedded software products used in Passenger Vehicles ('PVs'), Commercial Vehicles ('CVs') and Other Heavy Vehicles ('OHVs').

(c) ZF and WABCO were significant players in the automotive industry, supplying various components to OEMs. WABCO had a strong presence in the Heavy Commercial Vehicle ('HCV') segment, while ZF, through Brakes India, had a strong presence in the PV and Light Commercial Vehicles ('LCV') segments. Each of them had been competing through innovation and trying to make inroads into the domain of the other in the markets of brake and clutch components.

(d) CCI, in its preliminary assessment, observed that, in the product segments mentioned above, there were limited number of players and as a result of the proposed combination, the aspirations of Brakes India to innovate, offer complete portfolio of products in brake system for CVs and turn as a full systems player, was likely to be lost.

(e) The preliminary assessment further suggested that Parties constituted the substantial supply of brake and clutch components/system for CVs in India. Accordingly, the Proposed Combination, *prima facie*, appeared to reduce/eliminate the incentives of WABCO and Brakes India to compete in terms of price, products and innovation in the market of foundation brakes and clutch systems for commercial vehicles in India.

(f) As the extent of remedies offered by ZF were not found to be sufficient to address competition concerns, a show cause notice ('SCN') was issued seeking response as to why detailed investigation should not be conducted.

(g) In response to the SCN, the Acquirer submitted voluntary remedies/modifications, wherein it proposed to divest its 49% shareholding, and all rights and arrangements thereof, in Brakes India. Further, ZF clarified that the scope of remedy/modification offered to the Department of Justice in the USA, in relation to this combination, includes the divestment of the steering business of WABCO in India. Accepting the same, CCI approved the Proposed Combination.

(ii) Acquisition of shareholding in ANI Technologies Private Limited ('ANI'/ 'OLA') and Ola Electric Mobility Private Limited ('OEMPL') by Hyundai Motor Company ('HMC') and Kia Motors Corporation ('KMC')

(a) In 2019, CCI approved a combination relating to acquisition of equity stake in ANI and OEMPL by HMC and KMC ('Acquirers') subject to carrying out of voluntary modifications/remedies submitted by the Acquirers.

(b) HMC and KMC were part of the Hyundai Motor Group ('HMG') and were operating through their respective subsidiaries in India. ANI is a ride-sharing company that integrates city transportation for customers and driver partners onto an online platform to ensure convenient, transparent and quick service fulfilment. OEMPL was operating primarily in the electric vehicles value chain, with a focus on the market for charging infrastructure.

(c) OLA, through its wholly owned subsidiary Ola Fleet Technologies Private Limited ('OFT'), was engaged in the business of operational car leasing. It procured passenger cars of different makes, including Hyundai Motor India Limited ('HMIL'), and leased them to drivers who, in turn, used the vehicles in different ways to earn their livelihood. CCI observed that a majority of vehicles leased by OFT were registered in the marketplace of OLA.

(d) CCI noted that OLA, a known name for services to drivers and commuters in the radio taxi space in India, was enjoying a considerable market position during the last three financial years. If OLA were to prefer drivers owning HMC or KMC vehicles as a result of the proposed combination, such a preference might place other drivers/cabs registered in the OLA marketplace at a disadvantage.

(e) However, a voluntary modification/remedy was offered as per which, a strategic collaboration between the Acquirers and OLA would be on a non-exclusive basis. Further, the algorithm/programme of the marketplace of OLA would not: (a) give preference to a driver based solely on the brand of the passenger vehicle manufactured by the Acquirers; or (b) discriminate against any driver based solely on the brand of the passenger vehicle manufactured by any other OEM. The Acquirers clarified that, apart from the said stipulation on the algorithm/programme of the marketplace of OLA, its existing business model with OFT would not be impacted. Accepting such modifications, CCI approved the Proposed Combination.

B. Combination cases approved unconditionally

(iii) Merger between Peugeot S.A ('PSA') and Fiat Chrysler Automobiles N.V. ('FCA')

(a) In 2020, CCI approved a combination relating to merger between PSA and FCA.

(b) CCI noted that PSA and FCA were not engaged in production/provision of similar, identical or substitutable products or services either directly and/ or indirectly in India. Further, PSA did not manufacture or sell automobile vehicles in India. However, PSA was planning to enter the Indian automobile market in the first quarter of 2021. FCA owned a 50% stake in Fiat India Automobiles Private Limited ('FIAPL'), a joint venture with Tata Motors. Additionally, FCA India was, *inter alia*, engaged in the sale of passenger vehicles such as Fiat Urban Cross, Fiat Abarth Punto, Fiat Punto Evo and Fiat Linea in India. CCI noted that the potential overlap arising from the combination was not likely to raise any competition concerns in India.

(iv) Acquisition of shares of TVS Automobile Solutions Private Limited ('TASPL') by Mitsubishi Corporation ('Mitsubishi')

(a) In 2019, CCI approved a combination comprising acquisition of shares of TASPL by Mitsubishi, as result of which, the shareholding of Mitsubishi in TASPL would increase to approximately 25%.

(b) It was observed that Mitsubishi and TASPL were not engaged in the production/provision of similar, identical or substitutable products or services either directly and/ or indirectly in India. Mitsubishi had an equity stake in Isuzu Motors India ('IMI'), which was engaged in the supply of vehicles. IMI avails Road Side assistance ('RSA') services from TASPL for Isuzu brand vehicles. However, the number of IMI vehicles enrolled and attended by TASPL for RSA services were insignificant *vis-à-vis* the total number of vehicles enrolled with and attended by TASPL. Further, the market presence of IMI in the supply of passenger vehicles in India was not significant. Thus, the combination was not likely to incentivise the parties to engage in any conduct likely to raise competition concern.

(v) Formation of a joint venture ('JV') between Mahindra & Mahindra ('M&M') and Ford Motor Company ('FMC') and transfer of automotive business of Ford India to the JV

(a) In 2020, CCI approved a combination envisaging formation of a JV, namely Ardour Automotive Private Limited, between M&M and FMC, and transfer of the automotive business of Ford India Private Limited (**FIPL**) to the JV.

(b) M&M, incorporated in India, is a company belonging to the Mahindra Group and is engaged in the manufacture and supply of passenger vehicles, farm and construction equipment. FMC, an American automobile company, had operations in various countries. In India, FMC was engaged in the manufacturing and supply of passenger vehicles through its wholly owned subsidiary FIPL. FMC was also present in India through its other subsidiaries in sectors such as financing and mobility solutions.

(c) Both M&M and FIPL were engaged in the manufacture and supply of passenger vehicles and automobile components in India. Passenger vehicles can be broadly classified into passenger cars and utility vehicles. Each classification within this category can be further sub-segmented based on the size, dimension, price and utility of the vehicles.

(d) The broader market for the manufacture and supply of passenger vehicles had the presence of the parties and other known players such as Maruti Suzuki, Hyundai, Honda, Tata, Toyota, Nissan, *etc.*, and the incremental market share as a result of the combination was not significant. At a narrower level, M&M had negligible presence in the passenger car business, and the overlap between the parties was limited to the utility vehicles, particularly the UV 1 segment. However, the business for utility vehicles, including the UV 1 segment, was characterised by the presence of formidable players, and a few entrants were also coming up as significant competitors. Further, the features of models offered by M&M that constituted a majority of its sales in the UV 1 segment did not appear to be close substitutes to those offered by FMC. Taking into consideration these factors, it was observed that the combination was not likely to result in any appreciable adverse effect on competition in India.

(vi) Acquisition of shares in Suzuki Motor Corporation ('SMC') by Toyota Motor Corporation ('TMC') and in TMC by SMC

(a) In 2019, CCI approved a combination relating to the acquisition of certain shareholding in TMC by SMC and *vice versa*.

(b) In India, TMC was engaged in the manufacture and sale of automobiles through its subsidiary, Toyota Kirloskar Motor Private Limited, and in providing financial services through its subsidiary, Toyota Financial Services India. TMC was also engaged in the sale of commercial vehicles through its indirectly held joint venture, Hino Motors Sales India Private Limited.

(c) In India, SMC was engaged in the manufacture and sale of automobiles and two-wheelers through its subsidiaries, Maruti Suzuki India Limited, Suzuki Motor Gujarat Private Limited and Suzuki Motorcycle India Private Limited.

(d) CCI noted that the combination does not amount to acquisition of control but results in acquisition of minority shareholding amongst competitors. The parties had submitted that they would act as and be independent entities even after the combination and would continue to act as stiff competitors to each other. In this regard, CCI noted that mere cross-holding amongst competitors to pursue permissible competitor collaborations, by itself, does not raise any competition concerns. However, approval by CCI cannot be construed as immunity, in any manner, against any proceeding under, or the application of, the provisions of the Act, including Section 3 (anti-competitive agreements), with respect to the conduct of the parties.

D) China

7. The automobile industry is one of the most active areas for merger control notification in China. In terms of competition analysis for the concentration of undertakings, there is no distinctive difference between the automobile industry and other industries. The antitrust review of the concentration of undertakings in the automobile industry shall be conducted by the enforcement authority in accordance with the *AML*, the *Provisions of the State Council on the Notification Thresholds for Concentrations of Undertakings* and other laws and regulations. In the past three years in China, over 200 notifications for undertaking concentration in the automobile industry have been concluded. The

concentration in the field of motor vehicle components manufacture accounts for a large proportion, wherein horizontal concentration is the mainstream of transactions, equity acquisition and new joint ventures are the main concentration methods, and transactions of new-energy vehicles are developing rapidly. For example, in 2019, a total of 72 cases involving concentration of undertakings in the automobile industry were concluded, with a total transaction amount of RMB 152.6 billion. From the perspective of the field involved, 59 cases involved the motor vehicle components industry, accounting for 82%. From the perspective of notification procedure, 63 cases were applicable to simplified procedure and 9 cases applicable to non-simplified procedure. From the perspective of the concentration type, 32 cases were equity acquisitions, 9 cases were asset acquisitions and 31 cases were new joint ventures. Typical cases are:

(i) Novelis's acquisition of the equity of Aleris.

(a) On December 20, 2019, the SAMR conditionally approved Novelis's acquisition of the equity of Aleris. This concentration may have the impact of eliminating or restricting competition in China's aluminium automotive body sheets' (ABS) inner and outer market: 1. The concentration further increases the concentration of relevant markets and enhances the control of entities in relevant markets after concentration; 2. The concentration will eliminate important competition constraints in relevant markets and further strengthen the possibility that entities unilaterally eliminate and restrict competition after concentration; 3. The concentration will further reduce the choice range of downstream motor vehicle enterprises and increase procurement risks; 4. The concentration strengthens the possibility that entities and competitors jointly eliminate and restrict competition after concentration; 5. The concentration will further improve the entry barriers of relevant markets.

(b) In order to solve the competition concerns caused by this case, after comprehensive evaluation, the SAMR decided to approve the concentration by adding additional restrictive conditions. The additional restrictive conditions include: 1. Divest all inner and outer ABS businesses of Aleris in the European Economic Zone, including related facilities, personnel, intellectual property rights and other tangible and intangible assets; 2. In China, the concentrated entities are not allowed to supply cold-rolled sheets to any competitor who carries out business in the aluminium sheet market for automotive body within 10 years. The aluminium sheets for automotive body sold by Aleris in China are all imported from Europe, and the related business of Aleris in Europe has been divested, thus solving the competition brought by concentration in structure. The requirement that the concentrated entity shall not supply cold-rolled sheets to competitors in China solves the industry concerns that it conspires with competitors to jointly eliminate and restrict competition.

(ii) Infineon Technology Company's acquisition of the equity of Cypress Semiconductor Corp. On April 2, 2020, the SAMR conditionally approved Infineon Technology Company's acquisition of the equity of Cypress Semiconductor Corp. The concentration has, or may have, the effect of eliminating and restricting competition to the global market of auto-grade microcontroller unit (MCU). After the concentration, Infineon may force downstream users to buy their own auto-grade MCU in order to eliminate and restrict market competition by tie-in, developing integrated products or reducing product compatibility taking advantage of its own influence in the market of auto-grade insulated gate bipolar transistor (IGBT) and auto-grade NOR flash memory.

(iii) ZF Friedrichshafen AG's acquisition of the equity of Wabco Holdings Inc.

(a) On May 15, 2020, the SAMR conditionally approved ZF Friedrichshafen AG to acquire the equity of Wabco Holdings Inc., which mainly involved components of medium- and heavy-duty commercial vehicles. This concentration may have the effect of eliminating and restricting competition to the global and Chinese market of mechanical automatic transmission controllers' markets (upstream) and mechanical automatic transmission markets (downstream). Through this concentration, the trading party will take advantage of its dominant position in the upstream market, implement raw material blockade to eliminate and restrict competition in the downstream market, which may damage the interests of the downstream transmission enterprises and complete vehicle enterprises, and ultimately damage the interests of consumers.

(b) In order to solve the competition concerns caused by this case, after comprehensive assessment, the SAMR decided to approve this concentration with additional restrictive conditions, which mainly include: 1. Continue to supply mechanical automatic transmission controllers or components to existing customers, and ensure that the products provided are not lower than the contract level for existing customers in terms of price, quality, quantity and technological advancement. 2. Continue to supply mechanical automatic transmission controllers to Chinese customers based on the principles of fairness, reasonableness and non-discrimination. 3. Continue to provide Chinese customers with opportunities to develop mechanical automatic transmission controllers for subsequent supply based on the principles of fairness, reasonableness and non-discrimination.

E) South Africa

8. The South African Automotive Industry is peculiar in the sense that there are few manufacturing activities taking place in South Africa, i.e., the Original Equipment Manufacturers (OEMs) are only active in the South African market either as assemblers, wholesalers of various vehicles and parts to dealership. OEM active in the South African markets include BMW, Ford, Mercedes-Benz, Nissan, Toyota, Volkswagen, *etc.*

9. Some OEMs that are not based in South Africa are represented by wholesalers who order cars from the internally based plant of the said OEM and supply to the South African market as a wholesale to dealership. In some instances, these wholesalers are also owning dealerships. This implies that they are, in a way, vertically integrated. Hyundai and KIA are classic examples of firms that operate this model.

Merger cases notified to the Commission

10. The Commission assessed in excess of 50 merger notifications between the 2015–2020 calendar years. These transactions took place in various levels of the value chain, which include, among others, spare parts, sales of new motor vehicles, sales of used motor vehicles and others. From all notified cases assessed by the Commission only one case was prohibited because it raised significant competition concerns in the form of coordination and potential portfolio effects. The matter was prohibited partly because

there was a cartel uncovered by the Commission in the market. The matter was between the manufacturing and sale of airbags.

11. From the merger cases filed, more than 60% of the cases were in the wholesale and distribution of passenger and light commercial vehicles.

12. The following are the few distribution markets that were affected by the transactions that were notified to the Commission:

- The wholesale distribution of passenger and light commercial vehicles;
- The retailer distribution of passenger and light commercial vehicles by dealership;
- The wholesale distribution of commercial vehicles;
- The retail distribution of commercial vehicles by specialised dealerships;
- The retail distribution of spare parts;
- The wholesale and retail distribution of automotive components such as tires, airbags, panels, *etc.*
- There have been a few transactions that involve online advertising for used cars.

13. The said market is generally seen as competitive, and no significant competition concerns have been identified, with the exception of the Takata merger, at least by the Mergers and Acquisitions Division.

i. Peugeot SA / The Opel Business of General Motors Holdings LLC

14. In May 2017, the Competition Commission received notice of a large merger, whereby Peugeot S.A. ("PSA") intends to acquire the Opel Business from General Motors LLC ("General Motors"). Upon the implementation of the proposed transaction, PSA will control the Opel Business. In terms of the Master Agreement, PSA intends to acquire the Opel Business from General Motors. Upon the implementation of the proposed transaction PSA will control the Open Business. This transaction was unconditionally approved.

ii. Opel Automobile GmbH /General Motors South Africa Proprietary Ltd – in relation to its responsibility for the Opel Distribution Network and the Chevrolet Aftersales Distribution Network

15. In August 2017, the Competition Commission received notice of an intermediate merger, whereby Opel Automobile GmbH ("**Opel**") intends to acquire the responsibilities relating to the Opel Distribution Network and the Chevrolet Aftersales Distribution Network from General Motors South Africa Proprietary Limited ("**GMSA**") ("**Opel SA Transaction**").

16. This transaction was a result of General Motors' decision to exit what it terms "non-core" markets, and South Africa was one of these markets. In addition to the Opel SA Transaction, there were two other related transactions that were born as a result of General Motors' decision to exit the South African market, namely:

    (i) The previous acquisition by Peugeot S.A. ("**PSA**") of the Opel Business of General Motors LLC in Europe, which the Commission conditionally approved in July 2017 ("**PSA Transaction**"). The Opel SA Transaction is the South African leg of the PSA Transaction that was conditionally approved by the Commission on 25 July 2017, which conditional approval required that the Opel SA Transaction be notified to the Commission before 1 September 2017; and

    (ii) Another transaction that involves Isuzu Motors South Africa Proprietary Limited ("**IMSA**"), being a wholly owned subsidiary of Isuzu Motors Limited, acquiring GMSA's business operations as they relate to the importation of parts, the assembly of these parts into Isuzu Light Commercial Vehicles, and the marketing and distribution of these assembled vehicles throughout South Africa.

17. The PSA Transaction thus resulted in PSA replacing GM as the European supplier of Opel vehicles and Opel Aftersales Parts to GMSA. The effect of the PSA Transaction related to the supply line of Opel vehicles and Opel Aftersales Parts to South Africa. The terms of the PSA Transaction did not include PSA acquiring any assets or any business from GMSA. The merging parties had advised that the PSA Transaction occurred on an international level, with the transfer of assets between the merging parties within a foreign jurisdiction and that the transaction was only notified to the Commission as the target firm (i.e., Opel) derived revenue from its South African operations in relation to the sale of Opel branded vehicles, through GMSA. Furthermore, the merging parties had advised that they had not in fact considered some

of the indirect implications that the PSA Transaction may have on the South African market. this transaction was approved with conditions.

iii. Isuzu SA/UD Trucks SA

18. In July 2020, the Competition Commission received notice of large merger wherein Isuzu would acquire 100% of the issued share capital of UD Trucks from AB Volvo ("Volvo"). Following the completion of the proposed transaction, Isuzu would own 100% of the issued share capital of control UD Trucks. Isuzu will be the sole controller of UD Trucks and UD Trucks SA.

19. Isuzu and the Volvo Group entered into a memorandum of understanding in terms of which they would conclude a strategic alliance for commercial vehicles.

20. The memorandum of understanding indicated that the envisaged alliance would include an acquisition by Isuzu of the Volvo Group's business related to UD Trucks and UD branded products in Japan and all overseas markets (the UD Business), a development of common platforms for Isuzu and UD Truck's micro hybrid drive (MHD) models for the Japanese market and possibly other Asian markets, a technology partnership between Volvo and Isuzu and potential collaboration between Isuzu and Volvo on certain vehicles. Isuzu also indirectly acquire 100% of the issued share capital of UD Trucks SA. This transaction was unconditionally approved.

Conduct Cases

A) Brazil

21. Some of the cases on violation of the competition legislation i.e. anti-competitive conduct in the vehicle market within the Brazil are as under:

 (i) Cartel investigation in the market of automotive spare parts (08700.006065/2017-30)[37] – The General Superintendence of CADE initiated on 04.12.2017 an administrative proceeding to investigate a cartel between three companies in the Aftermarket and OEM market. The alleged anti-competitive conduct has affected the supply chain of the following automotive parts: engine

[37] http://en.cade.gov.br/press-releases/cade2019s-general-superintendence-investigates-cartel-in-the-automotive-spare-parts2019-market

pistons, bearings, pins, connecting rods, ring carriers, rings and sealing gaskets, and piston engine rings. According to the technical opinion that substantiated the initiation of the investigation, there is evidence that these companies fixed prices and commercial conditions of sales in the aftermarket, making agreements to fix rates and dates for price adjustments. In the OEM market, these companies allegedly allocated clients among themselves and agreed on prices and commercial conditions. Furthermore, they exchanged information considered commercially and competitively sensitive both in the Aftermarket and in the OEM market. The practices were implemented by means of face-to-face meetings, telephone calls, and e-mails between 2004 and May 2012, involving at least 26 individuals related to the companies. At present, the case is still pending before CADE's Tribunal.

(ii) **CADE signed agreements in cartel investigations into the market of automotive spare parts (08700.002904/2017-41 and 08700.002904/2017-41)**[38] – CADE issued two Cease and Desist Agreements (TCCs) in administrative proceedings for cartel investigations into the market of automotive spare parts. TRW Automotive and an individual linked to the company signed the TCC in an investigation of collusive practices in the production and selling of engine valves, valve guides, and valve seats in Brazil and Argentina, resulting in effects on the independent national market spare parts. The other TCC was signed by Leoni Wiring Systems France Sas and an individual linked to the company in a proceeding that investigates an alleged cartel in the markets of car wire harness and electric and electronic components – which include electronic control units, junction boxes, automotive dashboards and displays, systems with ABS sensor cables, high voltage cables, components for electric and hybrid vehicles, antennas, and connectors. The financial contributions set in the Cease and Desist Agreement amounted BRL 865.700.

(iii) **Cartel of replacement auto parts (08700.006386/2016-53)**[39] – The General Superintendence of CADE initiated on 29.09.2016 an administrative proceeding to investigate the practice of cartel in the independent replacement auto parts

[38] http://en.cade.gov.br/cade-signed-agreements-in-cartel-investigation-in-the-market-of-automotive-spare-parts-1

[39] http://en.cade.gov.br/press-releases/cade2019s-general-superintendence-investigates-cartel-of-replacement-auto-parts

market. There is evidence that 28 companies and their 66 individuals that operated in the sector shared commercially sensitive information by e-mails, telephone calls, and data sheets, as well as face-to-face meetings periodically held at the companies' facilities and at restaurants. These anti-competitive conducts would possibly have occurred between 2003 and 2016. The exchange of information would have enabled the companies to anticipate prices, projected sales, production, and business strategies of each other to structure a coordinated action with the purpose of harming or restrict competition in the auto parts market. At present, the case is still pending before CADE's Tribunal.

(iv) **Investigation of anti-competitive conduct of car assemblers that prevents auto parts replacement by independent manufacturers (08012.002673/2007-51)**[40] – The case commenced in 2007, when the National Association of Auto Parts Manufacturers (ANFAPE) filed a complaint alleging that Volkswagen, Fiat and Ford were using their IP rights in the parts market in an abusive manner by filing numerous suits and sending cease and desist notices to certain auto parts manufacturers. The case concerned the protection given to the auto part industrial designs that the auto manufacturers registered with the National Institute of Industrial Property. ANFAPE argued that the protection should extend only to 'foremarket' parts (i.e., parts used in the production and sale of new vehicles) and not to 'aftermarket' parts (i.e., replacement parts). In 2016, the General Superintendence issued an opinion in favour of finding the auto manufacturers liable for the anti-competitive conduct. Subsequently, Rapporteur Commissioner Paulo Burnier, who was responsible for issuing the lead opinion, took the same position. However, in 2017 the CADE Administrative Tribunal dismissed the complaint, following the opinion issued by Commissioner Maurício Bandeira Maia.

(v) **National cartel of exhaust systems and their automotive components (08700.001486/2017-74)**[41] – The General Superintendence of CADE initiated on 19.05.2017 an administrative proceeding to investigate the practice of cartel in the national market of exhaust systems and their automotive components. The

[40] http://www.cade.gov.br/cade_english/press-releases/cade2019s-general-superintendence-sees-anticompetitive-conduct-of-car-assemblers-that-prevent-auto-parts-replacement-by-independent-manufacturers

[41] http://en.cade.gov.br/press-releases/cade2019s-general-superintendence-investigates-a-national-cartel-of-exhaust-systems-and-their-automotive-components

investigation started from a leniency agreement signed between CADE's General Superintendence and Tenneco Automotive Brasil. CADE's General Superintendence found evidence that three companies fixed prices and commercial conditions, agreed to divide markets, and exchanged commercially and competitively sensitive information. The practices were carried out by e-mails, phone calls and, in a few occasions, face-to-face meetings. These anti-competitive practices happened between 2003 and 2014. In September 2020, due to a statement of compliance with the leniency agreement and the fulfilment of the obligations established in the Cease and Desist Agreement (TCC), the Tribunal of CADE decided to dismiss the case.

(vi) **Automotive filters cartel (08700.003340/2017-63)** [42] **–** The General Superintendent of CADE initiated an administrative proceeding on 17.08.2017 in order to investigate bid-rigging in the automotive filters market between 6 companies and their 41 individuals. The alleged anti-competitive conduct was practiced in Brazil and seems to be related to the national independent spare parts market. According to the technical opinion issued for the proceeding, there is evidence that these companies made agreements on prices, uniform strategies, price escalation (percentages, timing, and reasons), payment conditions offered to customers, price reductions. A final decision on the case is yet to be announced.

(vii) **Cartel of motor valves, valves guides, and valves seats (08700.002904/2017-41)**[43] **–** The General Superintendent of CADE initiated an administrative proceeding on 27.06.2017 to investigate a cartel in Brazil and Argentina between 4 companies and their 17 individuals with effects on the independent national market of replacement auto parts in the sector of motor valves, valves guides, and valves seats. According to technical opinion of CADE's General Superintendence, there is evidence that these companies fixed prices and commercial conditions, divided the market between competitors, and shared with each other commercially sensitive information, increasing prices and making arrangements concerning percentages and dates for adjustments of prices. The cartel was carried out through e-mails, telephone calls, and face-to-face meetings

[42] http://en.cade.gov.br/press-releases/cade2019s-general-superintendence-investigates-an-automotive-filters-cartel

[43] http://www.cade.gov.br/cade_english/general-superintendence-investigates-cartel-of-motor-valves-valves-guides-and-valves-seats

between at least 2007 and 2012. In March 2020, due to a statement of compliance with the leniency agreement and the fulfilment of the obligations established in the Cease and Desist Agreement (TCC), the Tribunal of CADE decided to dismiss the case.

(viii) **International cartel of airbags, seat belts, and steering wheels (08700.002938/2017-35)[44] –** The General Superintendent of CADE initiated on 02.06.2017, an administrative proceeding to investigate an alleged international cartel, with effects on Brazil, in the market of airbag modules, seat belts, and steering wheels. According to technical opinion of CADE's General Superintendence, there is evidence that 5 companies and their 29 individuals fixed prices and commercial conditions, engaged in cover pricing, and jointly establishing prices and discount percentages granted to car manufacturers through e-mails, telephone calls, and face-to-face meetings between at least 2005 and 2011. A final decision on the case is yet to be announced.

(ix) **CADE's General Superintendence opens investigation into the supply of spark plugs [45] –** The General Superintendence of CADE opened on 03.09.2014 a formal investigation to investigate an alleged cartel in the national and international market of spark plugs. The spark plugs were used in the gasoline, ethanol, natural gas, or flexible-fuel combustion engines of automobiles. The preliminary evidence indicates that the investigated companies, Bosch and NGK, agreed on prices offered to their clients, volume of sales, and price adjustments concerning automakers, dealerships, and automobile repair shops. Furthermore, the automakers would have been divided between the participants of the alleged cartel. The alleged anti-competitive practices occurred between 2000 and 2013. The collusion may have been agreed by both the parent companies abroad and their Brazilian branches. The case began in July, with the signature of a leniency agreement between CADE's General Superintendence, the Federal Prosecutor's Office, the State Prosecutor's Office of São Paulo and, the company Bosch. At present, the case is still pending before CADE's Tribunal.

[44] http://en.cade.gov.br/press-releases/cade2019s-general-superintendence-investigates-an-international-cartel-of-airbags-seat-belts-and-steering-wheels

[45] http://www.cade.gov.br/cade_english/press-releases/cade2019s-general-superintendence-opens-investigation-in-the-supply-of-spark-plugs-1

(x) Cartel in anti-friction bearings market (08012.005324/2012-59)[46] – The General Superintendence of CADE opened on 10.10.2014 an administrative proceeding to investigate an alleged cartel formation in the national and international market of anti-friction bearings. These bearings are used as car parts and in the manufacturing process of a wide range of industries, such as mining, steel, cellulose and paper, petrochemicals, food and beverage, agricultural products, ceramics, among other industries. The evidence indicate that the companies agreed to fix prices and other sensitive commercial conditions. In addition, they also agreed on the allocation of bids and the division of the automotive, industrial, and independent bearings replacement markets. Such anti-competitive conducts occurred between 1986 and 2011. The illicit agreements would have been signed by the companies' head offices abroad and their Brazilian subsidiaries. At present, the case is still pending before CADE's Tribunal.

(xi) International cartel on clay substrates for automobiles (08700.009167/2015-45)[47] – The General Superintendence of CADE opened on 21.12.2015 an administrative proceeding to investigate an alleged international cartel, with effects in Brazil, in the clay substrates market, used on automobiles. Clay substrates are one of the components of a catalyst that is part of the exhaustion system of the vehicles. There is evidence that the companies were fixing prices and placing commercial constraints through goals setting, price standards, and discounts given to the automotive vehicles assembling companies. In addition, the parties allocated markets and clients, fixing their global market shares and coordinating their sales at a worldwide scale. Also, there is strong evidence that the companies exchanged sensitive commercial information about prices and quotations, production capacity, and sales volume. According to Superintendence, actions were taken by at least 18 individuals connected to 2 companies and were implemented though e-mail and telephone exchanges and in-person meetings, possibly, among 1985 and 2011. In October 2019, due to a statement of compliance with the leniency agreement and the fulfilment of the obligations

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[46] http://en.cade.gov.br/press-releases/cade2019s-general-superintendence-investigates-cartel-in-antifriction-bearings-market

[47] http://en.cade.gov.br/press-releases/cade2019s-general-superintendence-investigates-international-cartel-on-clay-substrates-for-automobiles

established in the Cease and Desist Agreement (TCC), the Tribunal of CADE decided to dismiss the case.

(xii) Investigation in automotive components market (08700.010323/2012-78)[48] – CADE opened on 13.02.2015 three administrative proceedings to investigate alleged cartel practices in national and international auto parts markets. The potentially affected segments were the ones of clutch facings, thermal systems, which include radiators, capacitors, air conditioning, heating, and ventilation systems, and windshield wipers. The Superintendence found evidence that at least 11 companies and 51 individuals – whose actions are divided in their respective investigated markets in the proceedings – kept permanent contact aimed at fixing prices and commercial conditions, allocating customers' quote requests, and sharing markets and sensible commercial information between competitors. The evidence points that the companies' employees previously agreed on who would win the Requests for Quotations of the automobile industries and adopted strategies to influence the agreements between them. These practices would have restricted the competitive aspect of the request for quotation and potentially negatively affected automobile costs. According to the investigations, the anti-competitive conducts were possibly held between the 1990s and mid-2012. At present, the case is still pending before CADE's Tribunal.

(xiii) Cartel in the market of safety devices for vehicles [49] – The General Superintendence of CADE opened on 06.07.2015 an administrative proceeding to investigate two companies that participated in an alleged cartel in the national market of seat belts, airbags, and steering wheels, which consist of safety devices for vehicles. According to the opinion issued by General Superintendence, there is evidence that these companies fixed prices and commercial conditions by means of non-competition agreements and price fixing. Companies also refused the requests of vehicle manufacturers in order to avoid price reductions. Furthermore, there is strong evidence that the companies divided the market, trying to allocate client orders between them. Companies also would have exchanged information about prices, price adjustments, production data and, in

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48 http://en.cade.gov.br/press-releases/cade2019s-general-superintendence-opens-investigation-in-automotive-components-market

49 http://www.cade.gov.br/cade_english/press-releases/cade2019s-general-superintendence-investigates-cartel-in-the-market-of-safety-devices-for-vehicles

some cases, turnover data. All these conducts were conducted by at least 13 individuals related to the companies. The goal was to keep or artificially increase the prices of the products. This undermined vehicle manufacturers' intentions of reducing costs, thereby developing the capacity to influence the price of vehicles for final consumers. The practices were implemented through the exchange of e-mails, telephone calls, and face-to-face meetings at the companies' headquarters, at bars, and at restaurants. The anti-competitive conducts would have possibly occurred between 2002 and 2011. At present, the case is still pending before CADE's Tribunal.

(xiv) **Cartel in electronic power steering systems for automobiles (08700.004631/2015-15)**[50] – The General Superintendence of CADE published on 28.03.2016 its decision of opening an administrative proceeding to investigate an alleged cartel in the national and international market of electronic power steering ('EPS') systems for automobiles, with effects in Brazil. EPS are components that helps drivers steer by augmenting the steering effort of the steering wheel. There is strong evidence that the companies exchanged sensitive commercial information about prices, quotations, and sales volume in the market. Furthermore, the companies may have concluded agreements in Brazil and elsewhere with the purpose of fixing prices and other trading conditions, as well as to allocate bids for customers and share markets among them. The actions were taken by at least 19 individuals connected to the 9 investigated companies, and were implemented through e-mail and telephone exchanges and in-person meetings, which occurred between 2007 and 2011, at least. In October 2017, due to a statement of compliance with the leniency agreement and the fulfilment of the obligations established in the Cease and Desist Agreement (TCC), the Tribunal of CADE decided to dismiss the case.

(xv) Regarding the agreements signed in the proceedings, it is important to highlight that 46 Cease and Desist Agreements were signed between 2015 and 2020 in the auto parts market, with financial contributions amounting to BRL 610,850,086.32, as shown in the table below:

[50] http://en.cade.gov.br/press-releases/cade2019s-general-superintendence-investigates-cartel-in-electronic-power-steering-systems-for-automobiles

Table 6: *Financial Contributions/penalties in Auto parts market*

Year	Agreements	Financial Contributions
2015	4	BRL 154,999,454.83
2016	11	BRL 127,542,008.56
2017	7	BRL 136,257,759.58
2018	14	BRL 68,671,006.34
2019	8	BRL 120,084,528.58
2020	2	BRL 3,295,328.43
Total	**42**	**BRL 610,850,086.32**

B) Russia

22. The case on violation of the antimonopoly legislation in the vehicle market within the territory of the Russian Federation.

(i) The case against LLC "Ford Sollers Holding" (decision on case No. 05/12496/16 dated 29.02.2016)

(a) Within the investigation on the base of application of one of the official dealers of FORD cars, the FAS Russia conducted a dawn raid of the Ford Sollers Holding LLC (the only distributor of these vehicles in the Russian Federation). The signs of coordination of commercial activities of economic entities were revealed as the result of the investigation. If such coordination leads to any of the consequences specified in the parts 1-3 of the Article 11 of the Law on the Protection of Competition and it can't be recognised admissible in accordance with the Articles 12 and 13 of the Law on Protection of Competition or in accordance with other federal law provisions (in particular, part 5 of the Article 11 of the Law on Protection of Competition) it should be considered as illegal cooperation.

(b) The analysis of the dealer agreement concluded between Ford Sollers Holding LLC and authorised dealers was conducted and it revealed the following:

- The dealer agreement meets the criteria of a vertical agreement in terms of reselling the products;
- The dealer agreement doesn't meet the criteria of a vertical agreement in the part related to providing maintenance services;

- The dealer agreement should be considered as a mixed agreement, which combines the elements of various agreements.
- As the outcome of the investigation, it was determined that during the period from September 2013 until November 2015 that:
- LLC "Ford Sollers Holding" set the prices for car maintenance within the territory of the Russian Federation;
- LLC "Ford Sollers Holding" coordinated the commercial activities of dealers, which led to the establishment and maintenance of prices for the maintenance of passenger cars.

(c) During the process of investigation, the defendant voluntarily stopped the violation of the antimonopoly legislation. He informed the authorised dealers that the prices set by LLC Ford for Sollers Holding service maintenance are the maximum permissible prices for providing the technical maintenance by a dealer to the end consumers (the owners of passenger cars) and each dealer has the right to establish its own maintenance prices at the rate lower than the maximum maintenance prices. In this regard, the ruling against the defendant wasn't issued.

(d) The decision of the FAS Russia wasn't appealed to the court.

(e) The new practice aimed at developing inside-brand competition between dealers of the same brand was formed as the result of the investigation. This step should finally lead to the decrease of the prices for servicing passenger cars for end consumers (car owners).

(f) At the same time, according to the antimonopoly authority, inside-brand competition between dealers do exists exclusively in the service and maintenance markets, due to the fact that distributors aren't directly involved in these activities and are aimed at competing with other car manufacturers.

C) India

23. CCI has till date decided several anti-trust cases pertaining to the automotive sector.

24. In some of such cases, after comprehensive investigation by the DG, detailed orders have been passed by CCI finding contravention of the provisions of the Act, and

necessary remedies including imposition of monetary penalties, have been issued. Brief details of these cases are as under:

(i) In Re: Alleged anti-competitive conduct by Maruti Suzuki India Limited in implementing discount control policy vis-à-vis dealers (*Suo motu* Case No. 01 of 2019 decided on 23.08.2020)

(a) This case was taken up *suo motu* by CCI based on an anonymous e-mail received from a purported Maruti Suzuki India Limited ('MSIL') dealer, wherein it was, inter alia, alleged that the dealers of MSIL in the West-2 Region (Maharashtra State other than Mumbai & Goa) were not permitted by MSIL to give discounts to their customers beyond those prescribed by MSIL in the announced 'consumer offer'. If a dealer was found giving extra discounts, penalty was levied upon it. Such 'Discount Control Policy' of MSIL was alleged to be prevailing in other regions of India as well.

(b) Based on the aforesaid anonymous complaint and MSIL's response thereto, CCI vide order dated 04.07.2019, formed an opinion that there exists a *prima facie* case of contravention of the provisions of Section 3(4)(e) of the Act, i.e., Resale Price Maintenance, by MSIL, and hence, referred the matter to the DG for causing an investigation.

(c) CCI, in its final order, concluded that MSIL had an agreement with its dealers whereby the dealers were restrained from offering discounts to the customers beyond those prescribed by MSIL. In other words, MSIL had a 'Discount Control Policy' in place for its dealers whereby the dealers were discouraged from giving extra discounts, freebies, *etc.* to the consumers beyond what were permitted by MSIL. If a dealer wanted to offer additional discounts, prior approval of MSIL was mandatory. Any dealer found violating such Discount Control Policy was threatened with imposition of penalty, not only upon the dealership, but also upon its individual persons, including Direct Sales Executive, Regional Manager, Showroom Manager, Team Leader, *etc.* To enforce the Discount Control Policy, MSIL appointed Mystery Shopping Agencies ('MSAs') who used to pose as customers to MSIL dealerships to find out if any additional discounts were being offered to customers. If found offered, the MSA would report to MSIL management with proof (audio/ video recording) who, in turn, would send an e-mail to the errant dealership with a 'Mystery Shopping Audit Report', confronting them with the additional discount offered and asking for clarification. If clarification was not offered by the dealership to the satisfaction of MSIL, penalty would be imposed on the dealership and its employees, accompanied in some cases, by the threat of stopping supplies. MSIL would even dictate to the dealership where the penalty had to be deposited and utilisation of the penalty amount was also done as per the diktats of MSIL. Thus, CCI found that MSIL not only imposed the Discount Control Policy on its dealers, but also monitored and enforced the same by monitoring dealers through MSAs, imposing penalties on them and threatening strict action like stoppage of supply, collecting and recovering penalty, and utilisation of the same. Hence, such conduct of MSIL which resulted in AAEC within India, was found by CCI to be in contravention of the provisions of Section 3(4)(e) read with Section 3(1) of the Act.

(d) Hence, CCI imposed a monetary penalty upon MSIL, besides passing a cease-and-desist order.

(ii) *In Re:* Cartelisation in Industrial and Automotive Bearings *(Suo motu* Case No. 05 of 2017 decided on 05.06.2020)

(a) This case was taken up *suo motu* by CCI based on disclosures made by Schaeffler India Ltd. ('Schaeffler') by way of filing a lesser penalty application that when steel prices (which is the major raw material to manufacture bearings) started increasing 2009 onwards, there was co-ordinated action amongst five companies *namely* ABC Bearings Limited (now amalgamated with Timken India Limited) ('Timken'), National Engineering Industries Ltd. ('NEI'), Schaeffler, SKF India Ltd. ('SKF') and Tata Steel Ltd., Bearing Division ('Tata Bearings') to pass on such increase to automotive and industrial OEM customers and in the distribution segment of the market.

(b) Based upon such application, CCI, *vide* order dated 17.08.2017, referred the matter to the DG for investigation. During pendency of investigation before the DG, NEI also filed a lesser penalty application before CCI.

(c) Based on evidence of personal meetings and telephonic calls, and upon due confrontation with the parties' representatives, CCI concluded that NEI, Schaeffler, SKF and Tata Bearing were guilty of contravention of the provisions of Section 3 (3) (a) read with Section 3 (1) of the Act for cartelising in the domestic industrial and automotive bearings market from 03.11.2009 till 31.01.2011. However, no evidence of cartelisation could be found against Timken. Also, allegations of cartelisation in the distribution/ aftermarket were also not substantiated.

(d) CCI directed the parties NEI, Schaeffler, SKF and Tata Bearing and their respective officials, to cease and desist in future from indulging in practices found in the order to be in contravention of the provisions of Section 3 of the Act. Further, the parties were cautioned to ensure that their future conduct is strictly in accord with the provisions of the Act, failing which any such future behaviour would be viewed seriously with attendant consequences.

(iii) *In Re:* Cartelisation in the supply of Electric Power Steering Systems (EPS Systems) *(Suo motu* Case No. 07 (01) of 2014 decided on 09.08.2019)

(a) This case pertained to cartelisation amongst NSK Limited, Japan ('NSK') and JTEKT Corporation, Japan ('JTEKT') and their Indian subsidiaries namely Rane NSK Steering Systems Ltd. ('RNSS') and JTEKT Sona Automotive India Limited ('JSAI') respectively, in relation to the supply of Electric Power Steering ('EPS') Systems to automotive OEMs, by means of directly or indirectly determining price, allocating markets, co-ordinating bid response and manipulating the bidding process in Request for Information/ Request for Quotations ('RFIs/ RFQs') issued by these three automobile OEMs. The duration of the cartel was found to be from 2005 to 25.07.2011.

(b) The case was initiated on the basis of an application received by CCI under Section 46 of the Act read with CCI (Lesser Penalty) Regulations, 2009 ('LPR'), from NSK/ RNSS. During the pendency of investigation, JTEKT/ JSAI also approached CCI by filing an application under the Section 46 of the Act read with the LPR.

(c) The evidence collected in the case included instances of meetings and telephonic exchanges in which commercially sensitive information about prices *etc.* was discussed. Such conduct of the parties was found to have caused AAEC in India. Accordingly, CCI concluded that NSK and JTEKT, and their Indian subsidiaries RNSS and JSAI respectively, indulged into anti-competitive conduct in contravention of the provisions of Section 3(3)(a) read with Section 3(1) of the Act.

(d) CCI hence, issued a cease and desist order and further, considering all relevant factors, computed a penalty in terms of the *proviso* to Section 27(b) of the Act. However, in view of the fact that NSK/ RNSS was the first to approach CCI as a lesser penalty applicant and had provided complete, true and full disclosures, 100 percent reduction in penalty was granted to NSK/ RNSS and its individuals; and in view of the fact that JTEKT/ JSAI was the second to approach CCI as a lesser penalty applicant and had provided significant value addition in the matter, 50 percent reduction in penalty was granted to JTEKT/ JSAI and its individuals.

(iv) Shamsher Kataria v. Honda Siel Cars India Ltd. and Others (Case No. 03 of 2011 decided on 25.08.2014 and 27.07.2015)[51]

(a) Information was received against automobile manufacturers alleging anti-competitive practices in respect of sale of spare parts of these companies whereby genuine spare parts of the automobiles manufactured by these companies were not made freely available in the open market. It was contended that the car manufacturers in India were charging higher prices for spare parts and maintenance services than their counterparts abroad. Further, there was complete restriction on

[51] At present, the matter is sub-judice and pending at the Hon'ble Supreme Court of India.

availability of technological information, diagnostic tools and software programs required for servicing and repairing the automobiles to independent repair shops.

(b) Based upon such information, CCI, *vide* its order dated 24.02.2011 referred the matter for investigation to the DG. In its report, the DG found contravention of the provisions of Section 3(4) and 4 of the Act by several OEMs.

(c) OEMs submitted before CCI that the correct "relevant market" was a unified 'systems market' comprising a set of products or services, which cannot be distinguished into two different antitrust markets, since the consumers demand the primary and the secondary products as a 'system' and determining inter-changeability and substitutability of such products when distinguished into different markets are an inefficient determination of competitive market behaviour for such complex durable goods where the competition for the sale of the products exists at the "point of sale of primary goods" (even if consumers are uninformed, have high switching costs and become locked in ex post). The OEMs, further, submitted that the regulations imposed upon the OESs were necessary to ensure quality control and protect the goodwill of the brand of the OEM. The OEMs submitted that in the absence of any quality certification process in India to certify the quality of certain brand of spare parts, the OEMs were themselves required to examine the quality of applicable parts and items in the market and determine whether they are suitable for use in their brand of automobiles. Furthermore, the OEMs submitted that if OESs were permitted to sell spare parts directly in the aftermarket, the OEMs will be unable to ensure the quality of such spare parts, jeopardising the safety and health of their customers, besides jeopardising the goodwill of the OEMs brand of automobiles. In addition to this, several OEMs relied upon the IPR exemptions available under the Act and stated that on account of these provisions, the restrictions of sales on OESs, of their proprietary parts to third parties without prior consent would fall within ambit of reasonable condition to prevent infringements of their IPRs. It had been contended that significant investments were made into research and development facilities by them based on which these products were manufactured.

(d) CCI held that there were two separate markets for passenger vehicle sector in India – primary market consisting of manufacture and sale of passenger vehicles; and secondary market (after-sales market) comprising of complementary products or secondary products which are complementary to and derived from the primary product (*i.e.*, spare parts for passenger vehicles). CCI further opined that two sub-segments of such after-market for passenger vehicles in India *i.e.* (a) market for supply of spare parts, including diagnostic tools, technical manuals, catalogues *etc.* for aftermarket usage; and (b) market for provision of after-sales services, including servicing of vehicles, maintenance and repair services; adding that these two segments of the automobile aftermarket are different, yet inter-linked and inter-connected.

(e) With regard to the primary and secondary markets, the DG noted that there were technical differences between various primary market products (*i.e.*, differences between cars of various brands) which restricted consumers' choice in complimentary products/ services. CCI agreed with such finding of the DG and hence, noted that each automobile manufacturer was in a dominant position in the supply of its spare parts for its brand of cars.

(f) As the manufacturers *i.e.* OEMs, through restrictions, limited their suppliers from selling spare parts of their models of cars in the open market and the car manufacturers were unable to demonstrate that they owned intellectual property and technology transfer agreements ('TTAs') which were covered under Section 3 (5) of the Act, CCI found that the agreements between the car manufacturers and their overseas and/ or local suppliers and authorised dealers, through which the suppliers were restricted from selling spare parts in the open market, caused AAEC in the Indian automobile market., Because of such agreements, the consumers did not have access to any competitive products due to the limited inter-brand interchangeability of spare parts and the fact that each manufacturer, pursuant to its agreement with its local supplier, had established itself as the supplier of its respective brand of spare parts. This allowed the car manufacturers to charge unfairly high prices for spare parts replacement from the consumers.

(g) CCI further, observed that given the limited interchangeability of spare parts between the automobiles manufactured by various OEMs, each consumer of an OEM is completely dependent upon such enterprise. Moreover, the OEMs through a network of contracts have ensured that they are the sole supplier of the spare parts and diagnostic tools used to repair their brand of automobiles in the aftermarket. Therefore, the independent repairers, who are consumers of the OEMs, in the aftermarket for spare parts and diagnostic tools are also solely dependent upon such enterprises. CCI opined that in the absence of the availability of genuine spare parts and diagnostic tools that are compatible to carry out effective repair work on the various models of automobiles manufactured by the OEMs, the independent repairers are foreclosed to compete effectively with the authorised dealers of the OEMs. Therefore, such practices of the OEMs amount to creation of entry barriers for the independent service providers in the Indian automobile aftermarket.

(h) CCI hence, held that the car manufacturers investigated have abused their dominant position by imposing unfair conditions and prices, denial of market access to independent service providers and leveraging dominant position in spare parts market to protect repair services market; and also contravened the provisions of the Act with regard to anti-competitive agreements by entering into exclusive supply arrangement, exclusive distribution arrangement, refusal to deal with third-parties.

(i) Accordingly, CCI issued the following directions to car manufacturers:

- To cease and desist from indulging in conduct which has been found to be in contravention of the provisions of the Act;
- To put in place an effective system to make spare parts and diagnostic tools easily available through an efficient network;
- To allow OESs to sell spare parts in open market without any restrictions, including on prices. OESs will be allowed to sell spare parts

under their own brand name, if they so wish. Where OPs hold IPR on some parts, they may charge royalty/ fees through contracts carefully drafted to ensure that they are not in violation of the Act

- To place no restrictions or impediments on operation of independent repairers/ garages.
- To 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. Car manufacturers may also work for standardisation of an increasing number of parts in such a manner that they can be used across different brands, like tyres, batteries *etc.* which would result in reduction of prices and also give more choice to consumers as well as repairers/ service providers.
- Not to impose a blanket condition that warranties would be cancelled if the consumer avails of services of any independent repairer. While necessary safeguards may be put in place from safety and liability point of view, car manufacturers may cancel warranty only to the extent that damage has been caused because of faulty repair work outside their authorised network and circumstances clearly justify such action.
- To make available in public domain, and also host on their websites, information regarding the spare parts, their MRPs, arrangements for availability over the counter, and details of matching quality alternatives, maintenance costs, provisions regarding warranty including those mentioned above, and any such other information which may be relevant for full exercise of consumer choice and facilitate fair competition in the market.
- And, also imposed penalties on the OEMs.

(v) FX Enterprise Solutions India Pvt. Ltd. v. Hyundai Motor India Limited AND St. Antony's Cars Pvt. Ltd. v. Hyundai Motor India Limited (Cases No. 36 and 82 of 2014 decided on 14.06.2017)[52]

[52] At present, the matter is sub-judice and pending at the Hon'ble Supreme Court of India.

(a) Two dealers of Hyundai Motor India Limited ('HMIL') filed separate Information(s) alleging that HMIL imposed restrictions on dealers to obtain prior consent before taking up dealership of any other brand. Further, it was alleged that HMIL dealers were bound to procure spare parts, accessories and all other requirements, either directly from HMIL or through vendors approved by it. Further, resale price maintenance ('RPM') by way of a 'Discount Control Mechanism' was alleged through which dealers were only permitted to provide a maximum permissible discount and they were not authorised to give discount which was above the recommended range. HMIL was also alleged to be responsible for price collusion amongst competitor dealers through a series of 'hub and spoke' arrangements. Moreover, allegations of 'tie-in arrangements' were also made by tying the purchase of desired cars to the sale of high-priced and unwanted cars to the dealers.

(b) CCI found HMIL to be in contravention of the provisions of Section 3 (4) (e) read with Section 3 (1) of the Act for imposing arrangements upon its dealers which resulted into RPM in the sale of passenger cars manufactured by it. Such arrangements also included monitoring of the maximum permissible discount levels through a Discount Control Mechanism. Further, CCI also found HMIL to have contravened the provisions of Section 3 (4) (a) read with Section 3 (1) of the Act for mandating its dealers to use recommended lubricants/ oils and penalising them for use of non-recommended lubricants and oils. However, CCI found no contravention of the provisions of Section 3 (4) (a) by HMIL with regard to tying of sale of CNG Kits and/ or Car Insurance, from specified vendors. CCI thus, directed HMIL to cease and desist from indulging in conduct that was found to be in contravention of the provisions of the Act and imposed penalty on it.

D) China

25. The antitrust cases in automobile industry investigated by China's antitrust law enforcement authorities mainly focus on monopoly agreements, including horizontal monopoly ones and vertical monopoly ones. According to statistics, in recent years, 18 cases of monopoly agreements concerning the automobile industry have been handled and concluded. 10 cases are relating to motor vehicles and spare parts, 5 cases are relating to motor vehicles inspection and 3 cases are relating to used vehicles. Typical cases are given as follows:

(i) **Monopoly agreement case of eight motor vehicle components enterprises, including Hitachi Automotive Systems Co., Ltd.** Eight enterprises, including Hitachi Automotive Systems Co., Ltd., Denso Corporation, Yazaki Corporation, Sumitomo Electric Industry Co., Ltd., Aisan Industrial Co., Ltd., MITSUBA, Mitsubishi Electric Corporation, and Furukawa Electric, frequently hold bilateral or multilateral talks with their competitive enterprises in Japan, or exchanged price information and negotiated prices by telephone and mail, reached and implemented agreements on order quotations to specific motor vehicle manufacturers for many times. By the end of 2013, the components orders related to the Chinese market obtained by the relevant parties after price negotiation were still being supplied. Their behaviour constitutes fixing or changing commodity prices, which violates the provisions of the *AML*. In August 2014, China's antitrust law enforcement authorities imposed a total fine of more than RMB 831.96 million for the eight enterprises. Among them, Hitachi Automotive Systems Co., Ltd. was exempted from punishment, because it is the first enterprise to report the relevant situation of reaching a monopoly agreement and provide important evidence.

(ii) **Monopoly agreement case of FAW-Volkswagen Sales Co., Ltd. and some Audi distributors.** FAW-Volkswagen Sales Co., Ltd. has organised 10 Audi distributors in Hubei Province for many times to reach and implement the monopoly agreement on complete vehicle sales and service maintenance prices by signing the *Audi Price Limit Table in Wuhan Area* and *Price Plan Guarantee in Central China Region*; it also supervised distributors to implement relevant price management measures by directly issuing the *Notice of Strict Implementation of Audi Standard Price System in Hubei Province, Central China Region* and *Regulations on Service Marketing Management* *in Hubei Province* and setting up special teams. In addition, it is found that some distributors have reached and implemented the price monopoly agreement for complete vehicle sales by signing the *Price List of Wuhan Distributor Alliance* and meeting minutes. The above behaviours violate the provisions of the *AML*. In August 2014, China's antitrust law enforcement authorities imposed a total fine of RMB 278.54 million on relevant parties.

(iii) **Monopoly agreement case of Chrysler (China) Automobile Sales Co., Ltd. and some distributors.** Chrysler (China) Automobile Sales Co., Ltd. signed a distribution agreement containing resale price maintenance terms with distributors in the process of motor vehicle sales, and issued a business policy containing resale price maintenance; for distributors whose telephone quotation was lower than the manufacturer's suggested retail price were punished by deducting rebates, imposing fines, *etc.*, and a notice was issued to all distributors; for distributors whose actual transaction price was lower than or slightly higher than the wholesale price, measures such as freezing resource allocation (that is, temporarily delaying the supply of some hot-selling models to distributors) or suspending the allocation of test-drive vehicles were taken for punishment. In addition, it was found that three distributors of Chrysler in Shanghai signed a negotiation memorandum on standardising the maintenance and other related prices of Chrysler and other brand vehicles, which uniformly stipulated the maintenance working hours, accessory prices, painting prices and execution time of distributors in the same city, and implemented the agreed prices after the meeting. The above behaviours violate the provisions of the *AML*. In August 2014, China's antitrust law enforcement authorities imposed a total fine of more than RMB 33.82 million on relevant parties.

(iv) **Monopoly agreement case of Mercedes-Benz and some distributors in Jiangsu province.** Beijing Mercedes-Benz Sales Service Co., Ltd., Mercedes-Benz (China) Automobile Sales Co., Ltd. and Beijing Benz Automotive Co., Ltd., by virtue of their dominant position and strict management measures, limited the minimum resale price of E-class and S-class complete vehicles and the minimum resale price of distributors' spare parts in Jiangsu Province by telephone, oral notice, holding distributor meetings or other methods, and promoted the implementation of monopoly agreement by strengthening the assessment of distributors, interviewing, warning distributors, reducing policy support to distributors not implementing the price limit policy and other ways. In addition, it was found that distributors of Mercedes-Benz in Suzhou, Nanjing and Wuxi held many regional meetings under the organisation of Mercedes-Benz, and reached and implemented a monopoly agreement on fixing the price of some spare parts. The above behaviours violate the provisions of the *AML*. In April 2015, China's antitrust law enforcement authorities imposed a total fine of more than RMB 357.86 million on relevant parties.

(v) **Monopoly agreement case of SAIC General Motors Corporation Limited.** SAIC General Motors Corporation Limited, as the general distributor, reached and implemented a monopoly agreement with the distributors to limit the lowest price of goods resold by a third party by issuing regional price notices, market competition trends and price guidance announcements during the distribution process, which violated the provisions of the *AML*. In December 2016, China's antitrust law enforcement authorities imposed a fine of RMB 201.00 million on it.

(vi) **Monopoly agreement case of motor vehicle inspection institutions in Shaanxi Province.** Under the organisation of the Xi'an Branch of Shaanxi Motor Vehicle Inspection Association, 32 motor vehicle inspection institutions discussed the collective price increase in a WeChat group and organised a meeting to negotiate and uniformly raise the charging standards of motor vehicle inspection. They agreed on the time of price increase and formulated penalties to urge all inspection institutions to implement the uniformly agreed minimum charging standard. The above behaviours violate the provisions of the AML. In April 2016, China's antitrust law enforcement institutions imposed a total fine of more than RMB 5.76 million on relevant parties."

(vii) **Monopoly agreement case of Toyota Motor (China) Co., Ltd.** Toyota Motor (China) Co., Ltd., by virtue of its dominant position and strict management measures, through the marketing meeting, shop visit, WeChat notice and other methods, required distributors in Jiangsu Province to uniformly quote according to the suggested retail price of each model when selling Lexus motor vehicles on the Internet platform, and shall not lower the on-line quotation without authorisation. At the same time, the minimum resale price of Lexus S200, ES300h, NX200, CT200, RX450 and other series of key models is restricted by such means of regional associations and WeChat notifications. The above behaviours violate the provisions of the *AML*. In November 2019, China's antitrust law enforcement authorities imposed a fine of more than RMB 87.61 million on it.

E) South Africa

(i) Eden Quality Complaint (case under full investigation) (Case No: 2014May0247)

(a) The Commission received a complaint from Eden Quality Auto Parts ("Eden Quality"), a company active in the supply of automotive parts to panel beaters and the general public. This complaint was lodged against Grandmark International ("Grandmark") and Santam Limited ("Santam"). Grandmark is a company active in the supply of spare parts to panel beaters and the general public. Santam is a short-term insurance company.

(b) In terms of the complaint, Grandmark and Santam are excluding Eden Quality from supplying spare parts to panel beaters by threatening customers such as panel beaters not to buy from it as they do not sell genuine parts. Santam supports Grandmark's alleged conduct, in that it agrees not to pay out car insurance claims to clients having used the services of motor body repairers ("MBRs") who have sourced vehicle parts from suppliers other than Grandmark.

(c) The case is currently under investigation and the investigating team is engaging with panel beaters located in and around the George area in Western Cape.

(ii) African Panel Beaters and Motor Mechanics Association (case No: 2014Nov0653)

(a) The Commission received a complaint from Eden Quality Auto Parts ("Eden Quality"), a company active in the supply of automotive parts to panel beaters and the general public. This complaint was lodged against Grandmark International ("**Grandmark**") and Santam Limited ("**Santam**"). Grandmark is a company active in the supply of spare parts to panel beaters and the general public. Santam is the short-term insurance company.

(b) The Commission received a complaint from APMMA, a non-profit organisation which represents presently and previously dis-advantaged artisans in the motor mechanic sector in Gauteng. APMMA members own and operate workshops that are active, among others, in the servicing of cars. The complaint filed by APMMA is against all OEMs.

(c) In terms of the APMMA complaint, OEMs through their approved service centres/dealerships exclude independent emerging motor mechanics (independent service centres) from participating in the motor servicing industry. OEMs allegedly exclude independent vehicle mechanics/technicians from the market by convincing or inducing consumers to take lengthy service plans and compelling them to service their vehicles with approved dealerships. In instances where a customer chooses to service his/her vehicle with an independent service centre, such a customer runs a risk of losing a warranty on the vehicle.

(iii)Prime Parts Complaint (Case No: 2015Mar0103)

(a) The Commission received a complaint from Homefront Trading 401 CC t/a Prime Parts ("Prime Parts"), a company active in the supply of automotive parts to panel beaters and the general public. The complaint is against Hyundai Automotive South Africa ("Hyundai") and Kia Motors South Africa ("Kia"). Both Hyundai and Kia are active in the importation and supply of Hyundai and Kia branded cars respectively.

(b) In terms of the complaint, Prime Parts indicate that Hyundai and Kia have concluded agreements with their respective panel beaters and in terms of the said agreements panel beaters can only purchase parts from approved dealers. If a panel beater purchases parts from Prime Parts or similar business, the panel beater risks losing their approved repairer status. The Complaint was however withdrawn and the Commission accepted the withdrawal.

(iv)Toyota SA Complaint (Case No: 2015Jun0319)

(a) The Commission received a complaint from Dave Panel Beaters, a firm active in the automotive repair industry. The complaint was lodged against

Toyota South Africa Motors (Pty) Ltd ("Toyota SA"). Toyota SA is active in the supply of Toyota vehicles, parts, accessories.

(b) In terms of this complaint, Dave Panel Beaters has applied to Toyota SA to be an approved repairer in the Ladysmith area. Dave Panel Beaters application was not successful chiefly because Toyota SA has already appointed a repair shop (panel beaters) within the Ladysmith. area.

(v) Potential complaint against Toyota SA and various insurance companies (information received from EDD)

(a) The Commission received a request from the Economic Development Department ("EDD"), directorate of Economic Regulatory Bodies relating to potential competition concerns emanating from the concern received by the Minister of the EDD. EDD has received an e-mail from a panel shop owner who alleged that as a level 1 BEE company and meeting all the requirements of operating a panel shop is still not able to enter the market as corporate companies, i.e., insurance companies are not willing to give them business to repair cars that are still insured.

(b) It was also stated in the e-mail that with corporate South Africa still not interested in transformation, there is a need for new BEE codes that will allow for new entrants to have a better chance of entering the market. It is also argued that firms appointed by insurance companies are same firms that have been getting business for the past 30 years. Further, it was argued that the existing BEE codes are not good enough in ensuring that the automotive aftermarket industry is transformed.

(c) The Competition Commission has launched investigations into price fixing, market division and collusive tendering in the market for the manufacture of automotive components. The respondents, being competitors in the market for the manufacture and supply of automotive components, are alleged to have either concluded general agreements or engaged in discussions regarding specific customers in how to respond to requests for annual price reductions from original equipment manufacturers or discussed and agreed on how to respond to Request for Quotation (RFQ) issues by OEM in respect of a particular component.

(d) The meetings and discussions enabled the respondents to reach and implement agreements and/or concerted practices to fix prices, divide markets and tender collusively in respect of request for quotation issued by original equipment manufacturers. The aforementioned conduct may be in contravention of sections 4(1)(b)(i), 4(1)(b)(ii) and 4(1)(b)(iii) of the Act.

(e) Between August 2014 and March 2016, the Commission initiated 238 complaints comprising of 92 components. These complaints include 62 respondents such as Denso Corporation, Mitsubishi Electric Corporation, Robert Bosch GMBG, Hitachi Company Limited, Aisan Industry Company Limited, Yazaki Corporation, Maruyasu Industrial Company Limited, Keihin Corporation and others. The 92 automotive components affected by the collusion include, but not limited to, Inverters, Rear Sunshade ECU, Motor Generator and Motor Generator Control Systems, Airbag Control systems (including components), Airbag Sensors, Airbag ECU, Air Cabin Filters, Smart Keys Systems (including Remote Keyless Entry, Ignition).

(vi) CC v. Autoliv, Takata, Toyoda and TRW (Case number 2012AUG065 and 2016NOV0627) Matter at the Tribunal

(a) This case is in the market for the manufacturing and supply of airbags, seatbelts and steering wheels. TRW is a leniency applicant. Autoliv and Toyoda settled with the Commission.

(b) Takata is before the Tribunal for prosecution. Takata has raised a technical point regarding jurisdiction of the Tribunal to hear complaints against firms who have no presence in South Africa. OEMs such as BMW, Toyota, Daimler, Ford, VW, Nissan and General Motors have cooperated with the Commission.

(vii) CC v Eberspcher (Case number 2014NOV0688) Investigation completed and ready to be referred

(a) These cases are in the market for the supply of motor vehicle exhaust system. The investigation revealed that respondents colluded in respect of tenders issued by Audi, BMW, Iveco, Land Rover and Mercedes Benz.

(b) Eberspacher is a leniency applicant. Faurecia settled and Tenneco in settlement negotiations with the Commission.

(c) Friedrich Boysen, Cornaglia and Calsonic Kansei are before the tribunal for prosecution.The investigation revealed that respondents colluded in respect of tenders issued by Audi, BMW, Iveco, Land Rover and Mercedes Benz.

(viii) CC v NGK Insulators (Case numbers 2012OCT0608 and 2012OCT0609, 2017NOV0051 and 2017NOV0052)

(a) These cases are in the market for the supply of Diesel Particulate Filters (DPFs) and Substrates. NGK is a leniency applicant. NGK implicated Denso, Corning and Ibiden. OEMs issued tenders such as General Motors, Toyota, Ford, VW, Nissan and Mazda.

(b) OEM supplier prosecuted for collusion (03.07.2019) [53] – CCSA has found that Ibiden and NGK Insulators Incorporated ('NGK') had an agreement to divide markets in respect of the provision of Diesel Particulate Filters to OEMs since 2004 as per which they would work with each other when responding to tenders issued by General Motors and Ford. In this agreement, tenders issued by General Motors would be awarded to NGK while those issued by Ford would be awarded to Ibiden. DPFs are parts used in exhaust systems of motor vehicles that are fitted with diesel engines. CCSA has referred the matter for prosecution to the Competition Tribunal. CCSA has asked the Tribunal to impose an administrative penalty of 10% of Ibiden's annual turnover. However, no fine has been sought against NGK. The matter is still pending.

(c) Global car safety company to be prosecuted for collusion (14.03.2018) [54] – A global manufacturer and supplier of airbags and seatbelts, Takata Corporation (Takata) and its local arm, Takata South Africa (Pty) Ltd (Takata SA), were referred to the Competition Tribunal by CCSA for prosecution in four separate cases involving price fixing, market division and collusive tendering. CCSA's investigation showed that the Japan

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[53] chrome-extension://oemmndcbldboiebfnladdacbdfmadadm/http://wizeempire.com/testserver/wp-content/uploads/2019/08/OEM-SUPPLIER-PROSECUTED-FOR-COLLUSION.pdf

[54] http://www.compcom.co.za/wp-content/uploads/2018/01/Takata-Media-Statement.pdf

based firm colluded with other motor safety product suppliers in respect of multiple tenders for Honda Civic, Honda CRV, BMW and Toyota Yaris vehicles. CCSA has referred the four cases to the Tribunal for prosecution and is seeking orders that Takata be held liable to pay penalties in each of the cases.

(d) Airbags, seatbelts and steering wheels maker pays almost R150M for collusion (09.10.2017) [55] – One of the world's largest manufacturers of airbags, seatbelts and steering wheels Autoliv Inc. (Autoliv) had concluded a settlement agreement with CCSA for its involvement in prohibited practices like price fixing, market division and collusive tendering with its competitors, *namely*, TRW Inc, Takata Group, Toyoda Gosei Co Ltd and Tokai Rika Co Ltd. Autoliv agreed to pay an administrative penalty of almost R150 million following its admission of having contravened the Competition Act. The settlement followed CCSA's investigation into collusive conduct against manufacturers of airbags, seatbelts and steering wheels (including Autoliv and its competitors) for allegedly fixing prices, dividing markets and colluding on tenders issued by car manufacturers such as BMW Group and VW Group for the manufacture and supply of airbags, seatbelts and steering wheels. CCSA has filed the settlement agreement with the Tribunal for confirmation as an order. However, the investigation against other firms still continues.

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[55] http://www.compcom.co.za/wp-content/uploads/2017/01/Autoliv-media-release-9-Oct-2017-final.pdf

CHAPTER 7 ROLE OF ADVOCACY IN THE AUTOMOTIVE SECTOR

1. Most of the competition authorities have been given the mandate of not only implementing enforcement measures but also taking carefully crafted advocacy steps. It is based on a conventional wisdom that enforcement measures are *per se* not sufficient and therefore, an informed exercise of advocating competition awareness of stakeholders must be undertaken as well. Since consumers' interests are at the forefront of every State's antitrust laws, it becomes imperative to undertake the collective measure of enforcement and competition advocacy. Thus, Competition Advocacy is considered to be one of the main pillars of all BRICS countries which aims at creating, expanding and strengthening awareness of competition in the market. Raising the level of awareness among the stakeholders is an important step towards creating and nurturing a competition culture within the country.

2. When it comes to the automotive industry, the competition advocacy measures assume its own significance, firstly, because of its specialised and dynamic nature. With strong backward and forward linkages in upstream and downstream markets, this industry is one of the key drivers of economic growth of countries. With globalisation, liberalisation, and timely and conscious policy interventions in this sector as a whole have brought several new players in the fray. This has been resulting in capacity expansion in the automotive industry and generation of huge employment opportunities which has helped in creating a more vibrant and competitive market. Considering the importance of this sector in the economic development and growth of countries, fair competition in the industry assumes more significance, since it plays vital role in safeguarding the interests of stakeholders and public at large.

3. Although the industry has undergone technological as well as structural changes over the past few decades many of the perennial issues such as lack of access to know-how for carrying out associated works corresponding to issues of safety, IP protections have been inviting the attention of the competition authorities. Thus, the need of the hour is not only to further address the above issues through advocacy channels but also strengthen it amongst various stakeholders, such as OES, authorised dealers appointed

by each of the OEMs, *etc.* Keeping this objective in view, BRICS countries have been undertaking various advocacy initiatives and measures which have been discussed in the subsequent section.

Advocacy Undertaken/Initiatives

A) Brazil

(i) The Administrative Council for Economic Defense (CADE) has recently heard a case concerning the registration of the industrial design of auto parts (Administrative Proceeding 08012.002673/2007-51). Different Commissioners pointed out in their votes the necessity of competition advocacy in order to update the Brazilian Industrial Property Law and avoid future competition issues on the same topic. SEAE is currently analysing the convenience and potential competition outcomes of updating such law. SEAE is also addressing a review of the so-called "Ferrari Law", which establishes the rules of the automotive distribution system. The aim is to raise competition in the car resale market by reducing entry barriers (the current law provides exclusivity arrangements between brands and resellers).

(ii) In light of the several cases involving the auto parts segment, CADE has established a formal link with ANFAVEA (National Association of Automotive Manufacturers) in an effort to explain the anticompetitive practices that were being investigated, its causes, the negative impacts on the market, *etc.*

(iii) ANFAVEA understood the problems that were being created by its members and started a compliance project within them. One of the steps was a revision of ANFAVEA's Code of Conduct.

(iv) The Code of Conduct imposes and guides the activities and duties of ANFAVEA, its Collaborators, and Associated companies in its chapter on competition, supports and encourages measures to avoid illegal practices such as cartel formation, dumping, and corruption in all its forms. It also forbids, non-competition agreements, the allocation of clients or regions, the exchange of sensitive information not authorised by law, and restrictions in the access of new companies to the market by means of illegal horizontal and/or vertical agreements. The guidelines are in place to regulate any conduct and/or relationships between Associated Companies that may potentially constitute a violation of the Antitrust Laws.

B) Russia

(i) As part of car industry self-regulation with the methodological support of the FAS Russia in 2013, the Association of European Business (AEB) developed a code of conduct for automakers in the Russian Federation that regulates the basic requirements for dealers, service and use of spare parts.

(ii) The Russian Federal Antimonopoly Service official presented the Code of Conduct of Automobile Manufacturers on December 6, 2013. The Code of Conduct touches upon key aspects of business relations between automobile manufacturers/distributors, on the one hand, and dealers/independent service stations, on the other. This document is a voluntary initiative of the AEB Automobile Manufacturers Committee, it is available for any interested companies and is based on goodwill and a bona fide conduct of business. The code was established to ensure transparent non-discriminatory relations between automobile manufacturers/distributors, on the one hand, and dealers/independent service stations, on the other.[56] The need for a regulatory code was felt owing to certain anticompetitive practices prevalent in the market for automobiles, especially issues like discriminating access conditions for dealers to new vehicles and spare parts, compulsory combination of sale and service functions, special equipment deliveries to authorised service stations only, unjustified refusal of original spare parts deliveries to independent service stations, unilateral termination of contract and alteration of essential terms of a contract by a distributor, amongst such several other issues were rampant. Such anticompetitive practices lead to numerous anticompetitive effects leading to competition restriction, reduced quality of service, high entry barriers overstated cost for dealer services, among many others.[57]

(iii) The code of conduct ensures and the members undertake to adhere to following good business principles and practices in the Russian automotive sector. The

[56] Retrieved from https://en.fas.gov.ru/documents/documentdetails.html?id=14509
[57] *Id.*

process for selection for dealers should be transparent and collegiate process, which should not be groundlessly terminated. The process should be regulated by a document containing general terms of cooperation and dealer agreement. Further to ensure safety and regulated distribution of vehicle security system and special tools purchase from authorised/approved suppliers or the original vehicle manufacturer should be mandated. Warranty repairs and other repairs paid by the original vehicle manufacturers should be conducted only by official dealers. At the very same time usage of spare parts of matching quality should not be forbidden for maintenance and non-warranty repairs after the expiration of the warranty period. Official dealers should not be prohibited from carrying out maintenance and making non-warranty repairs of cars of other brands provided that the dealers meet certain conditions and standards. Further to ensure fair competition official dealers should be allowed to sell original and/or identical spare parts to independent repairers for their maintenance and repair purposes. The guidelines have helped to secure no-discriminatory access to vehicles and spare parts, enhanced competition between suppliers of special equipment, authorised and independent service stations, lowering of entry barriers and reduced number of antimonopoly legislation infringements.[58]

Self-regulation of the Automotive Market in Russia

(i) The activities of the FAS Russia, together with the Association of the European Business (AEB), are aimed at developing joint mechanisms for self-regulation of the market, which allows entrepreneurs to develop and set standards for their activities themselves, and then to exercise control over their observance, to minimise the participation of the state in the professional activities of legal entities while maintaining business responsibility to consumers. These mechanisms include codes of conduct, good practices, guidelines, *etc.*

(ii) With the aim of discussing topical issues of competition in the automotive market, since 2019, the working group on LCV created by the FAS Russia together with the AEB Automobile Manufacturers Committee has been functioning, the key issue on the agenda of which is the development of a transparent and effective certification system of vehicles (includes such

[58] *Id.*

companies, as Volkswagen Group Rus (Audi/ Bentley/ Lamborghini/ Škoda/ Volkswagen), Mercedes-Benz, Fiat, *etc.*).

(iii) In 2013, the AEB, with the methodological support and approval of the FAS Russia, developed a Code of Conduct for Automobile Manufacturers (hereinafter - the Code)[59], aimed at eliminating negative practices in the market for the sale of new cars, spare parts and service maintenance.

(iv) The introduction of the Code has led to a significant decrease in the number of complaints from dealers and independent service stations regarding violations of antimonopoly legislation by distributors, including in terms of refusals to cooperate with independent service stations in the Russian Federation, as well as to the creation of non-discriminatory conditions for interaction between car manufacturers and official dealers.

(v) The Code of Conduct was approved by the majority of Automobile Manufacturers Committee members, agreed with the Federal Antimonopoly Service of Russia and the Ministry of Industry and Trade of the Russian Federation. The Automobile Manufacturers Committee notes that, prior to application of certain provisions of the Code of Conduct, certain amendments need to be introduced in the Consumer Protection Law, which refer to the concept of 'material defect', adequacy of the market players' responsibility, liability for acts by third parties *etc.* Failing this, such application may negatively affect not only the operation of distributors and car manufacturers localised in Russia, but also the profitability of hundreds of official dealerships. It may also lead both to a deterioration in customer satisfaction and the quality and safety of services/works.

(vi) As of 2017, the Code has been signed by the following car manufacturers and auto distributors: BMW Group Russia (BMW, MINI), Chery Automobile Rus (Chery), FCA Russia (Chrysler, FIAT, Jeep), Ford Sollers Holding (Ford), General Motors CIS (Cadillac, Chevrolet, Opel), Hyundai Motor CIS (Hyundai, Genesis), Honda Motor Rus (Acura, Honda), Jaguar Land Rover (Jaguar, Land Rover), Kia Motor Rus (Kia), Mazda Motor Rus (Mazda), Mercedes -Benz Rus (Mercedes-Benz, smart), MMC Rus (Mitsubishi), Nissan Manufacturing Rus

[59] https://aebrus.ru/en/aeb-committees-and-working-groups/code-of-conduct.php

(Datsun, Infiniti, Nissan), Porsche Russland (Porsche), PSA Peugeot Citroën (Citroën, DS, Peugeot), Renault Russia (Renault), Subaru Motor (Subaru), Suzuki Motor Rus (Suzuki), Toyota Motor (Toyota, Lexus), Volkswagen Group Rus (Audi, Škoda, Volkswagen, Volkswagen LCV), Volvo Cars (Volvo).

(vii) Given that the market conditions have changed over the past 5 years, AEB and ROAD have signed a memorandum of understanding, clarifying a number of controversial issues arising between dealers and distributors and / or automakers, as well as including a description of good dealers' practices.

(viii) In 2018, with the support of the FAS Russia, a Memorandum of Understanding was signed, which became the first joint document between car manufacturers and official dealers.

(ix) The Memorandum united the Code of Conduct and Recommendations to it, which were combined into the document "Good Practices of Car Manufacturers / Auto Distributors" (17 practices) regulating the behaviour of car companies in the sales and after-sales service of cars (policy of appointment of official dealers, warranty repair, introduction of the terms "original spare part", "identical spare part" and spare part, sale of spare parts, *etc.*).

<u>Positive effects from the conclusion of the Memorandum:</u>

(i) The first joint document of car manufacturers/distributors and authorised dealers, i.e., almost all major players in the automotive market, which increases the level of self-regulation of the industry as a whole;

(ii) Creation of parity relations, which will improve the business climate of the industry and preserve the investments made in dealer networks;

(iii) The Memorandum allows not only AEB members to join the good practices, but also any other persons working in the Russian passenger car market;

(iv) A mechanism for the functioning of the conciliation commission is developed to consider possible disputes (which could not be created only under the Code);

(v) The Memorandum unites the Code of Conduct and Recommendations to it, which were developed and published over different periods of time, into a single document - "good practices of car manufacturers / distributors" (17 practices), which increases transparency and promotes the uniform application of these practices;

(vi) The Memorandum includes "fair practices of official dealers" (14 practices), aimed, among other things, at increasing competition in the retail market for sales and after-sales service of cars, as well as at additional protection of end consumers;

(vii) The Memorandum establishes the obligation of manufacturers and dealers to publish publicly the good practices and the lists of the members who have joined them;

(viii) The Memorandum establishes the obligation of the AEB to hold regular meetings and exchange information on issues related to the observance of good practices in order to find mutually acceptable solutions and develop competition.

C) India

(i) Section 49 of the Act, mandates CCI to take suitable measures for the promotion of competition advocacy, creating awareness and imparting training about competition issues. Competition advocacy creates a long-term impact among stakeholders and supplements the enforcement of law by CCI. The long-term aim of competition advocacy is to create a culture of competition in the economy so that benefits get percolated down to the grass root level.

(ii) For the purpose of competition advocacy, the CCI has been reaching out to stakeholders such as Government, the industries & trade associations, chambers of commerce, legal community, academia and professional bodies among others through workshops, seminars and capacity building initiatives on regular basis.

(iii) Specific to the automotive sector, the CCI has been complementing its enforcement efforts with advocacy outreach initiatives by engaging with stakeholders, particularly the automotive industry. The CCI has been conducting advocacy programmes aimed at dissemination of awareness of competition law and enhanced competition compliance.

(iv) CCI's enforcement efforts in the automotive sector cases, also disseminate among the industry stakeholders' various do's and don'ts relating to the competition aspects. Further, the erstwhile COMPAT[60] highlighted the need for setting up of a standards-based technical regulatory framework/ecosystem for encouraging independent repair work in the automotive aftermarket. It had suggested that the Ministry of Road Transport and Highways can be mandated to develop a host of voluntary standards under Indian automotive laws with the assistance of institutions like the Quality Council of India (QCI), the Bureau of Indian Standards (BIS), the Automotive Research Association of India (ARAI), *etc.* for the certification of independent repairers along with the development of corresponding conformity assessment, accreditation system.

(v) In 2019, a Workshop on Competition Law and Practices related to Automobile Industry was jointly organised by the Society for Indian Automobile Manufacturers ('SIAM") and CCI in New Delhi. The objective of the workshop was to engage with stakeholders on various aspects of the Competition Law across the value chain of the automobile industry and create its awareness amongst various stakeholders such as government departments, legal fraternity, academia and officials from automotive industry. In the workshop, in-depth discussions took place on competition issues relating to both primary market and the aftermarket.

(vi) In India, for regulating competition in the automobile industry and in particular, aftermarkets, CCI through its enforcement activities has sensitised the stakeholders regarding the anti-competitive activities and various remedial measures. For instance, while deciding the case of Shamsher Kataria[61,] the CCI's primary objective was to correct the distortions in the aftermarket, to provide corrective measures to make the market more competitive, to eradicate practices having foreclosure effects and to put an end to the anti-competitive conduct of the parties. The aim of CCI was to provide more freedom to OESs in sale of spare parts, and more choice to consumers and independent repairers. CCI considered it necessary to (i) enable the consumers to have access to spare parts and also be free to choose between independent repairers and authorised dealers and (ii)

[60] Comp. Appeal No. 60, 61, 62 of 2014, order dated 09.12.2016. This case was filed by few car makers against CCI's order dt. 25.08.2014 in case NO. 03/2011. The mater is sub-judice before the Hon'ble Supreme Court of India.
[61] https://www.cci.gov.in/sites/default/files/032011_0.pdf At present, the matter is sub-judice and pending at the Hon'ble Supreme Court of India.

enable the independent repairers participate in the aftermarket and provide services in a competitive manner and to have access to essential inputs such as spare parts and other technical information for this purpose, as part of a more competitive eco-system which is equally fair to the OEMs and their authorised network also.

Box 8

An excerpt from the order of the CCI passed in the case of Shamsher Kataria*, under Section 27 of the Competition Act 2002

- Parties were directed to put in place an effective system to make the spare parts and diagnostic tools easily available through an efficient network.
- Parties were directed to allow OESs to sell spare parts in the open market without any restriction, including on prices. OESs would 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.
- Parties were to place no restrictions or impediments on the operation of independent repairers/garages.
- Parties 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.
- Parties 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.
- Parties were directed not to impose a blanket condition that warranties would be cancelled if the consumer avails of services of any independent repairer. While necessary safeguards may be put in place from safety and liability point of view, OPs may cancel the warranty only to the extent that damage has been caused because of faulty repair work outside their authorized network and circumstances clearly justify such action.
- Parties were directed to make available in public domain, and also host on their websites, information regarding the spare parts, their MRPs, arrangements for availability over the counter, and details of matching quality alternatives, maintenance costs, provisions regarding warranty including those mentioned above, and any such other information which may be relevant for full exercise of consumer choice and facilitate fair competition in the market.

* At present, the matter is sub-judice and pending at the Hon'ble Supreme Court of India.

D) China

Diversified competition advocacy measures are taken in China to promote the effective implementation of the Anti-Monopoly Law (AML).

(i) **Holding competition advocacy activities.** The China Competition Policy Forum has been successfully held for eight times since 2012, with more than 300 representatives from different countries, regions and fields participating in each forum. The Forum has become an important platform to explore policy approaches, gather consensus among all parties, expand the influence of antitrust law enforcement, and effectively promote domestic and international exchanges on competition policy. Ten typical cases of the annual antitrust law enforcement are released and widely publicised and reported by the media, thus strengthening the interpretation of the law by cases so as to create a social atmosphere conducive to fair competition, and further demonstrate the influence of antitrust law enforcement.

(ii) **Carrying out extensive antitrust publicity.** Intensively promote the publicity and the interpretation of departmental regulations and Anti-monopoly Guidelines, and carry out a series of publicity activities such as special law enforcement for abuse of administrative power to eliminate or restrict competition and strengthening of review system for fair competition to create a good environment for public opinion on antitrust work; select ten typical cases of antitrust law enforcement, compile the Annual Report of Anti-Monopoly Law Enforcement in China, and carry out the planning, production and dissemination of promotional videos on fair competition to foster a positive atmosphere to encourage competition.

(iii) **Strengthening antitrust compliance training**. Persist in holding special training courses on AML facing private, state-owned and foreign-invested enterprises and other market entities to strengthen training and guidance on antitrust compliance of enterprises. Hold antitrust law enforcement seminars for Belt and Road (B&R) countries to enhance their mutual understanding on anti-monopoly laws and policies.

(iv) **Constantly improving the transparency of antitrust work**. Disclose the case information in accordance with the relevant provisions of the AML and the requirements of making government affairs public, and at the same time, focus on consensus building through joint efforts, and publicly solicit opinions on major research projects and document revisions for many times to improve the transparency of antitrust law enforcement and effectively enhance the credibility and execution of departments.

(v) As far as the motor vehicle market is concerned, China is an important and fast-growing motor vehicle market in the world. For the purpose of providing clear guidance to undertakings, balancing legitimate rights and interests of automobile undertakings at the upstream, midstream and downstream levels, rationally defining the boundaries between freedom of contract and autonomy of will of undertakings, effectively preventing and curbing anti-competitive behaviours of the automobile industry, and promoting the formation of a unified, open and orderly competitive motor vehicle market. The Anti-Monopoly Guidelines for the Automobile Industry in January 2019 formulated and promulgated by Anti-Monopoly Commission of the State Council, featuring in full consideration of the development stages, conditions and characteristics of China's motor vehicle market, not only fully considers the development level and practical experience of law enforcement in China's automobile industry, focuses on the new technologies and new business forms, but also reasonably uses mature practice on automobile industry competition rules from European and American developed countries for reference. In addition, the SAMR uses external think tanks to conduct research on industry competition in the field of motor vehicle circulation, completes the assessment of competition in the motor vehicle manufacturing industry, and timely grasps the current situation of competition in law enforcement, thus providing important support for antitrust law enforcement and market-oriented reform.

(vi) The automobile industry serves as an important pillar industry of the national economy and an important livelihood industry to enhance people's sense of happiness and gain. At present, the automobile industry has become an important driving force for developing new growth points and new drivers in China's middle and high-end consumption, innovation orientated, green and low-carbon, sharing economy and other fields, and continuously provides comprehensive support for accelerating the construction of a manufacturing power, a technological power, a transportation power and a smart society. Protecting fair competition in the motor vehicle market is of great significance to promote the healthy development of the automobile industry and safeguard the interests of consumers. Since 2014, China's antitrust law enforcement authorities have investigated and handled a series of monopoly cases in the automobile industry, involving both horizontal monopoly agreements between competitors and vertical monopoly agreements between manufacturers and distributors, with a cumulative fine of nearly RMB 2.6 billion, playing an important role in standardising the competition order in the automobile industry market, enhancing the awareness of antitrust compliance of enterprises, promoting the transformation and upgrading of China's motor vehicle market, increasing consumer welfare, and arousing great repercussions at home and abroad.

(vii) For the purpose of providing clear guidance to undertakings, effectively preventing and curbing anticompetitive behaviours in the automobile industry, and reducing costs of both administrative law enforcement and compliance of undertakings, based on the AML and the practice of antitrust law enforcement in China's automobile industry, by absorbing and learning from the mature practices of other countries, conscientiously implementing the requirements of scientific legislation, democratic legislation and legal legislation, and adhering to the principles of "formulating contents in accordance with law, absorbing anything and everything, problem orientation, high quality and efficiency, and overall planning", the Anti-Monopoly Commission of the State Council formulated and promulgated the Anti-Monopoly Guidelines for the Automobile Industry.

(viii) The Anti-Monopoly Guidelines for the Automobile Industry, based on national conditions, not only fully considers the development stages, conditions and characteristics of China's motor vehicle market and the development level and practical experience of law enforcement in China's automobile industry, and focuses on the new technologies and new business forms, but also reasonably draws lessons from the mature practice of European and American developed countries automobile industry competition rules.

(ix) **Adhering to the national conditions.** Based on the development stage of China's automobile industry and the experience of antitrust law enforcement, supported by comparative research and empirical research, the Guidelines conforms to the AML from structure to entity, and is composed of six parts, including General Provisions, Monopoly Agreements, Abuse of Dominant Market Position, Concentration of Undertakings, Abuse of Administrative Power to Eliminate or Restrict Competition, and Supplementary Provisions, which further refine the application of the AML of the automobile industry.

(x) **Adhering to problem orientation.** While considering completeness, the Guidelines insist on problem orientation. According to the competition situation in China's motor vehicle market, it focuses on the analysis ideas, framework, principles and methods of antitrust law enforcement in the automobile industry, and gives specific guidance on the assessment approaches of monopoly agreements that may eliminate or restrict competition and abuse of dominant market position, thus providing clear and specific guidance for the undertakings of the automobile industry to actively conduct compliance analysis.

(xi) **Adhering to balanced consideration.** In terms of general ideas and basic principles, the Guidelines strive to balance legitimate rights and interests of undertakings at the upstream, midstream and downstream levels in the automobile industry, rationally define the boundaries between freedom of contract and autonomy of will of undertakings, prevent and prohibit anticompetitive behaviours, encourage and promote competition and innovation, protect market competition, consumer interests and social public interests, and promote the formation of a unified, open and orderly competitive motor vehicle market.

(xii) **Adhering to overall coordination.** From components to complete vehicles, from manufacturing to service, the automobile industry is provided with strong industrial linkage, high-tech adsorption and capital intensity, and is a carrier to accommodate and promote the development of multi-industries. Therefore, the Guidelines pays special attention to the connection and coordination between anti-monopoly and intellectual property protection, industrial policies, consumer rights and interests protection, civil and commercial contracts and other relevant laws, regulations and policies, so as to jointly promote the sustainable and healthy development of the automobile industry.

(xiii) Following the general principles and methods specified by the AML and considering the characteristics of the automobile industry, the Anti-Monopoly Guidelines for the Automobile Industry starts from the key problems concerned by antitrust law enforcement authorities, such as market definition, monopoly agreements, abuse of dominant market position, abuse of administrative power to eliminate or restrict competition and other competitions, clarifies the analysis ideas and underlying factors, provides clear guidance for the undertakings of the automobile industry, enhances the transparency of antitrust law enforcement in China's automobile industry, and reduces the compliance cost of motor vehicle undertakings while ensuring scientific and effective supervision to guide them to conduct legal and compliant operation.

E) South Africa

(i) The Competition Commission of South Africa receives, on a continuous basis, complaints of constraints to competition in the automotive sector. These complaints relate to potential exclusionary conduct at all levels of the automotive value chain. For example, vertical restraints in the service and maintenance market, mechanical repairs market and motor-body repairs of in-warranty motor vehicles, unfair allocation of work by insurers in the motor-body repairs market, restrictions on the sale of parts and components, high barriers to entry that exclude small, medium and micro enterprises (SMMEs) and historically disadvantaged individuals (HDIs) from becoming authorised dealers, and a lack of competition and consumer choice in the sale and fitment of spare parts.

(ii) The Commission believes that these constraints to effective competition can be addressed through collaboration and advocacy initiatives with industry stakeholders. After four years of engagement with the sector starting in 2017, the Commission has published the Guidelines for Competition in South African Automotive Aftermarket in January of 2021. The Commission initially facilitated an advocacy program towards an industry voluntary Code of Conduct. After two years of engagements and consultation, the stakeholders failed to reach consensus and/or to commit to meaningful pro-competitive reforms in response to the challenges posed. The Guidelines issued provide practical guidance for the automotive aftermarkets industry, intended to promote inclusion and to encourage competition through greater participation of small businesses as well as historically disadvantaged groups. The Guidelines seek to achieve the stated objectives by encouraging stakeholders to adopt measures that:

(a) Widen the pool of approved dealers and approved motor-body repairers;

(b) Promote the entry (ownership) of HDIs as approved dealers;

(c) Ensure that ISP's can undertake in-warranty service, maintenance and repair work;

(d) Allow for greater consumer choice and product competition in the retail of service plans and maintenance plans; and

(e) Ensure the fair allocation of work by insurers to service providers on insurance panels.

(iii) The Guidelines had become effective from 1 July 2021, and stakeholders have until then to ensure there are in a position to implement the principles laid out therein.

(iv) Competition Commission of South Africa launched the Final Guidelines for Competition in the South African Automotive Aftermarket on 29 January 2021. The Guidelines prepared in terms of section 79(1) of the Competition Act No. 89 of 1998. The guidelines were made to address multiple complaints received by the Commission from various independent players in the automotive aftermarket as well as members of the public.[62] These parties raised concerns about alleged anticompetitive practices. The allegations include exclusionary agreements and/or arrangements between OEMs and approved motor-body repairers; the exclusion or foreclosure of independent service providers in the markets for the service and maintenance and mechanical repairs for in-warranty motor vehicles; unfair allocation of work by insurers; restrictions on the sale of

[62]Retrieved from http://www.compcom.co.za/wp-content/uploads/2020/02/Draft-Automotive-Aftermarket-Guidelines-for-Comment-14Feb2020.pdf

original spare parts to ISPs; high barriers to entry that exclude small and medium enterprises (SMEs) and historically disadvantaged individuals (HDIs) from becoming approved motor-body repairers and approved dealers; and a lack of competition and consumer choice in the sale and fitment of spare parts..[63] These guidelines intend to promote transparent, informed, effective and co-operative relationships between the relevant stakeholders in conducting their business with each other and in the provision of services to consumers.

(v) The Guidelines provide practical guidance for the automotive aftermarkets industry, intended to promote inclusion and to encourage competition through greater participation of small businesses as well as historically disadvantaged groups.

Box 9

- Commission views that OEMs must conduct themselves in a manner which is not exclusionary and exploitative.
- OEMs should disclose and make public the quality criteria in their appointment of Service Providers.
- OEMs must not enter into exclusive arrangements, either with one or more Service Providers, for effecting service and maintenance work.
- Consumer choice should be broadened by allowing consumers to fit "non-original spare parts" where the specific part's Warranty has expired, without voiding the balance of the Motor Vehicle's Warranty.
- OEMs must make available to ISPs the OEM-technical information relating to its Motor Vehicles, on the same terms offered to its approved Service Providers, where applicable.

(vi) Such access by ISPs to information excludes security-related information that permits interference in Motor Vehicle security systems.[64]

(vii) Through these guidelines the Competition Commission of South Africa strives to provide practical guidance for the automotive industry, with the aim of transforming the automotive aftermarket and encouraging competition through greater participation. The Commission intends to conduct periodic impact assessments to monitor compliance of adherence to the Guidelines after 1 July 2021. Affected parties to this guideline shall be required to submit information

[63] *Id.*
[64] *Id.*

and data in response to information requests issued by the Commission in the course and scope of conducting the periodic assessments on the implementation and adherence to the principles set out herein. All stakeholders are required to align their business practices with the Competition Act and the Guidelines for Competition in the Automotive Aftermarket.

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CHAPTER 8 EMERGING TRENDS AND ISSUES IN THE AUTOMOTIVE SECTOR

1. The automotive sector has come a long way from horseless carriage in the brass era to hybrid passenger cars. This industry has witnessed the impact of industrialisation, globalisation and now is being heavily influenced by the digital transformation. With digitalisation, industry is undergoing a paradigm shift with focus on enhancement and improvement not only of production processes but also of product development. This transformation facilitated by the industry is also welcomed by consumers. For the industry, it plays a significant role in terms of rationalisation of the processes, and for consumers, this may come up as a value addition in terms of easier human-machine interface and safety leading to much enhanced and better user experience.

2. Such significant change in the industry due to digitalisation, also necessitates reviewing and revisiting the existing regulatory structures and institutions. While introducing such changes, the focus of different regulatory regimes is to safeguard consumer interest and maintain a balance in the industry composition while at the same time safeguarding interests of industry players. New digital technologies no doubt play heavily in favour of those who own them, capable of leading to changes in market structure, market capturing strategies, influencing customer behaviour and preferences; and ultimately demanding adoption of regulations for maintaining balance in the market. By now, we know digitalisation has warranted intervention by regulators in terms of privacy, data and internet related laws. Thus, with new technologies, new challenges may emerge which would require timely solutions.

Box 10

The intensity with which autonomous vehicles and electrification is being witnessed in this era shows no sluggishness. And with time tech companies may move along supply chain, this would raise a few concerns that would need to be addressed at the earliest to settle uncertainties amongst stakeholders. These would include issues related to IP, Data Privacy and Risk-Shifting for Warranty Issues.

It is pertinent to point out that the data from automobile industry is significant for insurance, advertising, and energy firms.

[Source: https://www.natlawreview.com/article/top-legal-issues-facing-automotive-industry-2020]

3. Needless to say, the application of new technologies is not only leading to the emergence of new trends with respect to interactions amongst stakeholders, such as web/telecom companies with OEMs to provide data-based services, and access to the connected vehicles technology, which is focused on interacting bi-directionally not only with other vehicles but also with other IT devices[65]. Within the Connected Vehicle ecosystem, various players such as OEMs, web companies, software/app developers, mobile network providers, mobile device manufacturers, third-party repairers would have large competing stakes to fight for market share and better access. Moreover, in this ecosystem, any restrictive practices by OEMs/OESs which impair the consumer's ability to have vehicles repaired from third-party repairers can also be a matter of concern in future.

4. Other technological innovations such as autonomous (self-driven) vehicles (an integral component of Connected Vehicle ecosystem), electronic vehicles and emission norms have produced high capital-intensive products. Moreover, these technological innovations and advancements, also led to emergence of new business models such as shared mobility or pay-per-use with increasing acceptability amongst the customers.

Box 11

FAS Russia

It was announced in mid-July 2021 that more than 800 billion Rubles were allocated for the development of unmanned vehicles in Russia. This comprises the creation of automated road, rail, air and water transport.

The share of goods transport and passenger urban transport in the 20 largest Russian cities, carried out by highly automated and unmanned vehicles, should reach 30% by the end of 2035. The share of intercity goods transportation on key highways, carried out by highly automated and unmanned vehicles, will consist 50%, passenger transportation will consist 30% as scheduled.

According to the Strategy developed by the Ministry of Transport, in 2024, unmanned and highly automated transport will carry out 2% of intercity traffic on key highways, by 2030 - 20%. The share of freight and passenger urban road transport in the largest 20 cities, performed by highly automated and unmanned vehicles, will amount to 5% by 2030, the same share will be accounted for by intercity transport.

[65] 'US Dept. Of Transportation, What Are Connected Vehicles and Why Do We Need Them?' as available on https://www.its.dot.gov/cv_basics/cv_basics_what.htm last accessed on July 02,2021.

5. Further, the challenges which arise from adoption of new technologies and business models may require uniformity at some level such as interoperability of infrastructure (like charging stations in case of EVs) to alleviate the cost impact on consumers.

6. Ordinarily, any discussion on impact of the technology remains incomplete without understanding the complexity of the future challenges that it may raise. In this regard, it is being seen globally the data, amongst many others, is the new wave which has emerged from the past decades, continuously enhancing features of products. With its easy interpolation as a tool for delivering success in the market, the data has now started contributing significantly in the automotive sector as well, be it car production mechanism, repair processes, sharing and storage of telematics, navigation, music systems or integration of smartphone features, *etc.* It is pertinent to mention that this raises issues related to data ownership, its storage and its exploitation, leading competition issues, including but not limited to non-price competition issues.

7. Therefore, any discussion on emerging trends and issues in automotive sector without considering such developments stands incomplete. In the light of the aforesaid, this chapter focuses on new issues and emerging challenges in the automotive sector.

8. Before discussing into more details, it is relevant to understand the kind of data that is generated by any vehicle. Broadly speaking, there are three kinds of data that come to mind when we speak of data generated by any vehicle.

9. Diagnostic Data: In the digital age, data which is generated from the car, in as much as it relates to the mechanical sensors in the car, would be critical to conducting maintenance and diagnostic services. The European Commission Joint Research Centre in its report "*Access to Digital Car Data and Competition in Aftersales Services*"[66] identifies 3 technical data access points:
   (i) Human-Machine Interface (HMI) – Buttons in the car that are essential for interaction with the driver.
   (ii) In-car data network: This collects data from all mechanical sensors in the car.
   (iii) Geolocation (GPS) data: This is data related to the global positioning system of the car.

[66] Bertin Martens Frank Mueller-Langer, 'Access to digital car data and competition in aftersales services', September 2018.

10. Navigation Data: This is data that is derived from the usage of any navigation system and takes place on the navigation device, images from which are subsequently uploaded to satellites and disseminated to the driver at the appropriate time when the driver is using the navigation device interface. It should be noted that navigation services can easily be delivered through the driver's smartphone, without any need to access the OEM server. Apple and Google provide free navigation apps through their app stores. The usual pricing plan adopted by these navigation services apps gives users free access in return for their location data. Revenue comes from charging service providers for advertising their services in navigation maps. OEMs may use this data and charge users for access to navigation services. Moreover, they benefit from collaboration with a preferred navigation services provider that has preferential access to car navigation data, possibly combined with deeper car data on weather, road, traffic and parking conditions, to feed its own system.

11. Media and Infotainment Data: Media and infotainment devices require access to the HMI and can seamlessly connect cars to cloud-based media services and drivers' home and mobile devices. Many apps would not necessarily be car-centric apps, but would be a different avatar of the mobile app of an entertainment company. There OEM may try to use the best and most popular entertainment apps can be used in-vehicle.

Role of data

12. It is noted that the term 'data' itself is not capable of any definite explanation. 'Big Data' on the other hand, appears to be a meticulously assembled agglomeration of data that is more organised and is distinguished by the 4 'V's - 'Velocity', 'Variety', 'Volume' and the 'Value' that is subsequently derived.[67] In what is one of the most well-structured analysis of 'Big Data' carried out by any antitrust authority[68], Germany's *Bundeskartellamt* has explained 'Big Data' by looking at (a) the types of data, be it 'personal data' or otherwise, (b) the way the data is collated, either in structured format or in another format where it needs to be processed through

[67]Hu, Han, Toward Scalable Systems for Big Data Analytics: A Technology Tutorial, IEEE Access, Vol. 2 (2014).

[68] The US White House had also released a Report titled '*Big Data and Privacy: A Technological Perspective*' that was submitted by the President's Council on Science and Technology to the American President in May 2014. However, this report mostly dealt with privacy from the perspective of civil liberties and did not delve into the issue of technology companies collecting data to refine their services.

algorithms to be of commercial value, and (c) the way it is gathered, either voluntarily or inferred.[69]

13. The role of data mining for commercial activity has only been enhanced over the course of time. Whereas in earlier times, personal data was largely collected by credit information companies who served the needs of the business community by collating data that would appraise the creditworthiness of a person[70].

14. In the present day and age, data serves a multitude of objectives, particularly for e-commerce companies. From being able to refine their products and services that are offered, through constant iteration based on feedback from the data that is collected to pivoting to new markets if the data collected suggests that there is an opportunity in an adjacent market. For instance, mobile network operators can use the data connection which they provide to also gauge the user's location to potentially enter into the market for mapping services71.

15. Drawing from the aforesaid, various instances may occur for which OEMs, technology service providers, and e-mobility platforms may partner together for utilising the benefits of data driving the revenue. Applying superior data mining skills, coupled with machine learning on the "Big Data" have huge potential for driving holistic customer-centric experience. Thus, numerous issues may be surface, a few of which are highlighted herein below:

    (i) Right to access data and retrieve data: This is likely the key right which determines whether the car owner or OEM has access to the data that is generated by the car internal systems. For third parties, the said right to access data rounds up a discussion about off-board access (via neutral servers).

    (ii) Whether data collected for specific, clear and lawful purpose: This would mean that at the time of collection of data, or at the time of purchase of the car, whichever is prior, the car owner should be notified about (i) various purposes for

[69]Competition Law and Data, 10th May, 2016. Available at https://www.bundeskartellamt.de/SharedDocs/Publikation/DE/Berichte/Big%20Data%20Papier.pdf?__blob=publicationFile&v=2

[70]Maureen K. Ohlhausen, Alexander P. Okuliar, *Competition, Consumer Protection and the Right [Approach] to Privac*y, 80 Antitrust Law Journal No. 1 (2015).

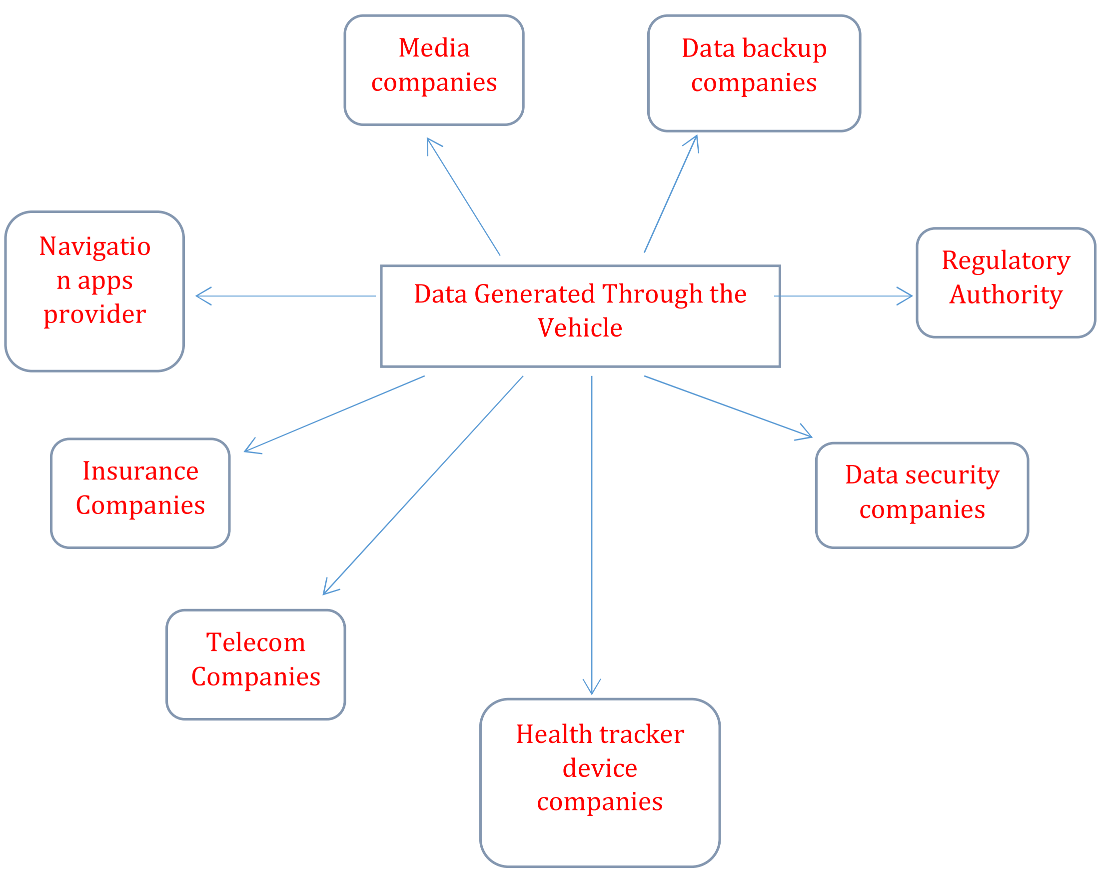
[71]*Bundeskartellamt* paper on Competition Law and Data.

which personal data is to be processed, (ii) categories for which it is collected, (iii) information pertaining to other entities that the data may be shared with. With regard to the limitation period, it may be specified whether such data is stored beyond a period reasonably necessary to satisfy the purpose for which it was initially collected.

(iii) Consent: Whether free and clear consent is provided to the OEM and whether it can be withdrawn as well.

16. The scope of these rights would determine a crucial question for assessing the commercial as well as privacy issues in the long run, including whether the data that is collected by the OEM can be used solely by the OEM or it is owned by the car owners and accordingly, can be ported by the car owner to other stakeholders.

<u>Stakeholders in the ecosystem of car-generated data</u>



(i) OEM/Car manufacturers: Being the designers of the cars and the data architecture as to how data can be collected and ported (if at all), OEMs are in the driver's seat when it comes to information or data about the car.

(ii) Regulatory Authorities: The regulatory authorities have a keen interest in the data that is collected by the OEM. This data can arguable be used to track car emissions and therefore be used in devising solutions regarding environmental pollution. Furthermore, the data from cars can be used to tackle congestion problems and help assist traffic authorities in coming with suitable traffic management systems. Data related to the whether the car is roadworthy can also be utilised when assessing whether certain cars should be allowed to ply on roads. Lastly, data related to health metrics of the car driver can be used to gauge and detect unsafe driving patterns and in turn, provide for safer roads.

(iii) Data Security Companies: The car owners would be interested in the authenticity of the data that is collected by the OEM. Usually, the responsibility to ensure that the data collected is accurate, complete and up-to-date is of the data collector. However, the car owner may decide to port such data to other service providers that are data security companies and rely on them for ensuring the veracity of data collected.

(iv) Health tracker device making companies: Health parameters measurement companies are also one of the stakeholders in the ecosystem of data generated by connected cars. The health data, as ramifications for insurance companies and for law enforcement purposes as well.

(v) Telecom companies: The OEMs do not own or possess any spectrum license which would enable them to establish their own network in the car. Self-driving cars would all need to use 5G and other infrastructure standards and would need to share driving data between them. Accordingly, they would need on services from telecom service providers. As per an EC Report, "*there is strong price competition between telecom operators to obtain preferential B2B contracts with OEMs. That puts OEMs in a powerful market position vis-à-vis telecom operators*".

(vi) Insurance companies: Insurance companies would be concerned about the onset of technological developments in the automotive sector. With vehicle telematics, insurance companies can very easily gauge into the drivers personal driving style, and analyse data to determine the risk profile that may be attributable to such an individual. Take, for instance, on the one hand, the average speed, distance driven and driving frequency, and on the other, the presence of certain features such as lane departure warning, forward collision warning, parking blind spot information and driver monitoring, which would lead to an overall decline in the number of accidents. In turn, the latter would also reduce the quantum of insurance premium that may be charged. However, there is a trade-off. Interconnected cars would allow for more monitoring of the car drivers and accordingly, allow for a more accurate assessment of risks that are not just driver-centric. For instance, the speed of the car, the roads which are being driven on, which areas are accident-prone areas *etc.* and accordingly may charge a higher premium than previously charged with the benefit of more data.

Box 12

Previously, US Fair Trade Commission had blocked a merger transaction concerning $1.4 billion between CCC Information Systems Inc. (CCC) and Mitchell Int'l, Inc. (Mitchell) wherein the entities involved in the market for electronic systems used to estimate the cost of collision repairs, known as "estimatics," and the market for software systems used to value passenger vehicles that have been totalled, known as total loss valuation (TLV) systems.

FTC Launches Suit to Block Merger of CCC and Mitchell, November 25, 2008, https://www.ftc.gov/news-events/press-releases/2008/11/ftc-launches-suit-block-merger-ccc-and-mitchell

(vii) Navigation apps provider: The navigation apps would be of use to the car owner for not just navigation purposes, but also a whole host of other reasons such as information of traffic congestion, parking information, and weather *etc.*

(viii) Media companies: Media companies have an enduring interest in seeking data collected by the car. Considering the substantial time spent commuting by most car owners, media and entertainment options, be it audio or video streaming services, become a key ingredient to in-car experience.

(ix) Data backup companies: Similar to data security companies, the car owner would be interested in backing the data otherwise collected by the OEM. This would ensure that the OEM does not remain the sole repository of the data collected and would assist in the porting of data to other stakeholders, if necessary.

Competition issues that can arise from the perspective of ‘data’ from the vehicle

17. Generally speaking, undertakings use data as products, inputs or entry threshold for competition. Case-by-case analysis is needed in specific cases, such as considering whether data are used as a product or input, whether competition is within the data or for the data, whether data are unique or widely available and reproducible, and the market entry may also be considered.

18. As far as the automobile industry is concerned, the data with certain industry particularity are maintenance technical information. Maintenance technical information is the general term of technical information necessary for motor vehicle diagnosis, testing and maintenance operations in order to maintain or restore the technical condition and working ability of the motor vehicle when leaving the factory, prolong the service life of the motor vehicle and ensure that the motor vehicle meets the requirements of safe and environmentally friendly use.

19. Aftermarket repair and maintenance of motor vehicles shall generally be conducted by qualified technicians on the basis of technical information of specific brands of motor vehicles. Motor vehicle suppliers are, in most cases, the only source of all the repair and maintenance technology information in relation to the motor vehicles of their own brands. If repair and maintenance service providers fail to obtain the technology information necessary for motor vehicle testing, repair and maintenance as well as the replacement of spare parts for motor vehicles, the repair and maintenance services they provide may result in risks such as, amongst others, dangerous driving, high-volume emission and air pollution; meanwhile, the market position of the repair and maintenance service providers may be squeezed, leading to the decrease in repair channels, higher price for repair and maintenance and limited choices for consumers.

20. The availability of aftermarket repair and maintenance technology information as well as the availability of testing instruments and repair and maintenance tools shall be ensured in order for the effective competition in the aftermarket for motor vehicles. These issues may arise as conventional competition concerns in the form of:

(i) Leveraging: Since OEMs manufacture the car, they are best placed to design the car in such a manner that the data collected by the car would be used only by them. If there are no data access points for other stakeholders, this would severely restrict the opportunities that arise from the utilisation of such data collected by the OEM. If OEMs are the only source of access to data, they may have an incentive to use such data in servicing the car owner in downstream markets (that are sought to be served by other stakeholders), to the exclusion of other stakeholders. It should however be noted that it has been pointedly observed by the EC in a report (on access to digital car data) that "*changes in the server ownership structure do not necessarily change the behavioural incentives of the owners. Any firm that operates the data server seeks to maximize profits by playing on the data pricing and access conditions*".

(ii) Discriminatory pricing: Even if this data is made available by the OEMs, they can easily supply it at monopolistic and excessive prices. It is also possible for the OEM to supply this data at discriminatory prices to other players in the downstream markets vis-à-vis its own downstream arm that may be supplied this data by the OEM.

(iii) Denial of market access: Since the OEMs collect the data, they can easily deny it to others as well. The OEMs would not be keen to relinquish their control over such data. A few alternative scenarios have been envisioned by the EC in its report (on access to digital car data). The first among these scenarios prescribes a neutral server wherein the OEMs would transfer their data to such neutral server. Accordingly, the OEMs would not be privy to the use to which the data is being put to. This would also preclude any price discrimination by the OEMs and also alleviate any concerns about leveraging. However, this data would still be sourced from the OEMs and therefore, the concerns about their willingness to part with such data remain in prevalent. The other scenario provides for a bypass server that would completely sidestep the OEM. However, it has been observed by the EC report that "*the operator of that server would simply take over the role of the OEM as data monopolist*". Accordingly, the EC report prescribes several competing bypass servers to choose from.

(iv) Tie-in arrangement: As various products and services get integrated in the automobile ecosystem there is potential for tie-in arrangements without legitimate and objective justifications thereby giving rise to concerns from competition law perspective. For instance, it is possible that at the time of buying a car, the car owner could be required to mandatorily opt for the telecom service provider that has been selected by the OEM to provide data services. This could lead to data plans for the car that are excessive since the car owner has no choice but to opt for the data plan provided. It should be noted that the OEM may decide to make the telecom service provider selected by them as the only telecom service provider that meets all the technical access conditions related to the car.

(v) Personalised pricing: With Big Data being collected by the OEM, it would be relatively easy to discern the data usage patterns that are associated with the car owner – if the benefits generated for the car owner by such data are widespread, then there is a feasibility of price discrimination vis-à-vis other car owners. The fact that a car owner would find it difficult to undertake a whole-life cost analysis at the time of purchase coupled with the fact that OEMs would be better placed to determine the point at which data use by the car owner becomes profitable for the OEM, means that every car owner would be charged a price that reflects their ability to pay. The EC in its report (on access to digital car data) mentions that "*users who obtain high benefits from using the data are charged higher prices*".

21. However, it is noted that this may be rationalised by the OEMs. The OEMs may submit that in the age of Big Data, it is no longer feasible to provide a simple upfront price, especially if they are going to be asked to part with the data collected by them. If the OEMs are going to compete with the other stakeholders when it comes to providing aftermarket data services, they need to be able to provide incentives to the car owners to encourage the car owners to repatriate the data collected back to the OEMs for pricing such aftermarket data services. This would most likely herald the onset of a new pricing structure that would reflect the ongoing relationship between the car owner and the OEM concerned. There may be a lower-than-normal upfront fixed price and subsequent on-going subscription fee that would treat the data as consideration. It has been pointed out by some authors that "*under simple competitive conditions it can be expected that prices for cars (and connected driving) will be higher, if the consumers*

like to keep data for themselves, and lower, if they are willing to provide data to the car manufacturers".[72]

22. It is noted that the OEMs may submit that they cannot possibly practice discriminatory pricing since that would presuppose their dominance in the relevant market for provision of data services. They could argue that there are other service providers that are vying with the authorised telecom service provider to provide data services through the car owner's smartphone, without any need to avail the data provided by the authorised telecom service provider. Therefore, the definition of relevant market becomes critical to sustain a finding of abuse of dominance through personalised pricing.

Box 13

Pro-Competitive v. Anti-Competitive Effects of Potential Conduct of Autonomous Vehicles Manufacturers

Conduct	Pro-Competitive Effects	Anti-Competitive Effects
Tying and Bundling	Besides providing an opportunity for combining multiple products together with one, it also provides for third party integration options (access to software updates, data protection schemes, *etc.*) to OEMs.	Complexity of specifications in design and systems developed for these vehicles may provide an opportunity to the OEMs to place conditions restricting availability of replacement and repair parts from third party competitors.
Limited Access to Data	Improved quality of the good with the use of prediction and self-learning algorithms targeting user expectation, behaviour & predicting faults. Placing a limitation on data can prevent data privacy liabilities.	Refusal or discriminatory access to Data (favouring parties, or exorbitant pricing, *etc.*)

Source:*https://awards.concurrences.com/IMG/pdf/25._autonomous_vehicles_at_the_anti-trust_crossroads.pdf?56558/a4f2defef87a83200125729e749 c3fb93f6a0a6c*

[72] Wolfgang Kerber and Jonas Severin Frank, Data Governance Regimes in the Digital Economy: The Example of Connected Cars.

23. In China, according to the Access Management Regulations for New-energy Vehicle Manufacturers and Products, "new-energy vehicle" means a vehicle that uses a new type of power system and is entirely or mainly driven by new energy, including, amongst others, pure electric vehicles, plug-in hybrid vehicles (including extended range vehicles), pure electric vehicles and fuel cell vehicles. In 2019, the production and the sales of new-energy vehicles in China were 1.242 million and 1.206 million respectively. Among them, 1.02 million pure electric vehicles were produced, with a year-on-year growth of 3.4% and 0.972 million were sold; the production and sales of plug-in hybrid electric vehicles were 0.22 million and 0.232 million respectively; the production and sales of fuel cell electric vehicles were 2,833 and 2,737 respectively.

24. In the research and development and production of new-energy vehicles, it is a common way to set up joint ventures. Generally speaking, joint ventures involving only joint research and development usually do not generate the effects of eliminating or restricting competition. In merger review, the following two aspects may be focused on:

   (i) Whether the joint venture can make the parties of the joint venture gain or enhance market strength by restricting independent decision-making and jointly controlling the important assets or competitive research and development results of the parties of the joint venture; whether the parties of the joint venture have reached an agreement to delay the application of research and development results, thus slowing down the pace of market innovation.

   (ii) Whether the joint venture is conducive to improving research and development efficiency, speed and success rate, reducing research and development costs and passing the benefits brought by the above efficiency to consumers, thus having a favourable impact on competition.

Inter-operability of charging Infrastructure

25. Electric vehicles (EVs) are gaining momentum in the market led by growing concerns for environment and energy security coupled with evolution of technological advancement and business models. This is trying to match with ever-increasing consumer expectations that are transforming the automotive business. At the helm of this upcoming trend is the need to lay new-age electric charging infrastructure, which

has a potential for network of infrastructure similar to those of power and telecom sectors cabling network. There are many advantages of this against the conventional fuelling requirements of designated location, these charging stations may be set-up at homes, residential colonies, office complexes, shopping malls, *etc.* For mass adoption of EVs, a wide spread and easily accessible charging network is critical.

26. For this, at the outset two upcoming challenges may be faced by the industry in the near future. Firstly, inertia amongst automobile companies reaching to a consensus amongst themselves to adopt a standardised, uniform charging ports and similarly charging stations for EVs developed by them; and secondly, laying this infrastructure on sharing basis. This becomes more important in an era marked by movement towards the electric mobility with government focussing policies towards promoting EVs and offering incentives for such mobility within the industry in response to sustainability concerns.

27. This advancement towards EVs warrants the need to address key consumer adoption barriers to such vehicles which includes concerns such as the lack of charging infrastructure. This resonates with problems created earlier to adoption of alternate fuels similar to those that may have been created earlier, for instance, at the time of adoption of CNG, Indian customers suffered from poor CNG stations network resulting into customers waiting in long queues for filling up gas. Challenges of ease of accessibility and interoperability of charging networks shall be the drivers for EV demand, ultimately a concern for not only general public but also various governments'. Coupled along with this is the issue of charging locations for public charging station. This may further facilitate the introduction of digital solutions and load shifting incentives (to combat electricity outages).

28. This industry of the global EV charging network was valued at \$3.8 billion in 2019 is to soar to \$25.5 billion by 2027[73] but for this to see the fruition requires adoption of low electricity charges, thus requiring the government to act on at least two fronts, i.e., automobile and electricity. In this regard, host of issues related to competition at the intersection of these sectors emerges. With regard to barriers to entry to the charging

[73] Jordan Ramer, ' Bringing Electric Vehicle Charging To Multifamily Housing', Feb 25, 2021 as available on https://www.forbes.com/sites/forbesbusinesscouncil/2021/02/25/bringing-electric-vehicle-charging-to-multifamily-housing/?sh=446cbb003a05

infrastructure market, includes charging stations at expressways, high connection costs, exclusive contracts and lack of choice. Moreover, for providing on-street charging infrastructure, a public-private partnership may be envisaged to offload the onus of investment to fund, deploy and operate. Amongst other challenges linking public chargers with an IT network for interoperability, insufficient information about the locations and availability of charge points, questionable future of interoperability between charging networks for different models of vehicle, differential pricing based on speed of charging and prices and various methods of payment may cause instability in the mind of consumers. This may also impact real estate and may at some stage residential & commercial complexes be offered with charging infrastructure as an incentive to market.

29. Similarly, from consumer perspective, availability of choices of repairers can be one of the driving factors for acceptability of EVs among consumers. No doubt, this conventional problem of allowing third party repairers would find its way into EVs segment also. However, this may escalate the existing situation as the complexity of the technical know-how is likely to be on a higher pedestal for such technologies. On one hand, both OEMs and technology development partners would like to protect their investment in R&D, on the other, these may risk running counter to consumer choices. Thus, another issue which may impair the consumer's choice of repairers with respect to EVs is imposition of physical restrictions, embedded in the product design, by OEMs and technology development partners. Such imposition may not only act as barriers to entry for independent repairers but also hinder procuring spare parts from independent sources. This may also become critical when the ability to open (remove or replace) a device/component is restrained by the OEM or the technology development partner.

30. To further this transition toward EVs, the stakeholders would need to adopt a dynamic ecosystem that while critically assessing should also evaluate the development of new solutions from R&D to financing to ownership to inculcating the same within the system. Needless to say, such transition would ebb and flow while unlearning traditional approaches to cater this simultaneous shift towards a multifaceted mobility landscape from the vertically integrated automotive industry. No doubt, with growth of the EV industry, interoperability will remain a significant driver to the development of

vehicle communications to charger, network and grid demanding open and harmonised standardisation for the promoting and fostering the interest of consumers.

Emergence of New Business Models

31. The latest addition of technology intersection in automobile sector is the emergence of shared mobility models. This is self-explanatory and is based on sharing by users on as-needed basis[74]. This includes models based on asset (vehicle) owned or not, may be for a common route to many users or personal but temporary access to the asset[75]. This can be in the form of subscription/leasing/rental-based modes. Most popular amongst these are ride splitting used by cab aggregators.

32. Aggregator model follows the approach of focusing on widening the outreach. These are usually ecommerce platforms through which service providers gain visibility and reach out to end-consumer (passenger in this case). At a time, when cab market largely remained unorganised and working on ad-hoc models, Cab aggregators via disruptive technology entered the market and achieved what the sector otherwise was not able to cater to the passengers – last mile connectivity, cashless payment facilities, getting a ride at home, information about the drivers and real-time tracking of routes.

33. This helped tide over the issues of unnecessary bargaining on fares, lack of courtesy and dubious security which was a significant improvement from customer point of view. On the other hand, it opened the doors of new opportunities for drivers as well. Several benefits are also bestowed upon drivers such as steady flow of businesses, flexible working hours and transparent price from pick-up to dropping of customers. The pricing may vary depending on timing and distance. This was further geared towards user experience by offering them incentives to buy internal schemes making rides cheaper and in ultimately offering these cabs as cheaper than owing cars and getting rid of parking hassle. The whole user-experience increased manifold which led to the upsurgence of this business model.

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[74] NITI Aayog, Rocky Mountain Institute, and Observer Research Foundation. Moving Forward Together: Enabling Shared Mobility in India. 2018; as available on https://www.niti.gov.in/writereaddata/files/document_publication/Shared-mobility.pdf last accessed on July 02, 2021

[75] Ibid.

34. This business model catered to both individual and corporate mobility requirements and added to transformation in terms of urban infrastructure. However, adding ease of convenience to passenger was one thing but facing severe criticism from local and unorganised sector was another. Mom and Pop model has been slowly eroding away in this industry.

35. Of late, passengers have raised concerns about certain unregulated aspects such as surge pricing, excess charges *etc.* The cab aggregators' response to surge price condition, is to balance the spike in demand and supply, thereby, offering an incentive for drivers to be mobilised to another location[76]. This model was further enhanced and many applications were developed ranging from sharing rides to delivering food.

36. Even the cab aggregators have tie-ups with vehicle rental companies, which maintains a large fleet of vehicles, and provide access to vehicles, through their rental programs, to not only riders but also drivers.

37. In the context of Brazil, it is noted that in 2018 CADE issued Working Paper No. 001/2018, entitled "Competition Effects of the Sharing Economy in Brazil: Has Uber's entry affected the cab-hailing app market from 2014 to 2016?"[77]. The paper assesses the competition effects of Uber's entry into the incumbent cab-hailing app market. A fixed-effects model was applied to a panel data set of 590 municipalities and 36 months, covering the 2014-2016 period.

38. Applying the sample to the 590 municipalities, the results showed that Uber's entry into the market resulted in an average reduction of 56.8% in the number of rides from cab-hailing apps in the cities where the platform operates; additionally, every 1% increase in the number of Uber rides represented a 0.09% decrease in the number of cab-hailing app rides. These figures, together with some descriptive information on the dynamics of the number of rides of companies in the sector, show that Uber not only competed with cab-hailing apps and attracted part of their users, but also attracted new users who were not cab-hailing apps' customers. It has also been verified that, in most municipalities,

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[76] https://www.uber.com/en-GB/blog/uber-dynamic-pricing/
See also https://help.uber.com/riders/article/why-are-prices-higher-than-normal---?nodeId=34212e8b-d69a-4d8a-a923-095d3075b487

[77] http://en.cade.gov.br/about-us/dee/working-paper-uber_01-2018.pdf

taxi apps did not react to the increase in competition, for example, by offering discounts on rides.

39. On the other hand, when investigating the competition effects of Uber's entry taking into account only Brazilian capitals, the magnitude of the effect of Uber's entry decreases (36.9% in the number of taxi rides), an indication that the competitive effect tends to be smaller (in percentage terms) in cities where the market is larger. It was also found that there is an important spatial heterogeneity in the competition effects of the platform when comparing the markets of the capitals of the North and Northeast regions with the capitals of the South, Southeast and Central West regions. This may be explained, to some extent, by when Uber entered in those regions. In the group of capitals of the North and Northeast regions, a late entry of the Uber app is observed (between March and December 2016), whereas the entries began in May 2014 for the group of capitals of the South, Southeast and Central West regions.

40. In this regard, it is possible to compare the results of the effects of a recent entry (less than a year ago) of Uber vis-à-vis an entry that occurred more than two years ago. It is noteworthy that when only capitals of the South, Southeast and Central West regions are examined, the effect of Uber's entry on cab rides is less intense (reduction of 26.1%) than in the North and Northeast regions (reduction of 42.7%). This evidence indicates that, initially, Uber's entry can have a huge effect, substantially reducing the number of cab rides, but, over time, a gradual recovery in the number of rides of the incumbent sector takes place.

41. The results suggest that only in the group of capitals of South, Southeast and Central West regions was detected that Uber's entry caused a reduction in taxi fares (reduction of 12.1%). This result indicates that the cab-hailing app sector reacted, offering discounts in fares after a longer period of exposure to a competitive environment. In this regard, it is possible to verify a growing rivalry over time between the two types of apps, where Uber's entry causes a reduction in the number of cab rides, reactions via price reductions through discounts and, finally, a recovery in the number of cab-hailing app rides.

42. Finally, it is important to note that, in addition to generating benefits to consumers and encouraging the entry of suppliers in the ridesharing market, such innovations resolved

some market issues in the sector, making the current regulation of taxi services outdated. The recently enacted Federal Law 13,640/2018, which outlines how ridesharing services operate in the country, was parsimonious in that it included safety rules but did neither impose major regulatory barriers to entry nor restrictions to pricing freedom. In the same regard, municipal entities should avoid measures that hinder the operation of such services via apps. In a complementary way, it is necessary to improve the debate towards a gradual deregulation of taxi services, especially on issues related to barriers to entry and pricing freedom. Such deregulation can be thought of, for example, only for the radio taxi segment via Internet apps. Thus, it would be possible to encourage more competitive business models for apps, bringing benefits for the consumer in terms of more innovative services, with improved quality and security, lower prices and more options.

43. For aggregator model, the FAS Russia cited certain developments. In November 2017, the FAS Russia approved the Yandex/Uber merger with remedies, according to which the combined company was to provide the most complete and accessible information to users about the legal entity carrying out transportation with the preservation of the travel history; not to prohibit partners, drivers and passengers from working with other aggregators of taxi services. As a result of the transaction, on the territory of the Russian Federation, the technological functioning of the taxi aggregators under the Yandex. Taxi LLC and Uber Russia brands is provided by Yandex. Taxi LLC, which is controlled by the Yandex group of companies.

44. From July 2019 to May 2020, the FAS Russia received four applications from “MLU B.V.” (controlled by the Yandex group) to acquire rights to determine the conditions for carrying out entrepreneurial activities in relation to Russian legal entities operating as a taxi aggregator “Vezet”. The first three applications were withdrawn by the applicant, the fourth application, dated 15 May 2020, was examined on its merits. Considering the application, the FAS Russia found out that the total share of taxi aggregators “Vezet”, “YandexTaxi” and “Uber” is 70% of the market in the Russian Federation.

45. The FAS Russia rejected the application, since if the application had been satisfied, the largest taxi aggregators “Vezet”, “Yandex Go” and “Uber” would have won the dominant position in the market.

46. Despite of this, on February 2, the media announced that the Yandex group was making a deal to acquire the assets of the "Vezet" taxi aggregator. The FAS Russia requested relevant documents from "Yandex" on this deal.

47. The analysis of the relevant data showed that the transaction didn't require approval from the competition authority on the grounds of Part 1 of Article 28 of the Law on Protection of Competition, since the value of the assets of the acquired entities was less than 400 million Rubles.

48. FAS Russia note that the acquisition of the aggregator of the taxi "Vezet" by "Yandex" may negatively affect the level of economic concentration in the market of taxi aggregators. The 5th Antimonopoly Package proposes introducing the requirement for mandatory approval of a transaction if its total value exceeds 7 billion Rubles (without a condition on the threshold value of assets of the object of economic concentration). This requirement will allow in the future to avoid situations in which the deals between large companies (leading to an increase in economic concentration) are conducted without the approval of the FAS Russia on formal grounds. (Vezet brands include RedTaxi, RuTaxi, *etc.*).

49. The refusal was due to the fact that, as a result of the analysis of the taxi aggregator market, it was established that the combined share of Yandex and Vezet would amount to 70% of the market within the borders of the Russian Federation, which would lead to the emergence of a dominant position of the combined company. The FAS Russia did not receive any other requests for economic concentration on the taxi aggregator market.

50. Apart from the above, it prepared the methodological recommendations that contain a description of the boundaries of the taxi aggregator market, the principles of its functioning and a general description of the interaction of market participants. However, in general, they boil down to the fact that the regional offices of the FAS Russia (84 offices in each Russian region) on their own find the market participants of the taxi aggregators on the territory of the respective constituent entities of the Russian Federation, send them a request according to the established form, carried out the reduction of the received answers to a uniform, predetermined form, and sent the results to the central office of the FAS Russia. This approach is due to the fact that many

persons operate on the Russian market of taxi aggregators on the territory of one or several constituent entities of the Russian Federation. Thus, centralised data processing is necessary for a complete and comprehensive study of the market, as well as to prevent double counting of the volume of services provided in the case when a market participant operates on the territory of several constituent entities of the Russian Federation or when several participants operate under one brand, or in other cases.

51. On the issue of pricing, since 2012, following the emergence of taxi aggregators, the passenger taxi market has grown annually, with market growth driven by an increase in trips organised by digital taxi aggregators. It is important to note that digital aggregators not only provide informational interaction between passengers and carriers, that is, they perform the functionality of traditional control rooms, but also provide market participants (carriers and passengers) with additional functionality that increases the consumer value of the service (positioning, route formation, reducing waiting time, reducing vehicle downtime, *etc.*).

52. There are two types of prices in the taxi aggregator market and in the taxi transportation market, which are interconnected today—the commission that the driver pays and the cost of the trip itself, which the passenger pays.

53. In the course of market analysis, a survey of taxi aggregators was conducted, which showed that almost all aggregators set a commission as a percentage of the cost of a trip. In some cases, the taxi aggregator's commission charged to drivers may be fixed. Considering that this approach to pricing has developed over the past few years and is, in fact, a custom of business turnover, and also, taking into account that in various other markets this approach is also practiced (for example, bank transfers or booking tickets, hotels, *etc. etc.*), the FAS Russia believes that the formation of the taxi aggregator's commission as a percentage of the price of the trip itself is not a negative factor affecting the market and consumers, as this is how the market functions. It should be emphasised that the FAS Russia is currently investigating the pricing of the taxi aggregator commission in terms of compliance with antimonopoly legislation requirements. Regarding the pricing of the cost of the trips themselves, including the issues of driver income in this regard, the FAS Russia is currently studying this issue, taking into account the acute social orientation of the problems associated with the activities of the participants in the taxi aggregator market. At the same time, it should

be emphasised that to date, the FAS Russia has not identified any specific violations of antimonopoly legislation on the Russian market of taxi aggregators.

54. Taxi/Cab aggregator provides services throughout the trip and after its completion. In particular, it is possible to track the route of movement during the entire trip, change the route (in certain cases with the corresponding recalculation of the cost of the trip), add stops, evaluate the trip after its completion, leave comments, and also contact the support service in case of disputable situations.

55. It is important to note that all the above operations of the aggregator are carried out using server capacities that ensure the operation of a large number of different information systems and the necessary software, such as navigation service, map data, traffic jams, *etc.* At the same time, the load on the aggregator's servers increase with an increase in the number of travel orders. The increasing load on the servers leads to the need to increase server capacities at a corresponding cost.

56. Taxi aggregators also incur a number of variable costs, which directly or indirectly depend on the duration and cost of trips, in particular:

(i) the cost of servers to calculate the cost of the trip. When calculating the cost, a graph is created with the route of the path, while the load on the server depends on the length of the route, since the route is checked and recorded all the way, and according to the results of the trip, the cost of the trip is recalculated in certain cases;

(ii) compensation for unpaid orders. Taxi aggregators compensate carriers for the full cost of the trip, the payment of which should have been made by bank transfer, if it was not possible to write off the cost of the trip from the passenger;

(iii) the cost of transferring payment to the carrier after receiving funds from passengers in case of non-cash payment for the trip. This cost may also depend on the amount transferred;

(iv) discounts on rides for passengers and commissions for drivers, as well as promotions aimed at attracting new users;

(v) expenses for the support service for passengers and drivers. The amount of helpdesk services and therefore the associated costs may also depend on the length of the trip.

57. The activity of taxi aggregators is based on finding a balance between the conditions that suit the passenger (cost of the trip, time of car delivery, *etc.*) and the driver (cost of the trip, minimisation of taxi downtime, *etc.*). The need to find such a balance is due to the possibility of free and prompt switching between the services of taxi aggregators, both on the part of drivers and on the part of passengers. Thus, the aforementioned features of the functioning of the taxi aggregator market today are important market mechanisms that allow maintaining a balance in pricing.

58. In the Indian context, as many as 10 cases have been received, till date, in the radio taxi industry by CCI. These have been filed by the traditional radio taxi players against online cab-aggregators (Ola and/or Uber) alleging abusive low pricing strategies (predatory pricing) by the online cab aggregators.

59. Most of these cases were closed at the *prima facie* level as the CCI did not find any of the cab-aggregators to be dominant in the relevant market and in the absence of dominance, an inquiry with regard to alleged abuse could not have been looked into as per the scheme of the Act. However, in one case[78] concerning abuse of dominant position by a domestic cab aggregator (namely, 'OLA') in the relevant market of Bengaluru (a city in Karnataka, India), CCI directed the matter to be investigated by the DG. The DG, after detailed investigation, was of the view that OLA did not hold a dominant position in the relevant market because of the presence of competitive constraints posed by UBER (a global cab aggregator).

60. While assessing the dominance of OLA, CCI applied a nuanced approach considering the challenges posed by traditional antitrust tools and approaches. CCI disregarded high market share held by OLA, realising that over-reliance on market shares in the assessment of such cases may lead to absurd outcomes. CCI noted that market share is but one of the indicators for assessing dominance, and the same cannot be seen in isolation to give a conclusive finding. Rather, CCI relied on factors such as strength of

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[78] Case No. 6 & 74 of 2015, *Fast-Track Call Cabs and Anr.v. Ani Technologies Pvt. Ltd.*, 19th July 2017, available at http://www.cci.gov.in/sites/default/files/6%20%26%2074%20of%202015.pdf.

network effect, entry barriers, and assessment of strategies adopted by the players to ascertain dominance. Based on these factors, CCI found that OLA did not hold the position of dominance in the relevant market for '*radio taxi services in Bengaluru*' as it was not able to act independent of the competitive forces in the market.

61. It was further noted that in two-sided markets, network effects may enable a large platform/network to become dominant and insulate itself from potential competition as entrants may find it difficult to challenge the large incumbent. However, there can be certain countervailing market forces that reduce the ability of even a very large platform to insulate itself from competition. CCI noted that despite OLA having the largest network, the network effect was not strong enough to deter entry and rapid expansion of other big competitor 'UBER' who was competing fiercely with OLA. Further, there were no significant costs preventing consumers from switching between different radio taxi apps. The radio taxi apps are offered for free and can be easily downloaded on smartphones and can coexist on the same handset, thus, multi-homing was found to be possible for both drivers and riders. CCI also noted that the competition in the relevant market was still unfolding and decided not to interfere in a market which is yet to fully evolve.

62. Recently, CCI also had an occasion to look at a similar case where the alleged anti-competitive conduct of UBER was in question. Though this case was closed by CCI at the *prima facie* stage on account of UBER not being found to be holding a dominant position, the matter was directly referred for investigation through a direction issued by the appellate tribunal, which was affirmed by the Supreme Court of India. In this case, CCI found the radio taxi market in Delhi-NCR to be competitive and UBER was not found to be dominant because of the presence of OLA. In the absence of dominance of Uber, examination of abuse or any analysis of pricing strategy by Uber was not carried out as it was not warranted under the provisions of the Act.

63. Further, as regards strategies of UBER leading to *de facto* exclusivity of drivers in the market, UBER alleged that cab aggregators operate at below-cost pricing strategy (because of the heavy incentives to drivers and discount to riders) and their pricing strategies are not based on efficiencies, the aggregator justified the discounts and incentives to be part of the overall network expansion strategy.

64. CCI observed that given that a cab aggregator competes in the relevant market on the network, and its operational efficiency is directly proportional to the network strength it has, it may be counterproductive for an antirust regulator to intervene in such an instance. Thus, on a collective assessment of various facts and evidence, the CCI did not find merit in the argument of Meru that the incentives and rating mechanism adopted by UBER for its driver partners led to any appreciable adverse effect on competition in the market.

65. Besides, in the year 2017-2018, CCI had also looked at cases[79] where dominance by OLA and UBER has been alleged collectively and/or as part of the same 'group' pursuant to common shareholding by some investors (e.g. Softbank). However, there was no material on record to suggest that competition between OLA and UBER had been compromised because of the common investments.

66. Besides the above, a study on cab aggregator is also underway under the aegis of CCI, to understand the competition issues including surge pricing.

67. Before parting with this section, a word on how a structural change in customer identity is being driven, the same can be witnessed by replacement, slowly, of individual vehicle buyers by those possessing large countervailing buying powers. These buyers would purchase or already own large fleet (fleet operators) and this buying is driven by mobility-on-demand services (shared mobility). Such business model would bring along with itself risks entailing: cyber, critical infrastructure risks; reputational and product recall risk among others. Another variation that has already spurred up is the new distribution channel of 'pay-per-use'. In this category, selected vehicle features (tailor made or rarely demanded yet requiring standardisation) can be prescribed/modified as pay-per-use for certain groups of vehicle owners. These may have variations in the form of software and sensor capabilities that may be developed in the future; needless to say, such requirements in terms of hardware capabilities already exist. Take for instance, cars with sunshades, four-seater passenger vehicles being converted to use only for two; interior functions - massage, park assistant and 3D sound; performance features - battery range; exterior functions - infrared/laser light, rain sensors.

[79] Case Nos. 25, 26, 27 & 28 of 2017, decided on 20.06.2018.

68. Taking these forward with a caution for competition regulators is crucial as their market disruptive impact is already being felt. Undoubtedly, they offer benefits to customers but they cannot be permitted to be unregulated in their growth and the same ought not be addressed with one-size-fits-all approach.

Box 14

Ride Sharing Regulations in India

The Ministry of Road Transport and Highways issued the Motor Vehicle Aggregator Guidelines 2020 as per the requirements and provisions of the Motor Vehicles (Amendment) Act, 2019 and further as per the amended Section 93 of the Motor Vehicles Act, 1988. The objective of issuing these guidelines is to regulate shared mobility in terms of fares, drivers' welfare, evolving concepts like pooling and ride sharing and reducing traffic congestion and pollution *etc.*

Source: *https://pib.gov.in/Pressreleaseshare.aspx?PRID=1676403*

Besides, Indian states also brought out certain guidelines in shared mobility services. Goa Transport Authority issued *Guidelines for Taxi Operator/Radio Taxis/Rental Car and Taxi App Aggregators in the State of Goa* for smooth conduct of the business of Radio taxi and App Aggregator in 2019.

Source: *http://goaprintingpress.gov.in/downloads/1819/1819-50-SI-OG-0.pdf*

In 2016, the State of Karnataka came up with the *Karnataka On-demand Transportation Technology Aggregators Rules, 2016* applicable to Aggregators operating in the State of Karnataka. After coming of Motor Vehicle Aggregator Guidelines 2020, the State of Karnataka decided to amend 2016 rules accordingly.

Source:*https://www.thehindu.com/news/cities/bangalore/state-govt*-to-amend-taxi-aggregators-rules-based-on-centres-

Impact of Covid-19 on Auto Industry

69. Covid-19 pandemic continues to plague global economies. Emerging as a disrupter for global supply chains it has carved its way through to stirring a global demand shock. It placed an intense pressure on the industry already plagued with dwindling demand.

70. Automobile industry not only contributes to upstream but also downstream components of economic growth. The interconnectedness of various sectors of industries for logistics and outreach relies heavily on auto industry.

71. Industry has been witnessing unprecedented trends even before the pandemic in form of autonomous, electric and shared driving. In a response to pandemic, automobile industry is recouping but for OEMs with low liquidity which may not survive the duration of this pandemic it may be time to resort to additional source of funding. At the same time, it cannot be lost sight of the fact of loss of supply lines, delay in production and assembly lines due to lockdown like restrictions around the world due to the pandemic. More so, in situation of constant decay in capital and cash inflow resulting from plummeting demands, with firms having to bear the burden of clearing

72. In China, in the first quarter of 2020, the number of notified undertaking concentration cases in the automotive sector decreased significantly compared with the previous year, with a year-on-year decrease of about 50%. After that, the number of notifications in that sector gradually increased to the normal level.

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CHAPTER 9 INTERFACE WITH IPR

1. The past century has been a witness to economic growth driven by improvements in technologies across different sectors like agriculture, computing, health, communications and more particularly the automobile industry. The change in technologies in automobile industry started becoming noticeable since it brought remarkable improvements in day to day lives and human activities. With the adoption of innovative communication technologies, the past century also ignited the discussions of not only leapfrogging into the phase of artificial intelligence but also blending the same into automobile industry. This opportunity brought significant investments in Research and Development (R&D) activities particularly the auto component segment of the industry. The automobile industry, being one of the front-runner candidates, led this transformation ranging from cutting-edge technology for engines, passenger safety measures, GPS based control, braking sensors to autonomous (self-driven) vehicles, fuel efficiency, emission controls *etc.* The plethora of these innovative activities within the sector, at the same time, also required huge cost towards R&D processes, thus warranting protection and security of such rights, *inter alia*, Intellectual Property (IP) rights. In order to reap the full benefits of their inventions and focus more on R&D to make peoples life easier and comfortable, such protection of IP Rights became absolutely essential not only for fostering innovation but also competition.

2. The protection of IP rights led to the surge in restrictive practices, mostly on the part of OEMs, generally in the form of exclusive distribution or tying up arrangements or causing restriction in terms of production and supply or exercising control over duties, *etc.* which drew the ire of different competition agencies worldwide. The rationale for such practices is attributed to (i) safeguarding the interests of OEMs due to concerns about proliferation of spurious/fake products and (ii) protecting the interest of consumers; otherwise, these fake products may affect the efficiency, fitness and longevity of the vehicle, which ultimately affect the brand image of the OEM/brand.

3. This interface between the protection of IP rights and measures taken by the IP rights holder (like OEMs) presented a so-called dichotomy between the IP and Competition laws in different jurisdictions. However, this is not the correct picture since interests of consumers and fostering innovation are the mutual bases of Competition and IP laws.

The ultimate goals of both are the same but approaches are different. The IP rights are for promoting and encouraging innovation based on recovering cost and expenditure incurred by the innovator in R&D. On the other hand, the competition law focuses on retaining and increasing competition by preventing and penalising the anticompetitive arrangements and combinations. Moreover, securing the innovation and the economic interests of the innovation creators for betterment of the industry are of paramount interest to regulators be it competition agencies or authorities laying automobile norms.

4. In the past, the enforcement experiences in different jurisdictions have revealed that there are practices adopted by OEMs, like restricting the sale of spare parts by their OESs in aftermarkets or authorised dealers of OEMs, restricting Over the Counter sales by authorised dealers and restricting the availability of diagnostic tools/catalogues/technical manuals to independent repairers or sale in aftermarkets. This has led to competition concerns since these restrictive practices impairs the ability of players in aftermarkets in providing repair and maintenance services for want of spare parts and diagnostic tools and thereby, restricting the choice of consumers in getting their vehicles maintained and repaired.

5. In light of this, an intersection of Competition law and IP rights in automotive industry now casts critical yet interesting challenges ranging from IP rights over mechanised products, technology and for future data generated *via* smart apps (as may be installed in the vehicles) and autonomous (self-driven) vehicles. To consumers, most features offered by various OEMs may seem similar, however, the proprietary information required to develop these products may vary and especially in case of autonomous vehicles and technology associated which is a bundle of proprietary information only. The vehicle information is an essential data for its correct diagnosis. The access to such data may be required by the owners (generators), players in the aftermarkets for repair and maintenance and law enforcement. Therefore, the handling of issues related to autonomous vehicles may require a mature position of antitrust agencies in the event of exclusionary practices in respect of aftermarket players.

Box 15
"*[C]ars and refrigerators, have their own patent landscapes that the system leaders could simply eliminate. Years or decades of investment in R&D could be lost because the device producers in future need to provide interoperability to their customers, and hence need to connect to the e-ecosystems and thus possibly surrender their property rights to the gatekeepers. Indeed, non-assertion clauses can, if they are wide, eliminate the incentive to conduct R&D, if the firm knows that it can still not prevent a firm to enter the market. Cloud providers may with the use of these clauses and the data advantage become very potent competitors to any Cloud user. In the flow of data, the device producers and/or the system leaders will hold some intellectual property rights, such as sui generis database protection*."
BRICS Digital Era Competition: A BRICS View, 2019

A. Brazil

6. As previously mentioned, Brazil had an important case involving intellectual property rights, more specifically, design protection on car parts. This case was important to shed a light on the market power of the OEMs on the aftermarket segment.

7. Besides this case, IPR is an important matter on the automotive market and it is possible to foresee two major concerns in a near future:
   (i) Associative contracts involving new technology on the automotive sector and
   (ii) Abuse of dominant position based on IP rights.

8. Regarding the contracts involving new technology, as previously mentioned on this study, the automotive market is very dynamic, and technology is an important differential between the products which are brought to the market on a daily basis. However, it is important to stress that there are two technologies that tend to be turning points in this industry, the first is the change of the energy source, in which electricity might dominate the market in the short term. Producing parts such as batteries which are economic, safe and environmentally acceptable is not an easy task. Some firms may opt to invest in R&D (Research & Development) on these technologies through joint ventures or other cooperative agreements.

9. In a national level, Brazil has experience with its Proalcool Program that dates back to the 1970s, in which sugarcane was used to produce ethanol and until nowadays it is still an important source of fuel for cars that circulate in Brazil. The creation of networks of

researchers that share information and advancements was an important step for the diffusion of this source of energy. It goes without saying that to reproduce the experience of a network in a global level would be a complex challenge.

10. In a competition perspective it is important that the companies involved are transparent about how the joint venture may operate and that the patents and technology that is developed is available to the society and to other companies in a competitive way, for example, if the companies decide to license the technology they own, that they establish reasonable prices and do not discriminate companies in an anticompetitive way.

11. The second technology that is improving is related to connected cars and, in a matter of time, the driverless cars. In this scenario it is important to make technological developments available to the society as a whole, at least in a way that when “cars talk to each other” they are able to understand the information that is being received and at the same time provide information that is accessible to other. Eventually, cars will also connect to the petrol and electric stations, gates, roads, parking systems, red lights and so on. The creation of standards might help a more efficient communication of the car with its surroundings and allow use of cars, buses and lorries in a way that we cannot imagine. In a scenario where cars communicate with each other, the worst scenario is to imagine two cars colliding because they were not able to communicate with each other since they use different systems or languages. Therefore, in a competitive perspective it is important to guarantee that the technology will have a circulation flux in which competitors are not being discriminated.

12. The abuse of dominant position caused by IP rights is an important theme that has been discussed in several markets, in most of the cases the focus has been on the patent system and its relationship with the antitrust. It is important to stress that the antitrust and the intellectual property systems have found harmony in most of the situations in which it is foreseen that granting exclusivity for a certain period of time is an incentive to development of technology that benefit the society as a whole.

13. However, the antitrust recent history has situations in which the owner of a patent abuses of its dominant position and damages the equilibrium between the IP system and antitrust. Moreover, it is also important to understand that IP rights are more complex

than the patents systems, involving copyright and the protection of software, data and several other ways.

14. In this scenario, it is important to stress that the use of data by apps and agents in the automotive sector may increase in the next few years, especially considering the growth and the importance of the Artificial Intelligence (AI) in this market.

15. Therefore, it will be important for the antitrust agencies to monitor the automotive market and ascertain if the market practices involving new technologies are competitive, and if they are eventually not, it is necessary to understand how to enforce decisions that re-establish competition and at the same time does not inhibits the advance of technology.

B. Russia

C. India

16. In India, IP protection, *inter alia,* falls under Copyright Act, 1957; Patents Act, 1970; the Designs Act, 2000; the Trade Marks Act, 1999 and the Geographical Indications of Goods (Registration and Protection) Act, 1999.

17. Under the provisions of Section 3 of the Act, it is provided that the provisions prohibiting anti-competitive agreements, would not restrict the right of IPR holders to restrain infringement of, or impose reasonable conditions, as may be necessary, for protecting any of its rights which have been or may be conferred under certain specified IPR statutes. However, IP laws do not have any overriding effect on competition law. The extent of *non obstante* clause in Section 3(5) of the Act is not absolute and the protection provided thereunder is statutorily circumscribed within the parameters noted earlier. As pointed out, the provision enables the IP right holder to impose reasonable conditions, as may be necessary, for protecting such rights.

18. In Shamsher Kataria case (*supra*)[80], the car manufacturers claimed that 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. CCI observed that while determining

[80] At present, the matter is sub-judice and pending at the Hon'ble Supreme Court of India.

whether the dispensation under Section 3(5) (i) of the Act is available or not, it is necessary to consider, *inter alia*, the following:

(i) Whether the right which is put forward is correctly characterised as protecting an intellectual property; and

(ii) Whether the requirements of the law granting the IPRs are in fact being satisfied?

19. After analysis of the material placed on record with regard, CCI held that the mechanism enshrined under Section 3(5) (i) of the Act was not available to those OEMs for the reasons that 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 and also that they had failed to show that their restriction amounted to imposition of reasonable conditions, as might be necessary for protection any of their rights.

20. Further, in the Indian context, it is noted that at present, the majority of patent applications filed by automobile companies fall under the categories of mechanical engineering, in areas like arrangement or mounting of propulsion units, transmissions systems, instrumentation for vehicles, conjoint control of drive units, arrangements in connection with cooling, air intake, gas exhaust, or fuel supply of propulsion units in vehicles[81]. As such, the likelihood of interface between IPR and competition law is more in the above-stated mechanical categories. However, as the sector is undergoing transformation due to ever-increasing impact of advanced digital technologies and the sector is moving towards concept of connected vehicle, the interface between IPR and competition law is likely to tilt towards such newer technologies.

IPR related issues in the Automobile Sector

(i) OEMs can restrict access to their brand of spare parts

The OEMs rely on placing restrictions to offer a quality product for consumers, which may not be possible if spare parts are sold directly in open market. According to them, such restrictions ensure quality control and protect the

[81] 'ETAuto Originals: Connected tech becomes hotbed for patent wars in automotive industry', April 12, 2020, as available on https://auto.economictimes.indiatimes.com/news/auto-technology/connected-tech-becomes-hotbed-for-patent-wars-in-automotive-industry/75103441.

goodwill of the brand of the OEM, and in absence of these restrictions, can raise issues regarding safety and health of their customers, in addition to tarnishing their brand image. To answer these concerns, CCI opined that "*The contractual relationship between the OEMs and the OESs can be pre-conditioned with the requirement that the OESs will be subjecting the spare parts that they wish to sell directly into the aftermarket to the same standards of safety checks as the OEMs. The OEMs can license their safety check methodology to their OESs for a royalty fee. Further, the OEMs to safeguard their brand image and to protect their consumer goodwill can require that the OESs label the genuine spare parts sold by them directly in the aftermarket with appropriate labels to limit their liability. Further, the OEMs in their contracts with their customers can limit their warranty against the use of faulty or defective spare parts sold by their OESs.*"

(ii) OEMs can restrict access to the OEM's diagnostic tools/training manuals *etc.*

With regard to OEMs claiming these under IPRs and making it available only to their authorised vendors, CCI found that mere selling of a diagnostic tool in open market does not compromise the IPRs of the OEMs. This was elucidated by the example that if any IPR infringement was caused by selling CT scan machines to hospitals, "[T]*hen all CT Scan manufacturers would have to open up diagnostic centres where only their trained personnel would be able to medically treat people*".

(iii) Data Related IPR issues

In case of self-driven vehicle, OEMs may take ownership of data generated and this may lead to a variety of competition issues at interface with IP laws such as restriction of data sharing with competitors over course of route preferred, diagnostic data (or self-repair mechanism) *etc.*

D. China

21. From components to complete vehicles, from manufacturing to service, the automobile industry has strong industrial linkage, high-tech adsorption and capital intensity, and is

a carrier to accommodate and promote the development of multi-industries. In the antitrust legislation and law enforcement for China's automobile industry, the connection and coordination of antitrust and intellectual property protection policies are paid special attention to jointly promote the sustained and healthy development of the automobile industry.

22. Taking the vertical monopoly agreement as an example, according to the Anti-Monopoly Guidelines for the Automobile Industry, on the one hand, for the purpose of protecting intellectual property rights, motor vehicle suppliers usually designate the sources from which their motor vehicle brand logos will be purchased. In order to guarantee brand image, motor vehicle suppliers generally agree or specify quality-related standards in relation to the design, decoration, office facilities of the business premises of distributors and repair and maintenance service providers through agreements or business policies. On the other hand, distributors and repair and maintenance service providers are required by motor vehicle suppliers to only use the paid service provided by specific design institutes or construction entities, or only use, amongst others, the required building materials, general-purpose equipment, IT management systems and office facilities from specific brands, suppliers or supply channels, which is not necessary for ensuring the brand images of motor vehicles, and may improperly restrict the sales and service capabilities of distributors and repair and maintenance service providers, resulting in exclusion and restriction of competition effects, increasing the prices for motor vehicle distribution and maintenance channels and harming the interests of consumers and may form vertical monopoly specified in AML.

23. In addition, an OEM Agreement differs materially from the spare parts supply agreement entered into between spare parts manufacturers using their own intellectual property rights and the motor vehicle manufacturers. According to Anti-Monopoly Guidelines for the Automobile Industry, commissioned processing arises out of the circumstance where the spare parts manufacturers manufacture motor vehicle spare parts in accordance with the requirements of the motor vehicle manufacturers and by utilising the intellectual property rights owned by the motor vehicle manufacturers, and the agreement they have entered into is an OEM Agreement. Taking dual-label parts as an example, in addition to the spare parts manufactured under the Original Equipment

Manufacturer (OEM) Agreement, motor vehicle manufacturers with dominant market position in the aftermarket for motor vehicles of their own brands shall not, without justifications, prohibit spare part suppliers who provide them with components for the initial assembly from affixing their own logos, trademarks or spare part codes on the relevant components for the initial assembly. This is because the production and circulation of double-label parts involves the balance between antitrust and intellectual property protection, and the legitimate rights and interests of both spare part manufacturers and motor vehicle manufacturers shall be guaranteed. Therefore, Anti-Monopoly Guidelines for the Automobile Industry explains the identification of OEM Agreement, and supplements and strengthens the regulations on double-label parts.

E. South Africa

24. In South Africa, intellectual property (IP) law encompasses all legislation which concerns patents, designs, trademarks and copyright protection. The relevant legislation includes the Intellectual Property Act 28 of 2013.

25. The Commission has not had to deal with any cases that deal with the interface between IP and competition. The Commission did however have to deal with the aspects of IP as they related to access to the OEMs' spare parts, technical information and training. The Commission noted that though the rights of the OEMs are protected in terms of the country's IP rights, there is a level of access that should be granted to third parties.

26. The Commission's guidelines promote OEMs and their dealers making Original Spare Parts available to independent service providers (ISPs) where they are required to perform service, maintenance or repair work. However, they may introduce conditions in relation to items that are linked to the vehicle's security system. The Commission's guidelines encourage OEMs not to restrict an ISP's ability to procure Original Spare Parts, when required for the purposes of effecting service, maintenance and repair work. OEMs may however impose restrictions or prohibitions on ISPs from on-selling Original Spare Parts to 3rd parties. In terms of the guidelines OEMs may not enter into any agreements with manufacturers or suppliers of Spare Parts, tools or equipment to restrict the manufacturer or supplier's ability to sell those goods to ISPs or end users, except for those Spare Parts, tools or equipment that are protected by IP rights or are linked to security systems.

27. The guidelines further require OEMs to make available to ISPs the OEM-technical information relating to its vehicles, on reasonable terms and conditions, including terms related to usage, confidentiality and fees that are no less favourable to the terms offered to its approved dealers and approved motor body repairers. Access by ISPs to OEM-technical information would include security- related information that permits access to the security system, including coding and programming, software, and Safety Systems. Such access must be subject to OEMs' IP and data privacy rights and ISPs meeting their accreditation requirements.

28. The guidelines also require OEMs to provide training (or provide access thereto) to employees of ISPs who request training, at a reasonable cost that may not exceed that imposed on employees of Approved Dealers. Such training shall encompass the methods used to effect structural and mechanical repair, service and maintenance and fitment works on the OEMs vehicles.

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CHAPTER 10 WAY FORWARD

1. The report extensively discussed the development of the automotive industry till date and also showed projected movement in the time to come in the wake of increasing digitalisation and technology such as connected cars. However, it is difficult to precisely gauge the course of development of the industry within a fast-paced, diverse, technology-dependent era such as the one we are witnessing. This uncertainty poses challenges, not just for manufacturers and other new stakeholders, but also for regulators, including competition agencies. In this situation, the way forward for stakeholders would be to match the pace of the technological developments and formulate solutions that can lead to sustainable, harmonious growth and development of the industry.

2. The path to success is to be charted not at the expense of any one stakeholder or, more particularly, the consumer. Therefore, in order to achieve this goal, the plans of the growth trajectory need to be founded on legally, morally and ethically correct principles. As far as competition laws are concerned, the way forward for players is not to indulge in any conducts that violate the competition laws of their respective countries. The report highlights cases of competition law violations, including violations of the most pernicious nature, such as frequent cartelisation in one or the other segment of the industry. Thus, it becomes incumbent on competition agencies to support and cooperate with each other to unearth cartelisation—at least those of a global nature. Competition agencies may also exchange their learnings and experiences on the nature of competition law violations for better inter-agency cooperation.

3. In relation to mergers, the report underscores the multi-jurisdictional filings of several transactions in the automotive sector. This marks the need for further reinforced cooperation amongst BRICS nations.

4. The entire world is on the verge of a digital technological transformation, and the automotive industry is not an exception. This report highlights and reflects upon the challenges, the automotive industry as well as various regulators may face. These changes envisage how conventional competition challenges in this industry are being interspersed with modern data-driven competition challenges. To effectively meet these

challenges, one way forward is to focus on advocacy as a pillar to strengthen trust between various stakeholders to foster growth of innovation not only in efficient terms but also in a way that is economical for the consumer. The advocacy initiatives undertaken by BRICS countries towards this end in the past few years have been encouraging. It has been observed that the interactions that have been taking place under different advocacy programs amongst stakeholders in the automotive industry and regulators in the BRICS countries have helped develop responsive policy approaches and strengthen the influence of antitrust enforcement. Apart from the above, the report also highlights various regulatory and enforcement steps and initiatives undertaken by BRICS nations, such as the guidelines issued by the CCSA. Such steps and initiatives offer valuable guidance to other jurisdictions dealing with similar concerns.

5. Additionally, since the industry is undergoing a paradigm shift owing to Connectivity, Autonomous, Sharing/Subscription and Electrification ('CASE') technologies, there are bound to be changes in the nature of interactions amongst stakeholders which, in turn, would require strengthening as well as continuity of advocacy programs at the domestic level and an increase in inter-agency cooperation. This would help facilitate much-needed interactions with stakeholders, thereby maintaining well-informed approaches and pragmatic solutions to the trends, challenges and opportunities posed by the disruptive forces. In order to tap into opportunities and meet challenges effectively, it would be essential to maintain harmony and balance between approaches and interventions as well as ensure clarity on the role of each stakeholder group— which would not only be beneficial for overall sectoral growth but also help bridge any gaps in terms of antitrust compliance.

6. Another common requirement for the automotive industry in this era is the need to be agile and diverse as well as develop empowered business models in order to realise its ambitions and prosper. The automotive industry has not remained untouched by rapid changes in telecommunication technologies and its growing environmental concerns. Coupled with the adoption of CASE technologies, this is leading to the emergence of new business models (for instance, cab aggregation and subscription) that would affect production and consumption patterns in the automotive industry. Further, due to the emergence of these technologies, cross-interactions among OEMs and service providers

(telecom companies, e-commerce players) are bound to increase in the sector. One of the important issues to be handled are related to the usage and sharing of data. Therefore, any challenges that may arise from the adoption of new technologies and business models will require a well-thought-out, discussed and consensus-based approach amongst regulators so that innovation is not stifled and there is timely addressal of competition concerns.

7. Lastly, there seems to exist an understanding amongt BRICS countries that the protection of IP rights is a legitimate right of OEMs; however, the application of the same must not be done in an unreasonable manner that may create barriers in the automotive sector. It is expected that CASE technologies would bring more IP-related challenges to the sector, which may potentially lead to exclusive dealings/discriminatory practices, etc. Therefore, the approach adopted for the interface of competition and IP laws is likely to intensify, and legal issues may also increase. It is imperative that comity amongst competition agencies and sectoral regulators (IPR) is maintained through harmonious and inter-sectional approaches in addressing and redressing the perceived areas of divergence. Going forward, it is also imperative for regulatory interventions and approaches be targeted at removing unreasonable restrictions thwarting competition while also incentivising innovations, thereby meeting the twin goals of ease of doing business and safeguarding consumer interest.

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