



# Indian Competition Authorities: Filling the Gaps In the Law

**T**he Competition Commission of India (“CCI”) is now an active regulatory body and has passed some historic orders in the last 12 months. While the Competition Act, 2002 (“Act”) is still being tested across industries, the members of the CCI have demonstrated their expertise in this area by writing some very reasoned orders and clarifying some grey areas of the Act. In its order dated November 11, 2012 emerging from information provided by Exclusive Motors Private Limited (“Informant”) with respect to an alleged anti-competitive agreement executed by Automobili Lamborghini S.P.A (“Opposite Party”), the CCI discussed the internationally recognized doctrine of “Single Economic Entity” and held that for the application of section 3 of the Act, an agreement has to be executed between two unrelated “enterprises.” Brief facts of the case are as follows:

(i) The Informant is a dealer engaged in the business of buying and selling super sports cars, whereas the Opposite Party is a wholly owned subsidiary of Audi AG, which is part of the Volkswagen group.

(ii) In 2005, the Informant and the Opposite Party executed a Dealership Agreement per which the Informant was appointed as the importer and dealer in India for super sports cars manufactured by the Opposite Party.

(iii) Subsequently, in 2011, the Opposite

Party appointed Volkswagen India Private Limited (“Volkswagen India”), a subsidiary of the Volkswagen group, as its dealer and importer of cars in India. A fresh Dealership Agreement was proposed for the Informant but it refused to accept the terms and served a 12 month notice period.

(iv) It was alleged by the Informant that during this notice period, the Opposite Party offered its products to the Informant at higher rates as compared to Volkswagen India, and that the agreement between the Opposite Party and Volkswagen India determined sale and purchase of car prices in India in contravention of section 3(3)(a) and 3(4)(c) of the Act. The Informant also alleged that the Opposite Party was abusing its dominant position under section 4 of the Act due to its share in the super sports car market in India.

The CCI, while passing its order, emphasized upon the definition of “enterprise” under section 2(h) of the Act, as well as explained its application to section 3 in view of the “Single Economic Entity” principle acknowledged and enforced by competition regulators across the world. It held that to establish a contravention under section 3, an agreement has to be proved between “two or more enterprises.” An internal agreement between entities constituting one enterprise cannot be assessed under the Act. This implied that the Dealership Agreement between the Opposite Party and

Volkswagen India was outside the ambit of the Act since both these entities were part of the Volkswagen group. The CCI concluded that for section 3 to trigger, the agreement has to be between two or more unrelated “enterprises.” Further, with respect to the allegation of abuse of dominant position under section 4 of the Act, the CCI held that the Informant could neither prove any dominance under section 19(4) of the Act, or any associated abuse. Accordingly, the case was closed.

While this “Single Economic Entity” principle is not specifically provided for in the Act, it will be interesting to see whether the CCI continues to apply it even for 50-50 joint ventures where the agreement between one parent and the joint venture entity is in contention. Nevertheless, this order will provide comfort to wholly owned subsidiaries where contracts between them and their parent entity could potentially fall within the ambit of section 3 and cause appreciable adverse effect on competition in India.

## ABOUT AUTHOR

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