COMPETITION COMMISSION OF INDIA

***Suo Motu* Case No. 01 of 2019**

***In Re:* Alleged anti-competitive conduct by Maruti Suzuki India Limited in implementing discount control policy *vis-à-vis* dealers**

CORAM

Ashok Kumar Gupta
Chairperson

Sangeeta Verma
Member

Bhagwant Singh Bishnoi
Member

Present:

For Maruti Suzuki India Limited (MSIL):	Dr. Abhishek Manu Singhvi and Mr. Rajshekhar Rao, Senior Advocates, with Ms. Shweta Shroff Chopra, Mr. Rohan Arora and Ms. Supritha Prodaturi, Authorized Representatives of MSIL and Ms. Manjaree Chowdhary, Executive Director and General Counsel of MSIL

ORDER UNDER SECTION 27 OF THE COMPETITION ACT, 2002

Facts:

1. The present matter was taken up *suo motu* by the Commission based on an anonymous e-mail dated 17.11.2017 received from a purported Maruti Suzuki India Limited ('**MSIL**') dealer, wherein it was, *inter alia*, alleged that MSIL's sales policy is against the interest of customers as well as the provisions of the Competition Act, 2002 (the '**Act**'). It was alleged that the dealers of MSIL in the West-2 Region (Maharashtra State other than Mumbai & Goa) are not permitted to give discounts to their customers beyond that prescribed by MSIL in the announced 'consumer offer'. If a dealer is found giving extra discounts, a penalty is levied upon the dealer by MSIL. This is called the 'Discount Control Policy' of MSIL. It was averred that, as such, a cartel is formed by MSIL within the dealerships, which is a policy of MSIL.

2. It was alleged that if a dealer of MSIL was found to be giving discounts other than those permitted by MSIL, MSIL would send the dealer an e-mail imposing a penalty, depending on the number of incidents found against that dealer in a particular financial year ('**FY**'). In the e-mail, the reason for the imposition of penalty would not be mentioned as this would be in violation of the provisions of Competition Law. Copies of several such e-mails were annexed with the complaint e-mail, after redacting the names of sender/recipient therefrom. In comparison, it was also shown that, where penalties were imposed for violation of any other policy of MSIL (except Discount Control Policy), like manpower encroachment, selling outside territory, charging extra from customer, *etc.*, the reason for imposition of penalty would be mentioned in the e-mail sent imposing the penalty.

3. It was stated that the penalty amount imposed was required to be paid *via* a cheque in the name of one Ms. Swati Kale, wife of Mr. Vinod Kale, who was the Vice-President of Wonder Cars Pvt. Ltd., an MSIL dealership in Pune, Maharashtra. It was informed that, prior to charging such a penalty, MSIL management would send an e-mail with a 'Mystery Shopping Audit Report' to the errant dealership asking for clarification. MSIL's independent agency conducted a Mystery Shopping Audit by posing as a customer to dealerships, checking whether extra discount is being offered. If found offered, the agency would send audio proof of the offer to MSIL management who, in turn, would send a 'Mystery Shopping Audit Report' *via* e-mail to the errant dealership asking for clarification. If a clarification is not provided to the satisfaction of MSIL, a penalty would be levied, not only on the dealership, but also on the Sales Executive and the Team Leader making the sale, and copy of the said penalty e-mail would be marked to all dealerships.

4. It was also stated that a similar Discount Control Policy was implemented by MSIL all across India — specifically in cities where more than 4 to 5 dealerships operated.

5. Upon consideration of the aforesaid e-mail dated 17.11.2017, the Commission issued a notice to MSIL and gave it an opportunity to file its comments, if any, to the e-mail received against it. Thereafter, the Commission held a preliminary conference with MSIL on 22.05.2019 and decided to pass an appropriate order in the matter.

6. Upon consideration of the complaint received against MSIL and MSIL's response and submissions thereto, the Commission, *vide* order dated 04.07.2019 passed under Section 26(1) of the Act, 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. The Commission, hence, directed the Director General ('**DG**') to cause an investigation into the matter and submit a report.

Investigation by the DG:

7. The DG submitted its investigation report. The DG first analysed the market structure and observed that MSIL is operating in the upstream market of the manufacture of passenger vehicles and has dealerships and distributorships operating in the downstream market of distribution and sale of passenger vehicles, across India. In the upstream market, *i.e.*, the passenger vehicles segment (which comprises passenger cars, utility vehicles and vans), MSIL had the highest market share in FY 2018–19, *i.e.*, 51.22%, the second largest being 16.14% of Hyundai Motor India Ltd. Further, the DG found that MSIL's market share had shown a consistently growing trend from 2011–12 onwards.

8. The DG framed three issues and concluded each of them as follows:

   8.1 As MSIL as well as its dealers are an 'enterprise' within the meaning of Section 2(h) of the Act, and MSIL is the manufacturer dealing in the upstream market while dealers are the distributors dealing in the downstream market, an agreement between MSIL and its dealers entered on a principal-to-principal basis can be examined in terms of Section 3(4) of the Act, being an agreement amongst enterprises engaged at different stages or levels of production chain in different markets.

   8.2 Based on the analysis of a large number of e-mails exchanged between MSIL and its dealers from August 2012 to July 2019, it is evident that MSIL framed guidelines and gave instructions to its dealers to not offer discounts without its permission over certain pre-restricted levels. Further, MSIL appointed Mystery Shopping Agencies ('**MSA**') to keep a track of the discounts offered by the dealers and threatened to impose/imposed penalties on them and/or even threatened to

suspend supply of premium models to them for violation of such Discount Control Policy. Upon reading the e-mails unearthed during the investigation, MSIL's submission that MSAs were appointed by the dealers themselves and MSIL's role was limited to being an independent third-party, was not found to be acceptable. MSIL was, in fact, actively involved in the planning and implementation of such Discount Control Policy as it even tracked the penalty imposed on a particular dealer for violation and recovery thereof as well as utilisation of the penalty amounts was also done as per the instructions of MSIL. Therefore, it is clear that MSIL indulged in the practice of RPM through the implementation of its Discount Control Policy on its dealers across India.

8.3 Such a practice of RPM by MSIL caused an appreciable adverse effect on competition ('**AAEC**') within India. It lowered inter-brand and intra-brand competition and led to products not being offered to the consumers at best prices. International cases also demonstrate that such acts cause AAEC. Thus, such a practice by MSIL is in contravention of Section 3(4)(e) of the Act.

Proceedings before the Commission:

9. The Commission considered the investigation report submitted by the DG, and *vide* its order dated 12.01.2021, forwarded an electronic copy of the non-confidential *qua* OP version of the same to MSIL, seeking its objections/suggestions, if any, thereto. The Commission directed MSIL to furnish its audited balance sheets and profit and loss accounts/turnover details for FYs 2017–18, 2018–19 and 2019–20 along with details of the revenue and profits generated by it from the sale of 'passenger vehicles in India' during these FYs by way of Affidavits supported by certificates from Chartered Accountants.

10. Thereafter, the Commission held final hearing on the DG Report on 15.04.2021 through video conferencing and decided to pass an appropriate order in the matter.

Submissions of MSIL:

11. In its objections/suggestions to the DG Report, and during the oral hearing, MSIL made, *inter alia*, the following submissions:

11.1 There is no Discount Control Policy placed in effect by MSIL. The dealers, in terms of Clause 28.1 of the Dealership Agreement entered into between MSIL and the dealers, are free to offer any discounts they please to their customers. However, since such varying discounts, even though do not impact MSIL, hurt the dealers *inter-se*, the dealers, through an agreement among themselves, in some regions have tried to police themselves. MSIL has no role to play in the same.

11.2 Dealers of MSIL are free to offer any discounts to consumers. Depending on the purchase value of the vehicle, the dealers almost invariably offer a series of freebies, such as:

(a) direct cash discount, which is officially conveyed by almost every dealer;

(b) additional unofficial discount, which most dealers' representatives promise during the sale of the vehicle; and

(c) additional freebies, which are nothing but discounts in the form of extra free services; pickup and delivery from home; numerous extra accessories; extension of the regular warranty period; bear part or whole of the insurance, *etc*.

11.3 By its very nature, the bewildering diversity, degree and nature of these free offers/discounts cannot be regulated or controlled by MSIL or even by dealers policing themselves, as there are 331 parent dealers (for all MSIL models put together) and 3067 outlets across India.

11.4 The DG has failed to notice that at least 29% of all MSIL sales made in FY 2016–17, 32% of all MSIL sales made in FY 2018–19, 30% of all MSIL sales made in FY 2018–19 and 36% of all MSIL sales made in FY 2019–20, involved additional discounts by dealers to consumers. These figures have been officially provided by the dealers to MSIL. In other words, at least 22–36% of all sales involved

discounts that were definitely given and officially admitted by the dealer to MSIL over and above the declared Consumer Offers. Furthermore, several other forms of discounts, other than direct cash discounts, are not included in the said figures. Hence, even where the Discount Control Policy was deployed by the dealers *inter-se* (and not by MSIL), this was in an extremely limited set of instances and areas, and it was not implemented as such, since in nearly 22–36% of the cases, dealers gave substantially higher discounts without any penal action being taken against them.

11.5 In order to impute any liability and to hold MSIL complicit to any alleged discount control conduct, there has to be an agreement between MSIL and the dealers to limit discounts. Though such an agreement has been alleged, no such agreement has been produced by the DG, even with a single dealer, except relying on oral/verbal allegations. The only agreement that MSIL has with is its dealers is the Dealership Agreement on a principal-to-principal basis, which specifically allows dealers to offer lower prices (Clause 28.1). MSIL's powers to levy penalties under the Dealership Agreement are restricted (Clause 52 and Clause 60.2), and MSIL has no power to penalise for additional discounts. There is no clause in the Dealership Agreement that allows MSIL to levy a penalty on dealers for providing discounts higher than those prescribed in the Consumer Offers to customers.

11.6 Mystery Shopping Audit is conducted by MSIL where anonymous inspectors posing as customers check adherence to MSIL guidelines (Sales Operating Procedures ('**SOP**') and System and Process Guides ('**SPG**')) to check the courtesy, service, efficiency, *etc*. of each dealer. However, this type of Mystery Shopping Audit does not pertain to the issue of discounts given by dealers. Non-mystery official shopping audits are also conducted by MSIL where MSIL sends its representatives to check the service and efficiency at various dealer outlets. However, this is not pertinent to the present matter, because this does not bear any relation to the alleged Discount Control Policy. On the contrary, these are standardised protocols followed by MSIL to ensure proper functioning of dealer outlets and uphold the brand value of MSIL.

11.7 Mystery Shopping Audit at certain places is conducted by the dealers amongst themselves to check and prevent the giving of additional or unfair discounts. However, MSIL is not a part of such agreements and only acts as an independent third-party in relation to such agreements among dealers. Its role is limited to that of an adjudicator. If culpability is found in the mystery shopping report *qua* any particular dealer by other dealers, for example Dealer X, then the report is shared with MSIL. MSIL, in turn, merely in the interest of natural justice and fair play, sends the report to Dealer X and seeks its comments thereon. Finally, it communicates the penalty to Dealer X. Thus, as a third-party, MSIL is far from being an active participant/proposer/inventor of the scheme and is highly akin to an adjudicator. It merely communicates the appropriate penalty to be levied by the dealers, as decided amongst themselves, for violation of the mutually agreed-upon guidelines. MSIL merely playing the role of an independent third-party in the dealers policing themselves *inter se* does not amount to having an RPM agreement *qua* discounts by MSIL with its dealers. SOP and SPG guidelines of MSIL, which cover relevant aspects of maintaining quality standards of a dealership, do not indicate any discount issues. Therefore, MSIL's intention is clearly not to control the imposition of discounts by the dealers. The dealers merely utilise the father figure persona of MSIL as an unbiased outside regulator/judge for the scheme.

11.8 There is no possible direct/indirect or perceived benefit to MSIL, irrespective of whether discounts are kept at a fixed amount, are varying, are partly in cash and partly in kind. Ultimately, the sale of vehicles of MSIL remains largely unaffected, and at most the significant and direct effect is only on its dealers. Therefore, there cannot be any significant motive for MSIL to indulge in such alleged RPM. Vehicle supply by MSIL to each of its dealers is undertaken on a principal-to-principal basis and is not a commission based sale. Hence, once MSIL supplies the vehicle to the dealer, the title of the vehicle passes to the dealer.

11.9 Without prejudice to the above, the alleged conduct of MSIL has not led to and is not likely to lead to any AAEC. MSIL has submitted that the DG has not discharged the burden of proof under Section 3(4) of the Act. Vertical agreements (such as RPM) under Section 3(4) of the Act are not presumed to cause AAEC,

and a 'rule of reason' (effects based) approach is adopted for their analysis. It must be established that a vertical agreement caused or was likely to cause an AAEC. However, RPM, in fact, rectifies market failures, eliminates free-riding problems and encourages dealers to compete on non-price factors. In this regard, reliance on a report prepared by Sapient Econ has been placed by MSIL.

11.10 Even if the alleged Discount Control Policy were to be assumed to compromise intra-brand competition, this could not have an anti-competitive effect since MSIL does not have high market power and consumers would rather switch away than pay a price that they deem too high. The DG has erroneously concluded that because MSIL has 51% market share, it has market power.

Analysis:

12. The Commission has perused the investigation report submitted by the DG and the evidence collected by the DG, the suggestions/objections to the DG Report, the convenience compilation and written arguments filed by MSIL and also heard the oral arguments made by the learned senior counsel(s) representing MSIL.

13. At the outset, the Commission notes that MSIL is the manufacturer dealing in the upstream market while its dealers are distributors dealing in the downstream market. As such, any agreement between MSIL and its dealers can be examined within the scope of Section 3(4) of the Act, being an agreement amongst enterprises engaged at different stages or levels of the production chain in different markets.

14. Now, the Commission proceeds to examine whether there was an agreement between MSIL and its dealers in terms of Section 3(4) of the Act on restricting discounts that may be offered by dealers.

15. MSIL has argued that the only agreement which MSIL has with its dealers is the 'Dealership Agreement'. In the said agreement, there is no provision to restrict discounts. In fact, Clause 28.1 of the Dealership agreement specifically allows dealers of MSIL to provide discounts as they deem fit. The dealers are free to charge a price lower than the Maximum Recommended Retail Price from consumers. MSIL has submitted that it does not have the authority to penalise any dealer for giving additional discounts over

consumer offers in terms of the Dealership Agreement. There is no clause in the Dealership Agreement that allows MSIL to levy a penalty on dealers for providing discounts higher than those prescribed in the consumer offers to the consumers. MSIL does not exercise control or supervision over the dealers except to maintain a balance between the satisfaction of consumers and uniformity in schemes. As such, MSIL had no agreement with its dealers regarding the Discount Control Policy.

16. In this regard, the Commission notes that 'agreement', as defined under Section 2(b) of the Act, is as follows:

> *"agreement includes any arrangement or understanding or action in concert,-*
>
> *(i) whether or not, such arrangement, understanding or action is formal or in writing; or*
>
> (ii) *whether or not such arrangement, understanding or action is intended to be enforceable by legal proceedings.*"

From a bare reading of the above provision, it is evident that 'agreement', for the purposes of Competition Law, is not the same as 'agreement' for the purposes of Contract Law. Under the Competition Law, an 'agreement' may not be a formal agreement entered into in writing between two parties. Any kind of mutual arrangement or understanding between them or action in concert may qualify as an 'agreement' between the parties for the purposes of Competition Law. The definition of 'agreement' under Section 2(b) of the Act is very wide and covers all possible agreements/ arrangements/understanding, not only in written form but also in tacit and informal form. As such, the argument of MSIL that, since the only agreement entered into between MSIL and its dealers is the Dealership Agreement and the same contains no clause restricting discounts but rather allows dealers to offer any discounts as they deem fit; it cannot be said to have any agreement with its dealers for enforcing Discount Control Policy, is not tenable. Such agreement/arrangement/understanding between MSIL and its dealers may exist *dehors* the Dealership Agreement entered into in writing between them, as examined in the subsequent paragraphs of this order.

17. In order to examine whether any such agreement/arrangement/understanding existed between MSIL and its dealers in terms of Section 3(4) of the Act, the DG has analysed the e-mail dump submitted by MSIL. In the same, the DG found multiple e-mails exchanged between MSIL and its dealers which show that MSIL did, in fact, have an agreement with its dealers to not let them offer discounts to customers beyond those permitted from time to time by MSIL without MSIL's prior approval. In other words, the DG found multiple e-mails that prove that MSIL did, in fact, have a 'Discount Control Policy' in place, for its dealers and the dealers were discouraged from giving extra discounts, freebies, *etc.* to consumers beyond what was permitted by MSIL. If found to be violating the Discount Control Policy, the dealers were 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.*, and stopping of supplies.

18. Some such e-mails sent by MSIL managers to dealers in various regions have been extracted hereunder (emphasis supplied):

E-mail	**Relevant excerpts of incriminating e-mail**
	Bihar
E-mail dated 31.12.2014 sent by Manager of MSIL to dealers in Bihar	*Any dealership after price rise from 1st Jan 2015,* ***if found selling/billing on old price will be considered as violating selling norms and it will be treated as discount offered to the customer.*** *We will be observing closing dealer wise rips from tomorrow onwards and appropriate action will be taken accordingly.*
E-mail dated 04.10.2016 sent by Manager of MSIL to dealers in Patna	*MOM:* ***Discount Control Policy Meeting*** *on 22nd September 2016* *To enforce market discipline and adherence to agreed sales policy and norms at dealership, we conducted a meeting at Area Office, Patna on 22nd September '16.* *…* *2.* ***Maximum Discount Allowed without Approval*** *–* ***Patna dealers can give maximum discount of upto 3 basic accessories (Matting, mudflap and steering cover) or Rs. 1000*** *…* *3.* ***Discount with Approval*** *–* ***The dealer can give discount over and above the set limit with approval from the respective TSM/AM.*** *But the dealer can ask for approval on maximum 2% of cases on the given retail target for the month.* *4.* ***Discount on Vintage Stock*** *–* ***Dealer can give discount on stock with more than 150 days but same should be approved from the respective TSM/AM*** *…*

E-mail	Relevant excerpts of incriminating e-mail
Ranchi	
E-mail dated 03.09.2014 sent by Manager of MSIL to dealers	*Please the points discussed during the* ***Discount Control Policy*** *Meeting held on 3rd September, 2014.* *Minutes of Meeting:* ➢ *…* ➢ ***The Upper Limit for Discounting has been Accepted to be Rs. 2000/- for which dealers doesn't have to take any approval.*** ➢ ***SM has to approve any discount upto Rs. 2000/-.*** ➢ ***For Discounts above Rs. 2000/- (maximum Rs. 5000): -*** o ***Dealers need to take permission for MSIL for any discounts above Rs. 2000/-.*** o ***The number of cases should not exceed 2% of the Total Sales of the month for the Dealership.*** ➢ *Process:* o ***Enquiry - If Discount is greater than Rs. 2000 > Approval from RO > Discount passed*** o ***Any deviation from the process will be considered as a Violation of Discount policy.*** o ***…*** ➢ *Penalty:* o ***1st violation: Rs 50,000*** o ***2nd violation: Rs 1,00,000*** o ***3rd violation: Rs 1,50,000*** *…* ***No discounts to be given on accessories. If any, it should come under Rs. 2000/- discount as already approved from MSIL. For anything greater than this, Dealers need to take approval from TSMs.*** *…*
E-mail dated 05.08.2016 sent by Manager of MSIL to dealers	*Subject:* ***Discount Control Policy*** *Meeting – 8th August' 16* *This is to inform you that we have* ***planned a Discount Control Policy Meeting on 8th August' 16*** *at 4:00 PM in Regional Office, Ranchi. Agenda for the meeting:* *1. Revision in earlier formulated policy and guidelines* *2. Discussion on Market Discipline* *3. Formulation of policy on audit of files* *4.* ***Mystery shopping*** *…*
E-mail dated 10.08.2016 sent by Manager of MSIL to dealers	*Subject: MOM from* ***Discount Control Policy*** *– Meeting on 8th August' 16* *…* *2.* ***Maximum Discount Allowed without Approval*** *–* ***Both dealers can give maximum discount of Rs. 1500 either as cash or accessories. The same will be allowed only when there is no ongoing booking scheme from RO.*** *3.* ***Discount with Approval*** *–* ***The dealer can give discount over and above the set limit with approval from the respective TSM. But the dealer can ask for approval on maximum 2% of cases on the given retail target for the month.*** *4.* ***Discount on Vintage Stock*** *–* ***Dealer can give discount on stock with more than 150 days***

E-mail	Relevant excerpts of incriminating e-mail
	but the same should be approved from the respective TSM. The same will be allowed only when there is no ongoing RIPS support scheme from RO.
Jamshedpur	
E-mail dated 13.07.2017 sent by Manager of MSIL to dealers	*RE: MOM from* ***Discount Control Policy Meeting*** *on 13th July' 17.* *... To enforce market discipline and adherence to agreed sales policy and norms at dealership, we conducted a meeting at Regional Office, Ranchi on 13th of July' 17 ...* *Please find below the key points which were discussed and has to be implemented at the dealership:* *1. Price List* *...* *2.* ***Maximum Discount Allowed without Approval*** ***– Both dealers can give maximum discount of Rs. 1500 that too only in accessories. No cash discount is acceptable****. ...* ***3. Discount with Approval – The dealer can give discount over and above the set limit with approval from the respective TSM. But the dealer can ask for approval on maximum 2% of cases on the given retail target for the month.*** ***4. Discount on Vintage Stock*** *– Dealer can give discount on stock with more than 90 days but the same should be approved from the respective TSM ...* ***5. …*** *... **in case any deviation is found from the above set policies then, accordingly penalty charges would be levied against the dealer.*** ***Penalty Structure on Violation of Mystery Shopping:*** *2. Rs 50,000 for 1st Violation* *3. Rs. 1,00,000 for 2nd Violation and* *4. Rs. 2,00,000 for 3rd Violation and above…*
Mumbai and Goa	
E-mail dated 07.07.2017 sent by Manager of MSIL to dealers	***2. Discount Control:*** *As discussed,* ***we need to strictly maintain market discipline in terms of discounting. As per discussion following has been decided by you all:*** ***a. Discount of 5% on MGA<20k and 10% on MGA>20K*** ***b. Finance subvention maximum upto 0.5% I*** ***c. Free under body coat I Teflon coating will be considered as policy violation.*** ***d. Mudflap & Matting - only MGA is allowed as freebee to the customer.*** ***Dealers who are found not adhering to the market discipline will be considered as policy violation.***
Nasik	
E-mail dated 21.05.2016 sent by Manager of	*... We will be starting mystery audits across all the outlets. If any violation of agreed norms is observed during mystery shopping, RO will take immediate penal action against outlet.* *...* ***Action Plan-*** ➢ ***From 23rd May onwards Zero discount has to be offered in any forms to S CROSS and***

<table>
<tr><th>E-mail</th><th>Relevant excerpts of incriminating e-mail</th></tr>
<tr><td>MSIL to dealers</td><td>
BALENO customer.
➢ Discount in any forms i.e. accessories (5% on accessories or even matting& mud flap), finance payout, Insurance or extended warranty will be considered as a violation and therefore should not be given.
➢ In case of a reference wherein dealership needs to oblige approval for same needs to be taken from MSIL. Only 2 cases of S Cross per month.
➢ Pricing on the ex-showroom front, insurance, EW, My Nexa card, RTO or GNA should be same across both the outlets.
➢ Discount can be given only on S Cross 2015 case.
…
<u>Penalty Clause</u>
<table>
<tr><th>Penalty</th><th>Amount</th></tr>
<tr><td>1st</td><td>5,00,000</td></tr>
<tr><td>2nd</td><td>10,00,000</td></tr>
<tr><td>3rd</td><td>15,00,000</td></tr>
<tr><td>4th</td><td>Same will be escalated to top management</td></tr>
</table>
Note: Penalty on SM, Sr. RM and RM have to be decided by dealership itself.
Penalty cheque will be collected in each dealership names.
</td></tr>
<tr><td colspan="2">West-1 Region</td></tr>
<tr><td>E-mail dated 26.05.2017 sent by Manager of MSIL to dealers</td><td>
Dear Dealer Owner,
It has been noticed that your dealership has participated in a deal of 4 New Dzire for …
This is to advise to stay away from any discounting. If it is established that your dealership has extended discounts on this Newly launched vehicle a penalty of 1,00,000/- will be charged to you.
…
</td></tr>
<tr><td>E-mail dated 26.05.2017 sent by Manager of MSIL to a dealer</td><td>
Please refrain from passing any discount on the new product.
</td></tr>
<tr><td colspan="2">West-2 Region</td></tr>
<tr><td>E-mail dated 08.07.2016 sent by Manager of MSIL</td><td>
As discussed in meeting Today, following changes are proposed and implemented by all of you:
…
E. FREEBIES:
The limit on giving extra offer on MGA is as follows:
i. If MGA> Rs. 20,000 and <30000 bought by customer, then only 5% discount is allowed.
</td></tr>
</table>

E-mail	Relevant excerpts of incriminating e-mail
to dealers	***ii. If MGA>= Rs. 30,000 and <40000 bought by customer, then only 7.5% discount is allowed.*** ***iii. If MGA>= Rs. 40,000 bought by customer, then only 10% discount is allowed…*** ***iv. If MGA<= Rs. 20,000 bought by customer, then nothing.*** ***v. The MGA price is as per MRP of the specific product.*** ***vi. AD-on if any will be strictly as per MRP.*** ***We are also modifying our Mystery process, now our auditors will be booking cars also during negotiation process and may go up to registration and invoicing stage, entire Financial loss has to be borne by respective dealer apart from Penalty*** *…*
Nagpur	
E-mail dated 20.12.2012 sent by Manager of MSIL to dealers	*Market Discipline:* *Once again informing all the team members that the same has to be strictly followed.* ***Only offers communicated by the Regional Office has to be given to the customers. Also ensure prior approval from RM in cases where ever it is required as guided by the RO/AO.***
E-mail dated 08.05.2013 sent by Manager of MSIL to dealers	*Purview of Penalty:* • *…* • ***It was agreed that the maximum permissible limit in MGA is 5% only if the MGA sold on that vehicle is more than Rs. 20000. For MGA of less than Rs. 20000, No Discount is to be offered on MGA. The price would be on DMS invoice value.*** ***Penalty Amount:*** • ***Dealership would be penalized Rs. 50,000 for the 1st violation and would go up to Rs. 2.00 lac for the 4th violation in a step up of Rs 500000 for every case. A flat amount of Rs. 2.00 lac per violation would be levied thereafter.*** • ***Violating DSE would be penalised Rs. 5000/-, violating TL would be penalised Rs. 10,000/- and GSM/ SM would be penalised Rs. 20,000/-.*** • ***Any DSE caught twice should be sacked from the dealership and black-listed from MSIL network*** *…*
E-mail dated 11.10.2013 sent by Manager of MSIL to dealers	***We are once again reminding to adhere to the laid guidelines from RM.*** *We have been receiving complaints from co-dealers on old price being offered by some dealers in Nagpur.* ***All these cases will be personally audited by us in the default dealerships and any deviations will be liable for penalty as per the guidelines set in common meeting with CEO's.*** ***So, please adhere to the norms and we should fought with competition rather that fighting with MSIL family.***

E-mail	Relevant excerpts of incriminating e-mail
E-mail dated 19.10.2013 sent by Manager of MSIL to dealers	***Inspite of repeated reminders many of you are still are not adhering to the norms set under market discipline. We are coming across complaints of additional discounts, old price issues, delivery to other territories without RO/OA approval etc.*** ***We are cross checking all these cases personally now and deviation found will have penalty of Rs. 50,000/-. This time there will not be any warning and no justification will be asked for the cases found with any dealership in the city.***
E-mail dated 28.12.2013 sent by Manager of MSIL to dealers	*As agreed in meetings held at AO,* ***we decided to ensure that the market discipline has to be ensured at all the outlets without any deviation*** *CBH started this to benefit dealerships. And once decided it has to be followed in letter and Spirit. In past few days we have come across some cases where in it seems that the team is not interested in following the same.* ***Any deviation without prior approvals will be treated as violation and liable for strict action against the concerned dealership*** *...*
E-mail dated 08.01.2014 sent by Manager of MSIL to dealers	*Today we have* ***done mystery calling at all the 3 dealerships*** *in Nagpur and the feedback is:-* ***The calling was done to check whether the Dec' 13 offers are still being given to the customers or not as we have not continued the offer today*** *...* ***The way of communicating the offer seems to be different but the idea is that the DSE should not offer or even hint of any extra offer by using these Tricks. This will help in maintaining market discipline and will also give healthy balance sheet.***
E-mail dated 26.02.2014 sent by Manager of MSIL to dealers	*...* *This has been started to ensure that MSIL (3 dealers) should not lose with each other as we have to fight with competition.* ***And discount control is very important part of healthy balance sheet for all the owners. If it is in benefit of the dealership then we should not deviate.*** *Taking action and putting penalty on dealership is very easy as we do have cases with us and on phone also many times it has been proved to SM's in conference calls with DSE* ***offering some or the other discount.*** *...* ***So, we once again request you to kindly adhere to the said guidelines which is in interest of dealership but by way of offering discounts over and above the agreed norms will damage the market discipline*** *...*
North-2 Region	
E-mail dated 15.05.2014 sent by Manager of MSIL to dealers	*This mail is in reference to the minutes of the meeting with RM sir in regional office on 12th May 2014* *Please find below details of the discussion and action points:* • ***As accepted by MD that earlier discounts were being given on approval of GM sales (…) will no more be further given. Any approval has to be taken by MD in consent with the regional office.*** • ***MD to ensure … implementation of vigilant checks to ensure no pilferage on account of***

<table>
<tr><th>E-mail</th><th>Relevant excerpts of incriminating e-mail</th></tr>
<tr><td></td><td>discount or any other mal practices at the dealership
• Standardisation of price list and quotation to be issued to the customer.</td></tr>
<tr><td>E-mail dated 20.05.2014 sent by Manager of MSIL to dealers</td><td>This mail is in reference to the meeting held at Chandigarh dated 16th May' 14.
...
Following are the points discussed and need immediate corrective actions:-
Market Discipline:-
a. It was found that your dealership is violating Market discipline guidelines by offering discounts to the customers.
b. Any violation in future, will attract penal action and also the suspension of Swift & Dzire supplies"</td></tr>
<tr><td colspan="2">North-4 Region</td></tr>
<tr><td>E-mail dated 21.08.2016 sent by Manager of MSIL to dealers</td><td>We have also found that few outlets have given extra discounts over and above consumer offers. Once the same is established with proper recordings available with the agency we are initiating actions against the defaulting dealerships.</td></tr>
<tr><td>E-mail dated 26.09.2016 sent by Manager of MSIL to dealers</td><td>Subject: Violation: Market Discipline
Recently we have established a violation in one of the case where in delivery to the customer was given with EW waiver which was not approved from RO.
Please find Attached case where-in Dealership has accorded 4th Year extended warranty waiver to customer. This case was reported on internal whats' app Group of all 3 dealers of Hissar as well for Market Discipline that no EW or other Discount waiver shall be given to this customer.</td></tr>
<tr><td colspan="2">Meerut</td></tr>
<tr><td>E-mail dated 26.04.2018 sent by Manager of MSIL to dealers</td><td>Subject: Dealer discount approval Meerut Territory
Please find appended the format for Discount approvals which Dealership in Meerut territory have to take from the TSM, compulsorily.
<table>
<tr><th>S. No.</th><th>Dealer name</th><th>Deal code</th><th>Variant</th><th>Color</th><th>Name of customer</th><th>Customer city</th><th>Discount amount</th><th>Reason</th><th>No. of discount cases already approved in month</th></tr>
<tr><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td></tr>
</table></td></tr>
<tr><td colspan="2">Kolkata</td></tr>
<tr><td>E-mail dated 05.07.2019</td><td>As per the mentioned case of a deal for … for 2 Nos Ciaz, this is to state that RO is giving an approval for Rs. 8000 in total (Rs. 4000 per car) and not anything extra, as agreed by the dealers</td></tr>
</table>

E-mail	Relevant excerpts of incriminating e-mail
sent by Manager of MSIL to dealers	... ***To add further, any discount or freebies without the approval of Regional Manager through TSM is against market policy and shall be dealt with accordingly, as agreed by the dealers.***
Chennai	
E-mail dated 27.10.2014 sent by Manager of MSIL to dealers	***In result of a mystery shopping being done today, it is been found that most dealers in Chennai have not implanted this new price list. Celerio AMT prices have been raised by Rs. 5000 but most of you haven't implemented the same. Still dealers are quoting the old price. It is very surprising that dealers are not even able to implement basic things like price list uniformly.***

19. The Commission is of the view that from the exchange of such e-mails between MSIL and its dealers, an 'agreement' between them to control discounts, in terms of Section 2(b) of the Act, stands established.

20. MSIL has argued that the Discount Control Policy, even if found to be existing in certain regions, was only a form of policing amongst the dealers themselves *inter se*, and MSIL had no role in formulating such a policy, except to enforce the same on behalf of the dealers as an independent third-party.

21. However, from the above extracted e-mails, it is observed that each and every discount offered by the dealers of MSIL over and above the customer offers of MSIL, had to be permitted by MSIL. If discount without prior approval was given, the imposition of a penalty was threatened. Further, analysis of the above e-mails also shows that the Discount Control Policy was not a limited evaluation and regulation by MSAs; rather, meetings on Discount Control Policy were conducted by MSIL and it formulated policies wherein discounts were defined by way of limiting maximum discount allowed in cash or in terms of accessories, *etc*. The dealers were informed by MSIL that no discounts above the stated discounts are to be offered to consumers. Additionally, MSIL dictated that any dealership, after price rise, if found selling/billing on old price, will be considered violating selling norms and it will be treated as a discount offered to customers. As such, in view of the Commission, MSIL does not seem to be merely a third-party in such Discount Control mechanism as contended. Further, from the above e-

mails, it is also observed that time and again, MSIL circulated communications of warning and threats of imposing high penalties in case dealers offered extra discounts without prior approval. Had MSIL merely been an independent third-party, it would not have been involved in any such act of issuing threats to dealers against the violation of the Discount Control Policy. MSIL has contended it only monitored the Discount Control Policy at the behest of dealers as the dealers only intimated to it, violations by other dealers. In view of the Commission, even if such submission of MSIL is assumed to be true, nonetheless, the very act of MSIL of monitoring and controlling the discounts by issuance of threats of penalties *etc.*, with or without the active participation of the dealers, tantamount to indulgence of RPM by MSIL.

22. It is also noted that, in the e-mail dated 28.12.2013 sent by the Manager of MSIL to the dealers in Nagpur, it has been stated that the Commercial Business Head ('**CBH**') of MSIL had started this to benefit dealerships. In the e-mail dated 20.05.2014 sent by the Manager of MSIL to dealers in North-2 Region, it was written that "*Any violation in future will attract penal action and also the suspension of Swift & Dzire supplies*". There is no entity except MSIL that is responsible for supplying vehicles to the dealers. As such, the threat is not only limited to the imposition of penalty but also for stopping the supply of products. Therefore, since stoppage of supplies can, under all circumstances, be done only by MSIL, it is evident that Discount Control Policy was imposed by MSIL and not amongst the dealers *inter se.* Supply of vehicles cannot be stopped or even effected by the dealers amongst themselves without the role of MSIL.

23. MSIL has also argued that at least 30% of all MSIL sales made in FY 2018–19 involved additional discounts by dealers to consumers, which were officially communicated by such dealers to MSIL. In other words, at least 30% of all sales involved discounts given and officially admitted by the dealer over and above the declared Consumer Offers. MSIL has further contended that there were several other forms of discounts, other than direct cash discounts, which are not included in the said 30%. Hence, MSIL has argued, even where the Discount Control Policy was deployed by the dealers *inter se* (and not by MSIL), this was in an extremely limited set of instances and areas. Since in nearly 30% of the cases, dealers gave substantially higher discounts without any penal action being taken against them, no such Discount Control Policy was actually implemented.

24. In this regard, it is observed that, even if such a submission of MSIL is taken at face value, the e-mails extracted above are glaring evidences showing MSIL restricting its dealers from offering any additional discounts to customers, with threats of imposition of penalties and stoppage of supplies.

25. It is also nowhere established by MSIL that such discounts were given by such dealers without seeking any prior approval from MSIL. However, the DG has found e-mails which show that, where additional discounts in the form of cash discount, accessories, freebies, *etc.*, were to be offered by dealers, prior approval of MSIL was mandatory. These e-mails are extracted below:

E-mail	Relevant excerpts of incriminating e-mail
E-mail conversation dated 06-08.12.2014 between a dealer in South-4 Region and Manager of MSIL	**Dealer to MSIL:** *PFB few cases where in we seek your approval for deviation in Market discipline over and above MSIL approved offers.* **Manager to dealer** *Approved except Dzire Vxi*
E-mail conversation dated 15.12.2014 between a dealer in South-4 Region and Manager of MSIL	**Dealer to MSIL:** *PFB few cases where in we seek your approval for deviation in Market discipline over and above MSIL approved offers. Kindly approve for the same.* **Manager to dealer** *Very high level of additional offers. Approved as a special case but you must curtail.*
E-mail conversation dated 17-18.12.2014 between a dealer in South-4 Region and Manager of MSIL	**Dealer to MSIL:** *PFB few cases where in we seek your approval for deviation in Market discipline over and above MSIL approved offers.* **Manager to dealer** *Not approved*
E-mail dated 22.08.2016 sent by a dealer in South-4 Region to Manager of MSIL	*Subject: Approval for Additional Cash Discount – Vintage Stock* *We have received a Booking for a ALTO K10 LXI CNG for ..., Order # 17123110150118, Booking Date: 09/08/2016.* *Request your kind approval for additional cash discount of Rs. 5,000/-, as the vehicle 91 days old – MSIL Invoice – 10624503, Date 13/05/2016 Chassis – 263118*
E-mail dated 12.09.2016 sent by a dealer in West-1 Region to Manager of	*Customer Name: ...* *Model: Wagon R* *Consumer Offer: 10000/- cash + 15000/- accessories* *Remark: Customer wants full amount in cash as has financial constraints.*

E-mail	Relevant excerpts of incriminating e-mail
MSIL	
E-mail conversation dated 07.11.2017 between a dealer in West-1 Region and Manager of MSIL	**Dealer to MSIL:** *Subject: Additional Discount* *Customer is Exchanging his old car with us and Expecting cash Discount of Rs. 15000/- and Matting over and above consumer offer. Kindly approve* **Manager to dealer** *why you want to give additional offers?* **Dealer to MSIL** *This is to close exchange car deal* **MSIL to Dealer** *Ok as an exception*
E-mail conversation dated 09.07.2018 between a dealer in NCR and Manager of MSIL	**Dealer to MSIL** *This is in the reference of our customer … . He visited to our showroom on 8th July and interested in purchase of Swift VV White. We need to offer some discount to him to get the order. Please advice.* **MSIL to Dealer** *We appreciate your efforts and sincerity but please understand that selling cars in discount is not a healthy option for dealership as this tends to encourage easy selling for the entire sales team. Since selling with discounts is also not allowed across the region so it would be better if you put efforts in building team capability skills to sell on merits.*
E-mail dated 13.11.2018 sent by a dealer in South-2 Region to Manager of MSIL	*In continuous to above subject, the below customer is the … and they have booked the car in this son name.* *As a good will gesture we would like to extend the benefit of Rs. 3000/- for the below customer.* *His card is mentioned below for your reference.* *The customer is not booked the car with any other dealer.* *Seeking your kind approval on the same.*
E-mail dated 05.07.2019 sent by Manager of MSIL to dealers in Kolkata	*As per the mentioned case of a deal for … for 2 Nos Ciaz, this is to state that RO is giving an approval for Rs. 8000 in total (Rs. 4000 per car) and not anything extra, as agreed by the dealers..."* *This is the last and final time an approval of such a case is being given as a special scenario and RO will not consider or entertain any such request in the future without proper confirmation from customer regarding purchase intent from a specific dealer only, as agreed by the dealers.* *To add further, any discount or freebies without the approval of Regional Manager through TSM is against market policy and shall be dealt with accordingly, as agreed by the dealers.*

26. From the above extracted e-mails, it is evident that the Discount Control Policy was controlled by MSIL itself, not by the dealers or the MSAs. Approval for providing additional discounts was also directly sought from the Managers of MSIL, which was either approved or denied. As such, MSIL was not a mere third-party in imposing the Discount Control mechanism as contended. Rather, it is clear that MSIL was the approving authority of the maximum discounts that may be offered by its dealers to customers, despite its claim that it had a principal-to-principal relationship with the dealers.

27. From a comprehensive analysis of the e-mails extracted above, it is apparent that MSIL did, in fact, have an agreement with its dealers in terms of Section 3(4)(e) of the Act, whereby it restricted the discounts that may be offered by dealers to customers without its prior permission.

28. Further, from the e-mail dump submitted by MSIL, the DG also found several e-mails which show that, for non-adherence to such a Discount Control Policy of MSIL, the dealers were penalised. To enforce its Discount Control Policy, MSIL used to appoint MSAs who used to pose as customers to MSIL dealerships to find out if any additional discounts were being offered by such dealerships to customers or not. 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.

29. Some such e-mails sent by MSIL to dealers in various regions with regard to the appointment of MSAs and conducting Mystery Shopping, are extracted hereunder (emphasis supplied):

E-mail	Relevant excerpts of incriminating e-mail
North-1 Region	
E-mail dated 24.12.2013 sent by Commercial Business Head–NCR of MSIL to dealers in NCR	*It has come to my notice that some Dealers are trying to do* ***some violation of market discipline norms*** *… as the month-end is approaching.* *Let me inform you that* ***we will mercilessly initiate MULTIPE Penal action,*** *if required, to stop this menace at any cost.* *The message is clear*
E-mail dated 27.03.2014 sent by Manager of MSIL to dealers	***It is learnt that few Dealerships are trying to violate some of the prescribed policies & guidelines on Market Discipline … we have intensified & strengthen the process of mystery shopping & will not hesitate to take action on the erring Dealers.*** ***Please treat this as <u>STERN WARNING</u> and advise your teams for Strict Compliance to avoid penal action against the Dealership/ E-outlet.***
E-mail dated 03.07.2014 sent by Manager of MSIL to dealers in Faridabad	***It is learnt that few Dealerships in Faridabad cluster are trying to violate some of the prescribed policies & guidelines on Market Discipline … we have intensified & strengthen the process of mystery shopping & will not hesitate to take action on the erring Dealers.*** ***Please treat this as <u>STERN WARNING</u> and advise your teams for Strict Compliance to avoid penal action against the Dealership/ E-outlet.***
Jodhpur	
E-mail dated 10.07.2015 sent by Manager of MSIL to dealers	*Subject:* ***Market Discipline Policy – Jodhpur Territory*** ***Mystery Audit will be conducted from Regional Office to check for any violations in terms of extra discounts given over and above MSIL Offers.*** *Mystery Shopping agency- … would be conducting the same for Jodhpur…* *Mystery shopping will commence from next week.* *Please find attached the* ***discount control policy document*** *in case of any violation…"* **Attachment to the said e-mail is a file named 'Discount Control-Jodhpur.docx'** which contains **gist of quantum of penalties to be imposed on Maruti Suzuki Dealership in case of violation of discount policy.**
Patna	
E-mail dated 04.10.2016 sent by Manager of MSIL to dealers	*To keep a check on the above points the below activity,* ***Mystery shopping and audits will be done at all the 4 dealer outlets in Patna:*** ***a.) Mystery Shopping- Physical Visit/ Tele-calling (on monthly basis):*** *The mystery shopper will be auditing on the below points:* •***Contents of quotation as per given format and ongoing offer*** •***Additional discount*** •… ***In case any deviation is found from the above set policies then, accordingly penalty charges would be levied against dealer. The details of the same will be***

E-mail	Relevant excerpts of incriminating e-mail
	shared later…"
Ranchi	
E-mail dated 25.08.2014 sent by Manager of MSIL to dealers	*To further improve the quality and efficiency of the quality of sales parameters and proper implementation of agreed sales policies and norms at all MSIL dealerships, we have hired a new professional agency to undertake this activity across all Ranchi territory.* ***The proposed activity will involve both personal visits to showrooms as well as telephone calls to each showroom. To start with, the Mystery Shopper will have physical visit on weekly basis to all the 4 Outlets of Ranchi, and Mystery calls in frequency of 2-3 days to each outlet.*** *This module will enable **dealership's compliance to company's price list**, customer docket, OBC implementation, **agreed Additional Discount**, etc. other than the audit of agreed Sales policies and norms of MSIL.* *…* *This will also place a **check on the discount front** as faced by the dealership in many cases.*
E-mail dated 03.09.2014 sent by Manager of MSIL to dealers	*Please the points discussed during the **Discount Control Policy Meeting** held on 3rd September, 2014.* ***Minutes of Meeting:*** ➢ ***MSIL has hired an agency to conduct Mystery Shopping across Maruti Dealership to control discount in Ranchi.*** ➢ ***The mystery shopper will pose as a normal customer and will enquire, give booking and take delivery in certain cases as well.*** ➢ *…* ➢ *The mystery shopper will physically visit dealerships in every 2-3 days.* ➢ *The mystery shopper will perform mystery calling in every 2-3 days.* ➢ ***Voice Recording or Video will be considered as a proof for discounts.***
E-mail dated 05.08.2016 sent by Manager of MSIL to dealers	*Subject: **Discount Control Policy Meeting** – 8th August' 16* *This is to inform you that we have planned a Discount Control Policy Meeting on 8th August'16 at 4:00 PM in Regional Office, Ranchi. Agenda for the meeting:* *1. Revision in earlier formulated policy and guidelines* *2. Discussion on Market Discipline* *3. Formulation of policy on audit of files* *4. **Mystery shopping**…*
E-mail dated 10.08.2016 sent by Manager of MSIL to dealers	*Subject: **MOM from Discount Control Policy** – Meeting on 8th August' 16* *To keep a check on the above points the below activity will be done at all the 4 dealer outlets in Ranchi:* ***a.) Mystery Shopping-Physical Visit/ Tele-Calling (on monthly basis):*** *The mystery shopper will be auditing on the below points:*

<table>
<tr><th>E-mail</th><th>Relevant excerpts of incriminating e-mail</th></tr>
<tr><td></td><td>• …
• Additional discount
…
In case any deviation is found from the above set policies then, accordingly penalty charges would be levied …</td></tr>
<tr><td>E-mail dated 22.08.2016 sent by Manager of MSIL to dealers</td><td>Subject: RE: MOM from Discount Control Policy Meeting on 8th August' 16
The below policy and guidelines are applicable from 16th August' 16. To keep a check on the above points, the mystery shopping will start from 25th August' 16. Other details will be shared tomorrow via another e-mail id.
Kindly ensure that each and every point have been informed to the entire sales team.</td></tr>
<tr><td>E-mail dated 05.09.2016 sent by Manager of MSIL to dealers</td><td>Subject: RE: MOM from Discount Control Policy Meeting on 8th August' 16
Please find attached mystery shopping report for the month of August' 16 in all the 4 outlets. The model selected for the same was Alto 800. As per the agency, no additional discount was offered to the customer.
…</td></tr>
<tr><td>E-mail dated 19.09.2016 sent by Manager of MSIL to dealers</td><td>Subject: SM-GM Meet on Discount Control Policy at RO
In the last few days, we have been receiving complaints on discounting by both the dealer outlets (…). I had already shared the mail with you regarding clarification on the same.
To further discuss on the same we would like SM-GMs from all 4 outlets to be present in RO at 4 pm tomorrow …
We have also asked the mystery shopping agency to be vigilant and but if the cases are increasing then, I would suggest we do 100% audit of all the files because it is not possible to catch hold of discount case in one or two visit.</td></tr>
<tr><td colspan="2">Jamshedpur</td></tr>
<tr><td>E-mail dated 22.08.2014 sent by Manager of MSIL to dealers</td><td>Mentioned below are the update of Action points post visit of Sr. EO (M&S).
<table>
<tr><th>Concerned Area</th><th>Action plan/Target</th><th>Deadline</th><th>Current Status</th></tr>
<tr><td>Discounting by Co. dealer</td><td>MSIL to take strict action against defaulters and discount control to be implemented.</td><td>Aug’14</td><td>1) CA agency has been finalised.
2) Briefing of agency done regarding work to be done.
3) Agency has started Mystery shopping w.e.f. Aug’ 14.</td></tr>
</table></td></tr>
<tr><td>E-mail dated 25.08.2014 sent by Manager of</td><td>To further improve the quality and efficiency of the quality of sales parameters and proper implementation of agreed sales policies and norms at all MSIL dealerships, we have hired a new professional agency to undertake this</td></tr>
</table>

E-mail	Relevant excerpts of incriminating e-mail
MSIL to dealers	***activity across all Jamshedpur territory. The proposed activity will involve both personal visits to showrooms as well as telephone calls to each showroom. To start with, the Mystery Shopper will have physical visit on weekly basis to all the Outlets & E outlets of Jamshedpur territory, and Mystery calls in frequency of 2-3 days to each outlet.*** *This module* ***will enable dealerships compliance to company's price list,*** *customer docket, OBC Implementation,* ***agreed Additional Discount,*** *etc. other than the audit of agreed Sales policies and norms of MSIL.* *...* ***This will also place a check on the discount front*** *as faced by the dealership in many cases.*
E-mail dated 13.07.2017 sent by Manager of MSIL to dealers	*Subject: RE: MOM from* ***Discount Control Policy Meeting*** *on 13th July'17* *To enforce market discipline and adherence to agreed sales policy and norms at dealership, we conducted a meeting at Regional Office, Ranchi on 13th of July' 17. The purpose of the meeting was to formulate a transparent market policy with consensus from both the dealers of Jamshedpur territory.* *...* *To keep a check on the above points the below activity will be done at all the 3 dealer outlets in Jamshedpur:* ***(i) Mystery Shopping-Physical Visit/ Tele-calling (on monthly basis):*** *The mystery shopper will be auditing on the below points:* • ***Contents of quotation as per given format and ongoing offer*** • ***Additional discount*** • *...* • ***Exchange bonus and pricing …***
West-2 Region	
E-mail dated 10.08.2012 sent by Manager of MSIL to dealers	*This has reference to the meeting we had at Regional Office on 7th August 2012 in the presence of ... CBH West, ... Regional Manager West and the sales team of West 2, to discuss on ways to bring about Market discipline.* *... based on the same you all have agreed upon the following:* *Market Discipline –* *Process to Be Followed:* • *The current system of mystery shopping at Dealership outlets would continue.*
E-mail dated 06.08.2015 sent by Manager of MSIL to dealers	*"First of all, I would like to convey sincere thanks for your active participation in Market Discipline meeting held on 5th August 2015…* *Please find below mutually agreed implementation points with respect to Market discipline & Sales operating procedures, wherein you have agreed on following parameters/ amendments:* ***We will be starting mystery audits across all outlets/ Workshops/ TV outlets/ MDS from 10th Aug. If any violation of agreed norms is observed during***

E-mail	Relevant excerpts of incriminating e-mail
	mystery shopping, RO will take immediate penal action against the outlet. … ***E.) Freebies:-*** ***The limit on giving extra offer on MGA is as follow:*** ***I. If MGA>Rs. 20,000 bought by customer, then only 5% discount is allowed.*** ***II. If MGA<= Rs. 20,000 bought by customer, then nothing.*** ***III. The MGA price is as per MRP of specific product.*** ***IV. Ad-on if any will be strictly as per MRP.***
E-mail dated 08.08.2015 sent by Manager of MSIL to dealers	*I am sure, by now below agreed norms are discussed and informed to people associated with your organisation loud and clear.* *We are starting mystery audits from 10th Aug.* *And please note,* ***any additional offer given on other than dealership quotation format will be treated as violation only****.*
Email dated 08.07.2016 sent by Manager of MSIL to dealers	*We are also modifying our Mystery process, now our auditors will be booking cars also during negotiation process and may go up to registration and invoicing stage, entire financial loss has to be borne by respective dealer apart from Penalty.* …
Nasik	
E-mail dated 21.05.2016 sent by Manager of MSIL to dealers	*… We will be starting mystery audits across all the outlets.* ***If any violation of agreed norms is observed during mystery shopping, RO will take immediate penal action against outlet."*** ***Action Plan-*** ➢ ***From 23rd May onwards Zero discount has to be offered in any forms to S CROSS and BALENO customer.*** ➢ ***Discount in any forms i.e. accessories (5% on accessories or even matting& mud flap), finance payout, Insurance or extended warranty will be considered as a violation and therefore should not be given.***
Hyderabad	
E-mail dated 30.04.2015 sent by Manager of MSIL to dealers	*"Kindly find the minutes of meeting on market discipline that was held on 29th April 2015.* • *All the dealers have agreed to appoint … as the both Market Discipline Agency and Docket File Agency for their dealerships.* • *…* • ***Market Discipline will not only cover discount issues*** *but also give an insight on dealer's SOS implementation which would be shared with dealerships on monthly basis."* The PPT attached with the e-mail under filename 'MSIL AP Telangana – DA PPT 2015 Final PPT' states that:

<table>
<tr><th>E-mail</th><th>Relevant excerpts of incriminating e-mail</th></tr>
<tr><td></td><td>Purpose: Purpose of the audit is to ensure that the dealership is pricing their cars as per the standard price list and also to ensure that no illegal discounts are being extended to the customer.</td></tr>
<tr><td colspan="2">Chennai, Coimbatore and Madurai</td></tr>
<tr><td>Email dated 18.02.2015 sent by Manager of MSIL to dealers along with attachment ‘MYSTERY SHOPPING SCORE CARD’</td><td>The second important and critical aspect would be to audit ‘Implementation of Market Discipline’ in multi-dealer city locations. This audit would evaluate the transparency and consistency of the sales process and market discipline as per MSIL norms being religiously followed in all outlets. The violation of sales process identified in this would be treated seriously and following penalty would be levied on the earring dealerships"
… We have designed an elaborate scale on which audit would be conducted by a third party agency. The scale consists of various points mounting upto 1000 points …
The attachment in the e-mail i.e. ‘Mystery Shopping Score Card’ has at Sl. No. 8, ‘Discounts Offered’ and the same, amongst others, has following Critical Parameters:
• Did not provide excessive discount in Cash over and above consumer offer …
• Did not provide freebies like MGA, Teflon Coating, Removing EW/ MI etc.</td></tr>
<tr><td colspan="2">Trivandrum</td></tr>
<tr><td>E-mail dated 15.09.2018 sent by Manager of MSIL to a dealer</td><td>During the mystery shopping audit on Quality of Sales in Kerala, we have observed a violation from …
Details of the violation and the penalty for this deviation is mentioned below.
Should you choose to verify the recording and revert, the nominated person can get in touch with …
Subsequent to this, we would appreciate strict action taken and the same shared with us.
<table>
<tr><th>Dealer</th><th>Location</th><th>No. of violation</th><th>Penalty</th><th>Date of violation</th><th>Model</th><th>Deviation</th></tr>
<tr><td>…</td><td>Trivandrum</td><td>1</td><td>1,00,000</td><td>6.9.18</td><td>Àlto K10 AMT</td><td>Rs. 4500 basic kit</td></tr>
</table></td></tr>
<tr><td>E-mail dated 17.10.2018 sent by Manager of MSIL to a dealer</td><td>Request you to kindly arrange to make the payment towards the quality of sales deviation observed at your outlet to the below mentioned account details.
The invoice along with the bank details against the same is also attached.
Account Name - T Sriram , Mehta & Tadimalla
Account No…
IFSC….</td></tr>
</table>

30. Again, MSIL argued that the appointment of MSAs was done by the dealers only and MSIL had no role to play in this regard. MSIL has submitted that the above e-mails, when read in entirety along with their trail mails, would show that the e-mails contained statements to the effect that the dealers had agreed to the sales policies of MSIL *etc.* Further, MSIL has argued that the invoices issued by the MSAs are also in the names of the dealers only.

31. In this regard, the Commission, upon holistic reading of the above e-mails, observed that MSIL has tried to pick-up isolated statements from its e-mails, which appear to be self-serving statements, to allege that it was the dealers who had appointed the MSAs. However, the Commission is of the view that such statements relied upon by MSIL merely show that the dealers may have willingly agreed to the proposals put forward by MSIL or that they had no choice but to agree with the proposal put forth by MSIL, in the meetings held between MSIL and the dealers. From perusal of these entire e-mails along with their trail mails, it is observed that such statements do not in any way, imply that the MSAs were hired by the dealers themselves. It is evident from the above e-mails that the MSAs were hired by MSIL, and it was MSIL that decided the mode and frequency of the visits of MSAs. MSIL also informed the dealers where the penalty was to be deposited. There is absolutely no indication in the above e-mails that the appointment of MSAs was done by the dealers themselves. Further, it is evident from multiple e-mails that MSIL made it clear that the cost of appointment of MSAs would be borne by the dealers. As such, certain invoices of some MSAs may be in the name of the dealers. In view of the above, MSIL's contention that because invoices were issued in the name of the dealers, as such, MSAs were appointed by the dealers themselves, holds no value.

32. Further, MSIL has stated that there are 331 parent dealers (for all MSIL models put together) and 3067 outlets of MSIL across India. In view of the Commission, even if only the parent dealers are taken into account, with so many dealers spread across the geographical breadth of the country, it is nearly impossible for dealers to agree and appoint MSAs and implement imposition of penalties themselves, without such an act being organised and monitored by MSIL.

33. It is noted from several e-mails exchanged between MSIL and its dealers that penalties were imposed by MSIL on the errant dealerships and their concerned individuals for violation of Discount Control Policy by first sending them an audio clip of the Mystery Shopping Audit and seeking clarification therefrom. If the clarification offered was not found acceptable, MSIL imposed penalties. MSIL also informed dealers where the penalty amount should be deposited and consistently reminded them about pendency of payment of their penalty amounts.

34. Some examples of imposition of penalty by MSIL for the violation of the Discount Control Policy, as extracted from e-mails of MSIL, are tabulated hereunder:

<table>
<tr><th>Period</th><th>Additional discounts offered by Dealer</th><th>Penalty imposed</th></tr>
<tr><td colspan="3">Pune</td></tr>
<tr><td>Feb. 2016</td><td>
<table>
<tr><th>Particular</th><th>Norm</th><th>Offered</th><th>Additional discounts</th></tr>
<tr><td>Accessories</td><td>0</td><td>₹3,000</td><td>₹3,000</td></tr>
<tr><td>Cash discount</td><td>₹25,000</td><td>₹30,000</td><td>₹5,000</td></tr>
<tr><td></td><td></td><td></td><td>₹8,000</td></tr>
</table>
</td><td>Dealer – ₹1,00,000
GM/ SM – ₹25,000
TL – ₹10,000
DSE – ₹5,000
MSIL asked dealer to submit cheque of total penalty amount of ₹1,40,000 at regional office in the name of Ms. Swati Kale.</td></tr>
<tr><td>May 2016</td><td>
<table>
<tr><th>Particular</th><th>Norm</th><th>Offered</th><th>Additional discounts</th></tr>
<tr><td>Accessories</td><td>0</td><td>₹1,850</td><td>₹1,850</td></tr>
<tr><td></td><td></td><td></td><td>₹1,850</td></tr>
</table>
</td><td>Dealer – ₹50,000
GM/ SM – ₹20,000
TL – ₹10,000
DSE – ₹5,000
MSIL asked dealer to submit cheque of total penalty amount of ₹85,000 at regional office in the name of Ms. Swati Kale.</td></tr>
<tr><td>Aug – Sep 2017</td><td>
<table>
<tr><th>Particular</th><th>Norms</th><th>Offered</th><th>Additional discounts</th></tr>
<tr><td>Accessories</td><td>0</td><td>₹3,000</td><td>₹3,000</td></tr>
<tr><td>Cash discount</td><td>₹25,000</td><td>₹28,000</td><td>₹3,000</td></tr>
</table>
</td><td>Dealer – ₹50,000
GM/SM – ₹20,000
TL – ₹10,000
DSE – ₹5,000
Dealership to also take disciplinary action against DSE.</td></tr>
</table>

<table>
<tr>
<td>June 2016</td>
<td>
<table>
<tr><th>Particular</th><th>Norms</th><th>Offered</th><th>Additional discounts</th></tr>
<tr><td>Cash discount</td><td>₹5,000</td><td>₹9,428</td><td>₹4,428</td></tr>
<tr><td></td><td></td><td></td><td>₹4,428</td></tr>
</table>
</td>
<td>Dealer – ₹50,000
GM/SM – ₹20,000
TL – ₹10,000
DSE – ₹5,000
MSIL asked dealer to submit cheque of total penalty amount of ₹85,000 at regional office in the name of Ms. Swati Kale.</td>
</tr>
<tr>
<td>July – August 2018</td>
<td>
<table>
<tr><th>Particular</th><th>Norm</th><th>Offered</th><th>Additional discounts</th></tr>
<tr><td>Cash discount</td><td>₹25,000</td><td>₹30,000</td><td>₹5,000</td></tr>
</table>
</td>
<td>Dealer – ₹2,00,000 as second violation.</td>
</tr>
<tr>
<td>April 2016</td>
<td>
<table>
<tr><th>Particular</th><th>Amount</th></tr>
<tr><td>Additional discounts</td><td>₹7,396</td></tr>
</table>
</td>
<td>Dealer – ₹1,00,000
GM/SM – ₹25,000
TL – ₹10,000
DSE – ₹5,000
MSIL asked dealer to submit cheque of total penalty amount of ₹1,40,000 at regional office in the name of Ms. Swati Kale.</td>
</tr>
<tr>
<td>April 2018</td>
<td>
<table>
<tr><th>Particular</th><th>Norm</th><th>Offered</th><th>Additional discounts</th></tr>
<tr><td>Cash discount</td><td>₹25,000</td><td>₹30,000</td><td>₹5,000</td></tr>
</table>
</td>
<td>Dealer – ₹50,000
RM – ₹10,000
SRM – ₹15,000
SM – ₹25,000
Dealership to also take disciplinary action against RM and SRM.</td>
</tr>
<tr>
<td>April 2018</td>
<td>
<table>
<tr><th>Particular</th><th>Norm</th><th>Offered</th><th>Additional discounts</th></tr>
<tr><td>Cash discount</td><td>₹25,000</td><td>₹39,000</td><td>₹14,000</td></tr>
</table>
</td>
<td>Dealer – ₹50,000
RM – ₹10,000
SRM – ₹15,000
SM – ₹25,000
Dealership to also take disciplinary action against RM and SRM.</td>
</tr>
</table>

<table>
<tr><td>April 2018</td><td><table><tr><th>Particular</th><th>Norm</th><th>Offered</th><th>Additional discounts</th></tr><tr><td>Cash discount</td><td>₹20,000</td><td>₹30,000</td><td>₹10,000</td></tr></table></td><td>Dealer – ₹50,000
RM – ₹10,000
SRM – ₹15,000
SM – ₹25,000
Dealership to also take disciplinary action against RM and SRM.</td></tr>
<tr><td colspan="3">Worli</td></tr>
<tr><td>Apr 2017</td><td>Additional discount of ₹3,000 offered</td><td>Dealer – ₹50,000
GM – ₹5,000
CEO – ₹5,000
SM – ₹5,000
DSE – ₹2,000</td></tr>
<tr><td colspan="3">Kolkata</td></tr>
<tr><td>Aug 2014</td><td>Additional offer given as music system to customer other than prescribed offers</td><td>Dealer – ₹2,00,000</td></tr>
<tr><td colspan="3">Delhi</td></tr>
<tr><td>Aug 2016</td><td>Multiple violations informed by OP to dealer:
• Discount of S Cross model
• Delivery of cars outside prescribed territory
• Demanding premium for early delivery of Brezza
• Demanding premium for early delivery of Baleno</td><td>Total penalty imposed – ₹10,00,000</td></tr>
<tr><td colspan="3">Haryana</td></tr>
<tr><td>Feb 2017</td><td><table><tr><th>Particular</th><th>Applicable offer</th><th>Consumer offer</th><th>Additional discounts</th></tr><tr><td>Consumer offer</td><td>25,000</td><td>20,000</td><td>5,000</td></tr></table></td><td>Dealer – ₹20,000</td></tr>
<tr><td colspan="3">Jamshedpur</td></tr>
<tr><td>Nov. 2017</td><td>Extra discount of ₹1,985 offered</td><td rowspan="3">For second violation, the dealer penalised with ₹1,00,000.</td></tr>
<tr><td>Jan. 2018</td><td>Extra cash discount of ₹5,151 offered</td></tr>
<tr><td>Sept. 2018</td><td>Extra cash discount of ₹5,000 offered on Dzire VDI
and
Extra cash discount of ₹25,000 + Fake Exchange offered on WagonR VXI</td></tr>
<tr><td colspan="3">Cochin</td></tr>
<tr><td>Sept. 2018 to Jan 2019</td><td>Extra cash discount of ₹5,000 + Free Teflon offered on Alto K10 AMT</td><td>Penalty of ₹1,00,000 to be deposited in the account of T Sriram, Mehta and Tadimalla.</td></tr>
</table>

Trivandrum		
Sept. to Nov. 2018	Extra ₹4,500 Basic Kit offered on Alto K10 AMT	Penalty of ₹1,00,000 to be deposited in the account of T Sriram, Mehta and Tadimalla in Axis Bank Ltd.

35. It is noted from the above e-mails that, in the territory of Pune, Maharashtra, the dealerships were to give the penalty cheque in the name of one Ms. Swati Kale. Ms. Swati Kale is the wife of Mr. Vinod Kale, who is the President of Wonder Cars Pvt. Ltd., an MSIL dealership in Pune, Maharashtra.

36. When Ms. Swati Kale was questioned by the DG, she submitted that her role was to receive cheques as per the instructions of the Regional Manager of MSIL and deposit the same in her account and issue cheques as per his instructions as and when required. Ms. Swati Kale also submitted her statement of accounts showing credit entries for penalty amounts and debit entries for cheques issued.

37. Further, Ms. Swati Kale also submitted some e-mails showing the manner in which such penalty amounts were utilised as per the instructions received from MSIL. Some such e-mails are extracted hereunder:

E-mail	Relevant excerpts of the e-mail
E-mail dated 27.10.2017 from MSIL to Mr. Vinod Kale	*As directed by Zonal office Mumbai, Regional office West 2 has released advertisement from the budget kept under Market Discipline activities in the month of September' 17 through Pratisaad Communications Private Limited. Please find herewith attached invoices of the ad released. Total amount is INR 18,89,657. Request you to please release the payment in the name of Pratisaad Communications Private Limited ...* *Also, after releasing the payment, please share statement of account.*
E-mail dated 05.01.2018 from MSIL to Mr. Vinod Kale	*As directed by Zonal office Mumbai, Regional office West 2 has released advertisement from the budget kept under Market Discipline activities in the month of December' 17 through Pratisaad Communications Private Limited. Please find herewith attached invoices of the ad released. Total amount is INR 8,58,935. Request you to please release the payment in the name of Pratisaad Communications Private Limited ...* *Also, after releasing the payment, please share statement of account.*
E-mail dated 09.11.2016 from MSIL to Mr.	*Pls transfer 10 lacs to below a/c code in reference to Dealers meet at Goa on 19th Nov. ...*

E-mail	Relevant excerpts of the e-mail
Vinod Kale	

38. From the above e-mails, it is observed that the amount collected in the account of Ms. Swati Kale was used by MSIL, *inter alia*, to pay the bills of advertisements. The e-mails clearly indicate that the advertisements under reference had been released by the Regional Office, West-2, MSIL, as per the directions of the Zonal Office and not by any dealer(s). Thus, the penalty amounts were clearly imposed by MSIL and collected in the account of Ms. Swati Kale as per the directions of MSIL, and the amounts were also utilised as per the instructions of MSIL. Hence, the submission of MSIL, of it being a mere third-party in the enforcement of the entire Discount Control mechanism through the appointment of MSAs, stands completely struck down. It is clear from the submission of Ms. Swati Kale that she was merely the keeper of the penalty funds in the territory of Pune; the management of such penalty funds however, lay with MSIL, and the amounts therefrom were utilised as per the directions of MSIL managers.

39. The e-mails extracted above clearly show that MSIL not only imposed the Discount Control Policy on dealers, but also enforced the same by monitoring dealers through MSAs, imposing penalties on them and threatening strict action like stoppage of supply, collection and recovery of penalty and utilisation of the same.

40. Once an agreement between MSIL and its dealers in terms of Section 3(4) of the Act regarding Discount Control Policy is established, and it is also established that MSIL not only imposed but even enforced such an agreement, the Commission now proceeds to analyse if any AAEC in the market has been caused or was likely to be caused as a result of such an agreement between MSIL and its dealers.

41. 'Resale Price Maintenance' as defined under Explanation (e) to Section 3(4) of the Act includes "*any agreement to sell goods on condition that the prices to be charged on the resale by the purchaser shall be the prices stipulated by the seller unless it is clearly stated that prices lower than those prices may be charged*".

42. The Commission notes that the imposition of maximum discount limits by MSIL upon its dealers amounts to RPM within the meaning of the above extracted provision.

43. As per the provisions of Section 19(3) of the Act, for determining AAEC, if any, caused or likely to be caused as a result of any agreement entered into within the meaning of Section 3 of the Act, including RPM, due regard to all or any of the following factors shall be had by the Commission:

    (i) Creation of barriers to new entrants in the market;
    (ii) Driving existing competitors out of the market;
    (iii) Foreclosure of competition by hindering entry into the market;
    (iv) Accrual of benefit to consumers;
    (v) Improvements in production or distribution of goods or provision of services; or
    (vi) Promotion of technical, scientific and economic development by means of production or distribution of goods or provision of services.

44. As such, the Commission proceeds to analyse AAEC in terms of the factors stated under Section 19(3) of the Act.

45. The Commission notes that RPM can prevent effective competition both at the intra-brand level as well as at the inter-brand level. When a minimum RPM is imposed by the manufacturer upon the distributors, the distributors are prevented from decreasing the sale prices beyond the imposed limit. In other words, the mechanism does not allow the distributors to compete effectively on price. As such, stifling intra-brand competition results in higher prices for consumers.

46. In the instant case, the RPM enforced upon the dealers by MSIL has led to denial of benefits to the consumers in terms of competitive prices being offered by MSIL dealers. When all the dealers are controlled by a Discount Control Policy, they are forced to sell the same product at the same price which, to a large extent, eliminates price competition amongst them. As such, due to almost *nil* intra-brand competition amongst MSIL dealers, the consumers would have had to purchase MSIL vehicles at fixed prices without flexible discounts being offered to them by MSIL dealers, thereby leading to charging of higher prices/ denial of discounts in kind, to them. Such arrangements perpetuated by MSIL restricted intra-brand competition amongst MSIL dealers, as it impaired their ability to compete with respect to prices in the sale and distribution of MSIL brand cars. There are numerous instances noted above whereby dealers have

offered additional discounts to the MSAs assuming them to be genuine consumers, and have been levied financial penalties for their such conduct by MSIL. As such, it is evident that had there been no Discount Control Policy enforced by MSIL, customers of MSIL would have been able to buy MSIL vehicles at lower prices. This has resulted in the denial of benefits to consumers, which would have otherwise been accrued to them in a healthy competitive environment between dealers. The anti-competitive impact of such a practice of MSIL is reinforced by the fact that MSIL has more than 50% market share in the passenger vehicles segment, as observed by the DG.

47. MSIL has argued that its market share keeps fluctuating and that if the prices of MSIL vehicles are kept high, consumers always have the choice of switching over to vehicles of other brands. As such, high market share of MSIL holds no nexus with any AAEC being caused.

48. The Commission however, is of the view that, imposition and enforcement of RPM by a player like MSIL, having a significant market share, not only thwarts intra-brand competition but also leads to the lowering of inter-brand competition in the passenger vehicles market. When a significant player such as MSIL imposes minimum selling price restrictions in the form of maximum discount that can be offered by the dealers, RPM can decrease the pricing pressure on competing manufacturers. This is more so in case of dealers who may be in an interlocking relationship with multiple manufacturers. When all dealers of MSIL are selling vehicles at similar prices, the prices of MSIL vehicle models can be easily comprehended by other players in the market. Being aware of the similar prices of MSIL's dealers due to prevalence of RPM in the passenger vehicle segment, the other OEMs can easily monitor MSIL's prices and also factor it in their pricing strategy, thereby softening competition. As such, it relaxes competitive pressure upon them and they can price their competing models accordingly, which due to the prevalence of RPM, may be priced higher than a competitively determined price. This phenomenon creates an obstruction for consumers to avail the benefit of competition in pricing across different brands as well.

49. It is known that RPM as a practice by multiple manufacturers is conducive for monitoring of tacit collusion among such manufacturers. Higher prices under RPM can exist, even when a single manufacturer imposes minimum RPM. This is more likely in the case of multi-brand dealers who have significant bargaining power because of their ability to substitute one brand with another. Further, this leads to another likely anti-competitive effect of higher prices across all brands even if there is no upstream or downstream conspiracy, 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, minimum retail price RPM has the effect of reducing inter-brand price competition in addition to reducing intra-brand competition.

50. Further, in terms of the factors stated under Section 19(3) of the Act, the impugned agreement/arrangement did not result in accrual of any consumer benefits; rather, the same resulted in denial of benefits to consumers as they were made to pay high prices. Further, the said arrangement/agreement is not resulting in any improvements in production or distribution of goods or provision of services. The arrangement/agreement perpetuated by MSIL also hindered in the distribution of goods and the provision of services in relation to new cars. The arrangement/agreement put in place by MSIL also resulted in creation of barriers to new entrants/dealers in the market as the new dealers would take into consideration restrictions on their ability to compete with respect to prices in the intra-brand competition of MSIL brand of cars. Hence, the arrangement perpetuated by MSIL in fixing the resale price of MSIL brand of cars in the manner, as discussed above, foreclosed intra-brand price competition for its dealers as well as stifled inter-brand competition.

51. MSIL has argued that there is no possible direct/indirect or perceived benefit to MSIL by enforcing any Discount Control Policy amongst its dealers. The sale of vehicles of MSIL is largely unaffected by this and, at the most, the direct effect is only on dealers. Therefore, there cannot be any significant motive for MSIL to indulge in such alleged RPM. Vehicle supply by MSIL to each of its dealers is undertaken on a principal-to-principal basis and is not a commission-based sale. Hence, once MSIL supplies the vehicle to the dealer, the title of the vehicle passes to the dealer.

52. The Commission is, however, of the view that by controlling the dealers' margin, inter brand competition softens due to ease of monitoring of retail prices by the competitors. This provides the manufacturer more liberty to regulate its own margin freely. Thus, RPM lowers the pressure on the margin of the manufacturer. As such, MSIL may have a motive to indulge in RPM through the Discount Control Policy. Anyhow, motive or *mens rea* of the alleged violator of Competition Law is of no value or significance.

53. MSIL has also contended that RPM through such Discount Control Policy has pro-competitive effects like the elimination of free-riding problem.

54. However, the Commission is of the view that the SOP and SPG put in place by MSIL provide a very clear and detailed description for working of MSIL dealers in terms of services to be rendered to the customers and other pre-sales services. Further, admittedly, these services are also monitored by MSIL through MSAs and the imposition of penalties. As such, considering such detailed guidelines for dealers backed by sanctions, there is very little scope for issues like free-riding. All dealers of MSIL are subjected to the SOP/SPG and non-compliance with the same also results in the imposition of penalties. As such, the justification put forth by MSIL, that RPM is required to eliminate the problem of free-riding, is not tenable.

55. Though MSIL has argued that SOP/SPG may not be sufficient to solve the free-riding problem, and neither can they be fully monitored, the Commission observes that even a vertical restraint like RPM may not be the solution to such a problem. Eliminating price competition between dealers may not necessarily incentivise them to pass on the benefit of extra margins to consumers by way of providing better complementary services and it may not necessarily add extra value to complementary services. Nonetheless, in any circumstances, even if a benefit in the form of improved complementary services may be resulting from RPM, the same does not outweigh the harm caused to the market due to significant reduction in intra-brand competition and softening of inter-brand competition, leading to higher prices for the consumers.

Conclusion:

56. On the basis of the above analysis, the Commission concludes that MSIL not only entered into an agreement with its dealers across India for the imposition of Discount Control Policy amounting to RPM, but also monitored the same by appointing MSAs and enforced the same through the imposition of penalties, which resulted in AAEC within India, thereby committing contravention of the provisions of Section 3(4)(e) read with Section 3(1) of the Act.

Penalty:

57. Under the provisions of Section 27(b) of the Act, the Commission is empowered to impose upon an entity contravening the provisions of Section 3 and/or Section 4 of the Act, penalty as it may deem fit, which shall not be more than ten percent of the average of the turnover of the entity for the last three preceding financial years.

58. Having considered the nature of the infringing conduct and the post–pandemic phase of recovery of automobile sector, the Commission takes a considerate view and deems it appropriate to impose a penalty of ₹200 crores (Rupees Two Hundred Crores) only upon MSIL, as against a maximum penalty permissible under the provisions of the Act, which may extend upto ten percent of the average of the turnover of the entity for the last three preceding financial years.

ORDER

59. The Commission, in terms of Section 27(a) of the Act, directs MSIL to cease and desist from indulging in RPM directly and/or indirectly, which has been found by the Commission in the present order to be in contravention of the provisions of Section 3(4)(e) of the Act.

60. Further, the Commission, under the provisions of Section 27(b) of the Act, directs MSIL to deposit the penalty of ₹200 crores (Rupees Two Hundred Crores Only) imposed upon it within a period of 60 days of receipt of the present order.

61. It is made clear that all information contained in the present order has been used for the purposes of the Act in terms of the provisions of Section 57 thereof. However, the other information over which confidentiality has been granted by the DG shall continue to remain confidential for a period of three (3) years from the date of passing of the present order, as directed by the Commission *vide* order dated 11.11.2020.

62. As regards the confidentiality claims with respect to objections/ suggestions to the DG Report filed by MSIL, confidentiality is granted as prayed for, subject to the observations made in the preceding paragraph.

63. The Secretary is directed to forward a certified copy of the present order to MSIL through its counsel accordingly.

Sd/-
(Ashok Kumar Gupta)
Chairperson

Sd/-
(Sangeeta Verma)
Member

Sd/-
(Bhagwant Singh Bishnoi)
Member

New Delhi
Date: 23.08.2021