The impressive showing of dynamism by the Indian automotive industry owes precedence to radical changes in policies post 1991. The opening up of the economy also dictated the necessity for detailed regulation to foster growth in a competitive environment. The ensuing Competition Act, despite being in a nascent stage, has had a considerable impact on the automobile industry through its recent ruling. In contemporary times, it serves to engender fair play and ultimately promote consumer welfare.

This essay discusses the impact of the post liberalization era on the automobile industry and the legislative history of the Competition Act. It further analyses the legal landscape and regulatory remedies in competition law enforcement with respect to the automobile sector in India. It charts the trajectory of the evolving jurisprudence, specific to the automobile industry in all three limbs of the Competition Act 2002; anti-competitive agreements, abuse of dominance and mergers and acquisition control to the current legal position of the CCI in recent rulings. In addition to mapping the developing jurisprudence in the field of automobile industry in India, a cursory indulgence in comparative jurisdictions has also been made.

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The automotive industry in India has long been recognized as a core manufacturing sector with the potential to drive national economic growth and accordingly must be sheltered from restraints resulting in a detriment to the competitive process and consumer welfare. Radical changes in policies post liberalization had forced the floodgates for the automotive industry in India. Consequently, it also necessitated a regulatory establishment for cultivating a fertile economic scenario for it to thrive. The automobile sector is one that has never ceased to demand the attention of regulators and commentators alike because of its economic importance, strategic impact and systemic influence.

The phasing out of quantitative trade restrictions and reduction in tariffs resulting from the onset of the liberalization and globalization in developing countries prompted a shift in the global production and sales strategies of leading multinational auto companies. With India becoming integral in their plans of components production and assembly sector, there was a massive spurt in growth recorded between the period of 1990 and 1997. Unit sales and production of automobiles rose from being 3,57,000 and 3,64,000 in 1990 to 7,61,000 and 7,70,000 in 1997 respectively. These figures established India’s robust appetite and encouraged further investment and subsequent growth in the automobile industry. The period post 1999 saw the expansion of domestic market for passenger cars. Annual number of production rose from 609,000 in 2002-03 to 1,620,000 in 2008-09. Domestic demand for motorcycle also increased constantly from 648,000 in 1994-95 to 6,802,000 in 2008-09. Consequently, annual production of auto components rose from 4,470 million US dollars in 2001-02 to 18,000 million US dollars in 2007-08. The resultant upsurge in the last few years has seen more entrants and local manufacturing in the automotive sector has therefore become a success story.

However, as is the case within a market economy scenario, the interplay between different players has given rise to various competition concerns over the years. Acquiring the patronage of customers has, over time, been riddled with dynamics of convoluted measures and unfair practices, detrimental to the interest of the consumers. Celebrated economist and moral philosopher Adam Smith aptly describes the scenario in his magnum opus, “The Wealth of Nations”. He opined, "People of the same trade seldom meet together even for merriment and diversion but the conversation ends in a conspiracy against the public."

Unlike the socialist hue that pervaded governance till 1991, India increasingly relies upon market rivalry for allocation as well as distribution of resources. Nonetheless, there is also a realization that the textbook model of perfect competition does not exist in reality. One of the intervention strategies to address the market imperfections that may induce welfare-reducing monopolies is that of competition law and policy.

Regulatory measures to curb unfair practices and check accumulation of monopoly power and its consequent abuse were initiated in India as early as 1960 with the Government’s appointment of

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1. Fournir (1998)
the Mahalanobis Committee. On the recommendations of the Committee, the Government constituted the Monopolies Inquiry Commission in 1964. Findings of the Commission relating to pre-emption and foreclosure of capacity resulted in passing of the MRTP Act in 1970 and setting up of the MRTP Commission in August that year. A substantial part of the MRTP Act was focused around monopolistic behavior and economic concentration. In light of the changing economic situation and initiation of economic reforms in the country post 1991, the need was felt for a change in approach towards fostering competition. The Raghavan Committee was constituted to recommend a suitable legislative framework relating to competition law for the country. It was felt that although the MRTP Act seemingly had provisions regulating anti-competitive practices, in comparison with competition laws of many countries it was inadequate for promoting competition in the market trade and for reducing, if not eliminating, anticompetitive practices in the country’s domestic and international trade.³

The Competition Act, drafted in 2002, finally replaced the MRTP Act in 2009 when the latter was consequentially repealed. To implement the regulatory measures and achieve its objectives, the Act provided a three-tier institutional framework comprising of Competition Commission of India (CCI), The Competition Appellate Tribunal (COMPAT) and The Supreme Court of India.

The objective of the Competition Act, in accordance with its preamble, seeks to prevent practices having adverse effect on competition, promoting and sustaining competition in market, protecting the interests of consumers and ensuring freedom of trade. Fostering of competition as an instrument for accelerating growth through innovation and economic efficiencies and thereby maximizing consumer welfare by offering better products at lower prices, has been sought to be achieved in three ways:

(i) Prohibiting anti-competitive agreements and practices that harm free trade and competition;

(ii) Preventing abuse of dominant position and anti-competitive practices that lead to such a dominant position;

(iii) Regulating mergers and acquisitions.

When viewed in context of the automobile industry, the violations by players in concerned relevant markets have drawn attention from all three limbs of the Competition Act. Exploitative practices, price fixing, refusal to deal in essential products, collusive tendering and exercising vertical restraints have already been reported over time and across jurisdictions in this sector. These offences, relating to abuse of dominant power and anti-competitive agreements are subject to Sections 4, and 3 of the Competition Act 2002 respectively. The rulings in automotive sector by the CCI with regards to these sections on earlier occasions had not provided an

³ http://theindiancompetitionlaw.files.wordpress.com/2013/02/report_of_high_level_committee_on_competition_policy_law_svs_raghavan_committee.pdf
indicative view or suggestive trend. However, with its recent order on August 25, 2014, that void has been filled.

In the course of dealings in automotive trade, agreements may be entered into (including informal agreements/arrangements) with relation to production, supply, distribution, storage, and acquisition or control of goods or services which causes or is likely to cause an appreciable adverse effect on competition within India. **Section 3** of the Competition Act prohibits any such agreements with a detrimental effect on competition and renders them as void. Although the Competition Act does not define appreciable adverse effect on competition (AAEC) and nor is there any thumb rule to determine when an agreement is likely to cause it, Section 19 (3) of the Act specifies certain factors that need to be considered in determining AAEC. In **Automobiles Dealers Association v. Global Automobiles Limited &Anr.**, the Commission had held that it would be prudent to examine an action with reference to all the factors mentioned in Section 19(3). Anti-competitive agreements are of two types; vertical and horizontal.

Vertical anti-competitive agreements refer to arrangements between firms enjoying a supplier-customer relationship, i.e. agreements involving an upstream firm and a downstream firm. These agreements may affect a foreclosure of markets due to non-availability of goods and services owing to agreements with regard to first choice treatment. Exclusive dealings or distribution agreements are examples of such vertical agreements. In its earlier rulings on vertical agreements, the Commission had found no violations. **Automobile Dealers Association, Hathras (UP) v. Global Automobiles Ltd &Anr** dealt with restrictive clauses of the Letter of Intent executed between the dealer and the manufacturer/supplier which included restrictions on dealing or acquiring agency of any other distributor. The Commission in its decision noted since the parties did not have sufficient market power there was no appreciable adverse effect on competition. Similarly, in **M/s Nanavati Wheels v. Hyundai Motor India Ltd** the Commission found that there was no violation of Section 3 of the Act, inasmuch as Hyundai proved on facts that they had not barred their dealers from dealing with competing brands.

Horizontal agreements are agreements among firms in the same line of business, e.g. between two or more retailers, between two or more manufacturers. These collusive agreements are regarded as most harmful to competition and take place through various methods such as price fixing, bid rigging, market allocation and output restricting agreements. The automotive sector in India also has had a case of alleged cartelization filed by All India Tyre Dealers Federation with respect to regulation of price and supply of tyres. However, the Commission did not find

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4The factors under Section 19 (3) includes six factors, first three being anti-competitive remaining three being pro-competitive factors (a) creation of entry barrier (b) driving existing competitors out of market (c) foreclosure of competition (d) benefits to consumers (e) improvements in the production or distribution of goods or the provision of services, and (f) the promotion of technical, scientific and economic development.

5CCI Case No 33 of 2011, decided on July 3, 2012

6Case No. 67 of 2013

7All India Tyre Dealers Federation v. Tyre Manufacturers, (Case No.RTPE 20 of 2008).
sufficient evidence to prove any violation by the Automobile tyre manufacturers or their association.

**Section 4** of the Act deals with abuse of dominance and stifling of the level of competition in the relevant market. The liability under this section involves three steps. Determining the relevant market, establishing dominant position in the relevant market in accordance with factors mentioned under Section 19(4)\(^8\) and lastly, showing abuse of such dominance. It is important to note that the Act only prohibits the abuse of dominant position and not dominant position itself.

There also have been a few earlier matters in the automotive industry where allegations of abuse of dominant position have been made before the Commission. On all occasions, no violations had been found. One such case is *M/s Nanavati Wheels v. Hyundai Motor India Ltd*\(^9\) where the dealer alleged that Hyundai abused its dominant position by not allowing the dealer to take dealership of other cars. CCI however, found that Hyundai was not dominant and, therefore, there was no violation of the Act. In another previous order, in *Jeetendar Singh v BMW India Ltd & BMW India Financial Services Pvt Ltd*\(^10\), the informant had alleged that BMW India Ltd had abused its dominant position in the relevant market of luxury cars to enter into the market of insurance by not providing a spare tyre to the customer and bundling the sale of the car with the purchase of a specialized insurance policy from BMW India Financial Services Pvt Ltd for tyre replacement. The Commission in this particular case concluded that even though BMW India Limited had a significant market power, competitive constraints from other players implied that it was not a dominant player and dismissed the complaint against BMW India Ltd.

With reference to violations under Sections 3 and 4, the CCI had until recently, not set out broad principles of ingredients of an offence or of the nature of permitted activities. In other earlier pronouncements/orders passed by the Competition Commission of India in *Exclusive Motors Pvt. Limited v Automobili Lamborghini S.P.A. and Sanjeev Pandey v Mahendra & Mahendra & Ors*, the CCI had dismissed both cases without referral to the Director

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\(^8\) The Commission shall, while inquiring whether an enterprise enjoys a dominant position or not under section 4, have due regard to all or any of the following factors, namely: market share of the enterprise; size and resources of the enterprise; size and importance of the competitors; economic power of the enterprise including commercial advantages over competitors; vertical integration of the enterprises or sale or service network of such enterprises; dependence of consumers on the enterprise; monopoly or dominant position whether acquired as a result of any statute or by virtue of being a Government company or a public sector undertaking or otherwise; entry barriers including barriers such as regulatory barriers, financial risk, high capital cost of entry, marketing entry barriers, technical entry barriers, economies of scale, high cost of substitutable goods or service for consumers; countervailing buying power; market structure and size of market; social obligations and social costs; relative advantage, by way of the contribution to the economic development, by the enterprise enjoying a dominant position having or likely to have appreciable adverse effect on competition; any other factor which the Commission may consider relevant for the inquiry.

\(^9\) Case No. 67 of 2013

\(^10\) Case No. 104 of 2013
General. As a quasi-judicial body and court of first instances, the CCI had on earlier accounts shown that it is generally more concerned with establishment of facts.

Deviating from its earlier rulings based on these sections, the Competition Commission of India, on August 25, 2014 gave its first significant and landmark ruling on vertical restraints (Section 3) and excessive pricing under Section 4 in ShriShamsherKatariaVs Honda Siel Cars India Ltd. &Ors. The Order has far-reaching repercussions for similarly placed industries. The CCI imposed an aggregate penalty (2% on total turnover) of Rs. 25.54 Billion (USD 420 Million) on fourteen car manufacturers or Original Equipment Manufacturers (OEM) for creating anti-competitive effects through agreements for spares and after sales services. ShamsherKataria filed the information under Section 19(1)(a) of the Act in January, 2011 against Honda Siel Cars India Ltd, Volkswagen India Pvt. Ltd. and Fiat India Automobiles Pvt. Ltd. alleging anti-competitive practices in respect of sale of spare parts of these companies. Informant contended that car manufacturers in India were charging higher prices for spare parts and maintenance services than their counterparts abroad. Further, there was complete restriction on availability of technological information, diagnostic tools and software programs required for servicing and repairing the automobiles to independent repair shops.

The Commission examined the agreements and its effect on competition based on Sections 3, 4 and factors set out in Section 19(3) of the Act. CCI observed that it is in the aftermarket of spare parts, diagnostic tools and technical manuals and not the primary market of sale of cars where the alleged dominance of the OEM’s. The Commission concluded that each OEM is a dominant entity in the aftermarket for its genuine spare parts and diagnostic tools and correspondingly in the aftermarket for the repair services its brand of automobiles as the customer gets “locked-in” after buying a car of a particular brand. Each OEM has a clear competitive advantage in the aftermarket for sale of spare parts/diagnostic tools and repair services for their respective brand of automobiles. Due to the technical compatibility between the products, each OEM is sheltered from any competitive constrains in the aftermarket from their competitors in the primary market. Further, the OEMs have ensured that the independent repairers are not able to compete with the authorized dealers of the OEMs in the secondary market for repairs and services by denying them access to required spare parts and tools to complete such repair work.

The Commission, in the present case, concluded that there were 'hardcore' restrictions imposed by the Original Equipment Manufacturers (restriction on supply of goods and restrictions on sale of goods to independent suppliers) thereby eliminating the competitive process. Consequently,

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11 Case No. 03/2011
12Section: 19(1) The Commission may inquire into any alleged contravention of the provisions contained in subsection (1) of section 3 or sub-section (1) of section 4 either on its own motion or on—
(a) receipt of any information, in such manner and accompanied by such fee as may be determined by regulations, from any person, consumer or their association or trade association; or
the Commission held that Original Equipment Manufacturers were in violation of Sections 3(4)(b), 3(4)(c), 3(4)(d), 4(2)(a)(i), 4(2)(c) and 4(2)(e) of the Act. A penalty of approximately Rs. 25.54 Billion has thus been imposed on the OEMs (2% of total turnover).

This order could be indicative of the Commission's view on vertical agreements such as those between manufacturers and retailers. The Commission held that agreements with local Original Equipment Suppliers adversely affected competition in the after sales and service market. The CCI held that through restrictive agreements and trade practices, Original Equipment Manufacturers caused entry barriers in secondary market for spare parts and diagnostic tools. CCI also noted that high margins were exploitative and a manifestation of anti-competitive structure of the market under Section 4 of the Act. In addition, the CCI also directed the manufacturers to take immediate remedial measures and to make available products in the secondary market. The CCI, relying on EU cases also emphasized on providing the choice to the customer with relation to procuring of essential products from authorized dealers or open stores. The Order is the first of its kind notably for holding that sale of spare parts and provision of services is a separate market distinct from the product itself, its review of agreements between manufacturers and dealers in a vertical arrangement, examination of restrictions from intellectual property rights and its sweeping directions.\textsuperscript{13}

However, in some respects, the order may seem harsh and perhaps a bit misplaced in a few areas. The imposition of complex and far reaching remedies, in terms of state intervention into the market, raise the issue of the Commission’s discretion and the relation between the remedy and antitrust liability phase in a competition law case. It is the purchase of the car that determines the consumption of spares and consumption of spares is not an independent economic act by a consumer. The Commission's conclusion of lack of market access to spares and conclusion of entry barrier is contrary to its own finding that after the warranty period, consumers approached independent garages. With 60,000 organized dealers and 300,000 un-organized, the claim of lack of access to spares and services may appear unfounded. Also, no reason has been provided in the order for a blanket imposition of 2 % of the total turnover.

Cases pertaining to \textbf{regulation of combinations} under section 5 and 6 have also already found their place in the jurisprudential evolution of competition law in the automobile and components sector. The third limb which is catered to by the Competition law is the regulation of acquisitions and mergers. \textbf{Section 5} of the Act deals with the definition of combination and Section 6 deals with the regulation of such combinations. “Combination” is a term which entails mergers, amalgamations, acquisitions and acquisition of control. The Competition Act 2002 mandates that no person or enterprise shall enter into a combination which causes or is likely to cause an appreciable adverse effect on competition within the relevant market in India. The provisions

relating to combinations\textsuperscript{14} were notified on March 4, 2011 to be effective from June 1, 2011. The term “combination” is defined\textsuperscript{15} very broadly to include any acquisition of shares, voting rights, control or assets, or merger or amalgamation of enterprises, where the parties to the acquisition, merger or amalgamation satisfy the prescribed monetary thresholds in relation to the size of the acquired enterprise and the combined size of the acquiring and acquired enterprises\textsuperscript{16} with regard to the assets and turnover of such enterprises.

While taking a myopic view of the jurisprudential trend with respect to combination regulation in the automotive sector, it can be seen that the automobile industry has not yet been at loggerheads with the Commission in this regard. Two notifications for Acquisition in NHK Automotive Components India Pvt Ltd and Bombay Burmah Trading Corporation Ltd\textsuperscript{17} and Mahindra and Mahindra\textsuperscript{18} filed under Section 5(a) were approved with the former being approved unconditionally. Intra-group amalgamation notification in Taco Composites Ltd. (TACOCL) & Tata AutoComp Systems Ltd. (TACO)\textsuperscript{19} and a similar notification for acquisition filed under Section 5 (c) in Maruti Suzuki India Limited and Suzuki Powertrain India Limited\textsuperscript{20} have also been approved and thus cleared.

Interestingly, auto component manufacturers' role in the industry is being examined in other jurisdictions as well.

Vertical agreements in the car industry were treated more restrictively by EU competition law, than agreements falling under the general verticals block exemption. Competition policy for the car industry is a bit peculiar. On the one hand, EU competition law imposes an industry specific block exemption regulation (Reg. 1400/2002) which is more restrictive than the general block exemption regulation on vertical agreements (Reg. 2790/99). On the other, there is a remarkable reluctance to let car companies go bankrupt, despite endemic overcapacity in the industry.\textsuperscript{21} The new automotive block exemption came into force on 1 June 2010 supplemented by some detailed guidelines. The new regime provides for different approaches for the sale of new vehicles (the “Primary Market”) on the one hand, and the repair, maintenance and spare parts markets (the “After Market”) on the other. Overall the new law represents a move from sector specific

\textsuperscript{14}Competition Act, 2002, §§5, 6, 20, 29, 30 and 31.
\textsuperscript{15}Competition Act, 2002, §5.
\textsuperscript{16}An enterprise for the purposes of the Competition Act includes all entities within a group\textsuperscript{16}, defined to mean controlling entities, controlled entities and entities under common control. In this context, “control” means exercising at least 50 percent of voting rights, appointing at least 50 percent of directors or management control.
\textsuperscript{17} Combination C-2011/10/05
\textsuperscript{18} Combination C-2013/01/105
\textsuperscript{19} Combination C-2012/01/18
\textsuperscript{20} Combination C-2012/07/68
legislation to application of the general competition rules applicable to almost all other sectors of the economy.

In South Africa, China and United States, instances of violation of competition laws in the automobile industry by way of horizontal anti-competitive agreements have also been adjudicated upon. In South Africa, competition authorities are investigating price fixing and collusive tendering in the automotive industry, with component suppliers Panasonic and Mitsubishi Electric Corp among those being probed. Information received by the Competition Commission suggested collusion among automotive component manufacturers when bidding for tenders to supply parts, such as electric power steering and spark plugs, to car makers.

Again, in the U.S., there has been ongoing and mounting criminal antitrust investigation of the auto parts industry. In February 2014, two companies agreed to plead guilty to conspiring to fix prices of auto parts. On February 3, 2014 Aisan Industries Co., Inc. pled guilty to fixing the prices of electronic throttle bodies sold to Nissan Motors Co. Ltd. in the United States and elsewhere. Less than two weeks later, Bridgestone Corp., another Japanese-based company, agreed as well to plead guilty and pay a substantial fine in the amount of $425 million for fixing the price of automotive anti-vibration rubber parts that it sold to a number of Japanese OEM including Toyota, Nissan, Suzuki, and Isuzu. According to the U.S. Department of Justice, these were hard-core cartels lasting upwards of a decade. With these guilty pleas, total U.S. fines imposed in the on-going auto parts probe exceed $2 billion.

It has also been reported that China's National Development and Reform Commission (NDRC) has levied a record fine totaling 1.24 billion Yuan (£121 million) on twelve Japanese car parts companies including Sumitomo, Mitsubishi and Denso for their involvement in an alleged price-fixing scheme. NDRC held that these companies planned and executed a scheme to reduce competition in order to fix the prices of parts for more than 20 automakers, including Honda, Toyota and Ford. Hitachi's fine was waived because it first reported the collusion, according to the NDRC.\(^{22}\)

Scrutiny under the competition law regime has had a profound bearing on the workings and established systems of automotive industries around the world. In India, stringent measures have been recently taken to ensure consumer’s welfare through the process of keeping the market competitive. Compliance with antitrust laws is the way forward. In conclusion then, it appears that with the advent of competition regulatory measures, the objective of growth through efficiency and innovation remains to be the only desired alternative for players in the automotive sector. The recent cracking of the regulatory whip has set precedent in terms of fair play with competitors and dealers whereas foreign rulings have issued appropriate warnings against collusion among them. However it remains to be seen whether in the future, the precedents are followed and the warnings regarded.

\(^{22}\)Source: NDRC Press Release dated August 20, 2014