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# Levelling the playing field: Protecting the Interests of Automobile Dealers in India

*Recommendations for a thriving automobile industry in India*

Prepared by The Quantum Hub Consulting (TQH) for FADA

## FOREWORD

The recent restructuring of Ford's Indian operations has caused massive anxiety for dealers and customers alike. Ford's announcement to shut down its Indian manufacturing plants within the next one year, hints at an exit strategy, as opposed to the stated plan of restructuring, especially in light of the August end inventory for new Ford cars which was **zero**. As a result, the futures of ~170 Ford dealers with a combined investment of ~Rs 2,000 Cr and ~ 40,000 employees are now in question.

Unfortunately, the situation faced by Ford dealers and customers in India is not a unique occurrence, with multiple abrupt exits by foreign original equipment manufacturers (OEMs) over the last 4 years including General Motors (GM) in 2017, MAN Trucks in 2018, United Motor Cycles in 2019 and Harley Davidson in 2020. The bone of contention is not these companies' decision to exit, but rather it is the manner of exit. In each of the above cases, exits occurred with little to no notice to the dealers or customers, leaving the automobile industry in a lurch.

The Indian automobile industry is a Rs. 8.2 lakh crore industry and its turnover contributes ~6.4% of India's GDP while providing employment, directly and indirectly, to about 3.7 crore persons. Automobile dealers are a key component of this industry, and it is important to acknowledge and empathize with their struggles in India.

Most dealerships in India are MSMEs and their contractual arrangements with OEMs that are large corporations have historically been tilted in the favour of OEMs due to the dealers' lack of bargaining power. What is surprising is that the same OEMs offer much better contracts to their dealers in many international jurisdictions. In the pages that follow, we undertake an analysis of OEM-Dealer contracts and associated laws across the world to understand how agreements are structured in other countries. Our analysis suggests that unlike the one-sided Indian agreements, international agreements such as those in the USA are more balanced and outline specific reasons under which contracts can be terminated, with repurchase and indemnification obligations clearly spelled out. Countries such as South Africa and Australia as well as several states in the US also have specific laws in place to protect automobile dealers against unfair and arbitrary behaviours of OEMs.

While Ford's announcement is only the latest manifestation of an old problem, it highlights the urgency to protect the interests of automobile dealers and their investments in India. It is therefore important to consider steps that can be taken towards levelling the playing field and safeguarding the interests of dealers in the longer term.

Our strongest recommendation is that the government should consider the introduction of a legislation - an *Automobile Dealers Protection Act* - as also suggested by the Parliamentary Committee on Commerce and Industry, to create an enabling environment for automobile dealers. Not only will this benefit dealers and consumers, it will also be vital for the health of the industry at large. The automobile industry is, after all, core to the nation's growth and integral to the Hon'ble Prime Minister's vision of Atma Nirbhar Bharat and the \$5 trillion economy.

**Vinkesh Gulati**  
President, FADA  
October, 2021



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## **A. INTRODUCTION**

According to a recent Parliamentary Standing Committee Report, the Indian automobile industry is a Rs. 8.2 lakh crore industry and its turnover constitutes 7.1% of overall GDP, 27% of industrial GDP and 49% of manufacturing GDP, clearly signifying its **importance as one of the key sectors of the economy**. This sector also provides employment, directly and indirectly to about 3.7 crore persons. It is also a large contributor to the national exchequer, contributing 1.5 lakh crore in GST which corresponds to 15% of the total GST collected in December 2020, when the above-mentioned report was submitted.<sup>1</sup>

The value chain of the automobile industry in India typically consists of the automobile manufacturers (“**OEM**” - **Original Equipment Manufacturers**) and automobile dealers (“**Dealers**”) that form the two pillars of the industry along with allied services such as finance, insurance etc. Dealers in India are **predominantly small and medium enterprises** that provide employment to over 4 million<sup>2</sup> people, making them a significant stakeholder in the welfare of the country. In a country where owning a family car has always been a luxury and a dream, automobile dealerships are an integral part of the business ecosystem and community in India.

However, like any other large industry - the automobile industry and its progress face significant challenges in India. In an industrial landscape muddled by entries and exits of international OEMs, an overall slump in the automobile sector, and the historically imbalanced power structures between OEMs and Dealers; it is the Dealers that often pay the price.

This policy brief aims to highlight some of the pressing concerns of the Dealers and possible ways to alleviate their stress by relying on a cross-jurisdictional analysis of agreements (“**Dealership Agreements**”) and laws that deal with OEM - Dealer relationships.

## **B. CHALLENGES FACED BY AUTOMOBILE DEALERS IN INDIA**

Given the fact that automobile dealerships are predominantly sole proprietorships, partnership firms or family-owned businesses, and mostly fall in the MSME category, contractual arrangements with OEMs that are large corporations have historically been tilted in the favour of the OEMs due to the **Dealers’ lack of bargaining power**. Such lack of bargaining power is also highlighted in unfair business practices, beyond the disbalanced contractual terms.

For instance, the exit of foreign OEMs such as General Motors and Harley Davidson from the Indian markets in 2017 and 2020 respectively resulted in huge monetary and reputational losses to Dealers in India. Many of them lost their livelihoods entirely, owing to the lack of protections to Dealers in the event of termination and exit of OEMs from the market. The impact of these exits was exacerbated by the fact that the OEMs, even months before their exit, were promising further investments and plans of business expansion.<sup>3</sup> The Dealers were completely blindsided and had no recourse when the foreign OEMs finally exited the country with a compensation plan that didn’t even cover the initial capital invested by the Dealers.<sup>4</sup> In addition to the problems stemming from imbalanced OEM-Dealer relationships, there have been recent instances of many fly-by-night EV manufacturers shutting shop abruptly and leaving the dealers high and dry.

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<sup>1</sup> Report No. 303, *Downturn in Automobile Sector - Its Impact and Measures for Revival*, Department Related Parliamentary Standing Committee on Industry, December 2020, Accessed at:

[https://rajyasabha.nic.in/rsnew/Committee\\_site/Committee\\_File/ReportFile/17/145/303\\_2020\\_12\\_14.pdf](https://rajyasabha.nic.in/rsnew/Committee_site/Committee_File/ReportFile/17/145/303_2020_12_14.pdf)

<sup>2</sup> About Us, Federation of Automobile Dealers Association, Accessed at: <https://fada.in/about-us.php>

<sup>3</sup> Inputs from stakeholder conversations.

<sup>4</sup> “*GM exits India: Dealers to go to court over measly compensation*”, PTI, 8 June 2017, Business Standard, Accessed at: [https://www.business-standard.com/article/companies/gm-exits-india-dealers-to-go-to-court-over-measly-compensation-117060800234\\_1.html](https://www.business-standard.com/article/companies/gm-exits-india-dealers-to-go-to-court-over-measly-compensation-117060800234_1.html)

While issues such as the behaviour of EV manufacturers are only the most recent bone of contention between OEMs and Dealers, the Dealers also suffer because of a host of issues in Dealership Agreements that can be bucketed as follows:

1. Lack of standardized duration of agreements and uncertain renewal mechanisms;
2. Unfair termination and exit clauses;
3. Lack of support to Dealers for realising return on investment, including unclear repurchase obligations in case of an OEM exit, lack of consultation while appointing multiple Dealers in the same territory;
4. Lack of clear indemnity provisions;
5. Lack of flexibility for Dealers in taking business decisions (prohibition from selling competitor products, inability to procure accessories or consumables from outside the OEM's ambit, and unreasonable sales targets which are often biased and non-transparent).

**Unfortunately, the existing legal regime in India is inadequate to address these specific concerns of Dealers.** While OEM-Dealer agreements are governed under the Indian Contract Act, 1872 (“**1872 Act**”), the law does not contain any clear solutions for the issues discussed in this brief. OEM-Dealer agreements, across different OEMs are standard form contracts, i.e., contracts which are drafted by one party, and signed by the other party without any scope for modification. The Supreme Court has stated that “*The ‘standard form’ contract is the rule. One must either accept the terms of the contract or go without.*”<sup>5</sup> This is the situation faced by Dealers as well, since almost all OEMs have standard form contracts with similar provisions. In case of unreasonable or unfair terms in standard form contracts, the court has intervened in the past. However, this has mostly been limited to cases involving consumers,<sup>6</sup> or employees.<sup>7</sup> The courts have been reluctant to intervene in case of a commercial transaction between two business parties.<sup>8</sup> Hence, there are no direct solutions for the issues identified in the Dealer-OEM agreements under the current legal structure.

### **C. ANALYSIS OF CONTRACTUAL AGREEMENTS**

The relationship between an OEM and a Dealer is mostly regulated through an agreement that lays down the rights and obligations of both parties. In India, in the absence of any protective policy measures for Dealers, these agreements tend to heavily favour OEMs. In contrast to this, dealership agreements in foreign countries like the USA tend to be more balanced, while protecting the Dealer from adverse unilateral action of the OEM. The following comparative analysis of domestic and foreign agreements highlight the differences stated above.

A detailed provision-by-provision analysis is also included in the appendix.

#### **1. Lack of standardized duration of agreements and uncertain renewal mechanisms**

Automobile dealerships are capital intensive ventures that require considerable time (about 3-5 years) for Dealers to realise their return on investment. However, there is no standardization vis-à-vis the duration of Dealership Agreements. Some domestic contracts tend to have much shorter durations, while some are longer. The Honda India agreement, for instance, is a 1-year contract, the term of the Maruti Suzuki contract is 3 years and that of Ashok Leyland is 6 years..

Given the substantial capital required by the dealership business, shorter duration agreements create difficulties for Dealers by not allowing them adequate time to realise a reasonable return on investment. This problem is further compounded by **uncertain renewal processes**, with grounds for renewal being ambiguous and contracts being renewed closer to expiration deadlines.

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<sup>5</sup> *Delhi Transport Corporation v. DTC Mazdoor Congress*, 1991 Supp (1) SCC 600

<sup>6</sup> *Lilly White vs R. Munuswami*, AIR 1966 Mad 13

<sup>7</sup> *Superintendence Company of India (P) Ltd v. Sh. Krishan Murgai*, 1980 AIR 1717

<sup>8</sup> *S.K. Jain vs. State of Haryana*, 4 SCC 357



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## 2. Unfair termination and exit clauses

Termination clauses in domestic agreements are also heavily skewed towards OEMs. In most cases, domestic contracts give greater flexibility to OEMs, in comparison to Dealers, to terminate the contract. International agreements, on the other hand, are more balanced and outline **specific reasons under which contracts can be terminated**, providing more clarity to Dealers. Usually, international agreements also provide for longer notice periods that vary depending on the cause of termination, while Indian agreements typically have a 30-day notice period. This is reflected in the Honda India agreement, for instance, which prescribes a notice period for termination as 30 days while termination becomes effective 90 days after it has been served under the Honda US Agreement.

The damage that Dealers in India have to face due to unfair termination and exit clauses is evidenced by the recent instances of sudden exits of MAN Trucks<sup>9</sup>, General Motors<sup>10</sup> (GM) and Harley Davidson<sup>11</sup> from the Indian market. These exits were without due notice, leaving Dealers to fend for themselves with a huge stock of inventory. The lack of any protective policy measures for Dealers in such cases has led to an irreparable breach of trust among Dealers and OEMs. In the case of the GM exit, for instance, many Dealers were stuck with unsellable stock with no support from the OEM and no means of financing inventory that had no resale value. The Dealers were also left with many spare parts as well as signage and other material bought under the Corporate Identity (CI) norms<sup>12</sup>. This was in addition to the job losses at dealerships that follow any exit. The exit of GM, for instance, resulted in an estimated loss of ~15,000 jobs.<sup>13</sup> Similarly, the exits of United Motorcycles and Harley Davidson caused estimated job losses of ~2,500 and ~2,000 respectively<sup>14</sup>.

More recently, Ford Motors has also announced its decision to restructure its Indian operations and stop manufacturing most Ford cars in India<sup>15</sup>, a move that is akin to an exit as opposed to a restructure, especially in light of the August end inventory for new Ford cars which was zero. The decision came as a shock as Ford had appointed new Dealers as recently as 5 months before the announcement was made in Delhi and Noida. Currently, there are ~170 Ford Dealers running ~391 outlets with a total investment of ~Rs 2,000 Cr for setting up their dealerships.<sup>16</sup> While Ford India employs 4,000 people, Dealerships employ around 40,000 people.<sup>17</sup> Ford has assured assistance to existing customers and announced a plan for the benefit of its employees, but a robust compensation plan for Dealers was conspicuously absent from all press releases and public discourse.

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<sup>9</sup> “Volkswagen Group owned MAN Trucks exits Indian market”, Ketan Thakkar, The Economic Times, 8 August 2018, Accessed at: <https://economictimes.indiatimes.com/industry/auto/lcv-hcv/volkswagen-group-owned-man-trucks-exits-indian-truck-market/articleshow/65306912.cms?from=mdr>

<sup>10</sup> “General Motors India exit leaves dealers, customers in a quandary”, Shally Seth Mohile, LiveMint, 23 May 2017, Accessed at: <https://www.livemint.com/Companies/CSDpz9qo3t3AZEEmda9dEO/General-Motors-India-exit-leaves-dealers-customers-in-a-qua.html>

<sup>11</sup> “Harley Davidson exits India as losses mount”, Amit Pandey, LiveMint, 25 September 2020, Accessed at: <https://www.livemint.com/companies/news/harley-davidson-exits-india-as-losses-mount-11600993103747.html>

<sup>12</sup> CI norms are rules made by the OEMs from time to time regarding branding, marketing etc. that the Dealers must comply with. On several occasions, Dealers have had to expend significant funds to comply with these norms, with absolutely no compensation at the time of OEM exit and/or termination. OEMs sometimes also change CI norms frequently, thereby adding to the financial burden of Dealers.

<sup>13</sup> “General Motors India exit leaves dealers, customers in a quandary”, Shally Seth Mohile, LiveMint, 23 May 2017, Accessed at: <https://www.livemint.com/Companies/CSDpz9qo3t3AZEEmda9dEO/General-Motors-India-exit-leaves-dealers-customers-in-a-qua.html>

<sup>14</sup> FADA estimates

<sup>15</sup> “Ford to stop making cars in India”, Aditi Shah and Aditya Kalra, Reuters, 9 September 2021, Accessed at: <https://www.reuters.com/business/autos-transportation/ford-motor-cease-local-production-india-shut-down-both-plants-sources-2021-09-09/>

<sup>16</sup> FADA estimates

<sup>17</sup> *ibid*

There have also been many instances when abrupt exits have led to significant inconvenience for customers who have been left without ready avenues for servicing and/or obtaining spare parts. Exits also significantly impact the resale value of vehicles<sup>18</sup>. For instance, a customer who bought a Chevrolet Cruze (automatic) - a premium sedan manufactured by GM, for which he paid Rs 17.5 lakh a month and half before the exit,<sup>19</sup> is unlikely to be able to re-sell the vehicle without taking a significant hit on its value. This also sometimes leads to litigation against Dealers by consumers.

Furthermore, abrupt OEM exits result in the Dealers being stuck with unusable stock with little to no value. This is due to the lack of clear and robust repurchase obligations in the Indian agreements. With respect to repurchase obligations in the event of termination and exit, while international agreements mandate repurchases of spare parts and other products as obligations on the part of the OEM, most domestic agreements only give preferential rights to the OEM. For instance, under the Honda and Mahindra India agreements, Dealers can sell to third parties if the OEM refuses to exercise its right to repurchase within 15 days. The preferential right to repurchase (rather than an obligation) often allows OEMs to refuse buy backs of spare parts and other products.

In this context, it is imperative that protective measures be put in place to ensure that the domestic businesses and consumers do not disproportionately suffer due to the actions of the OEMs.

### 3. Lack of support to Dealers for realising a reasonable return on investment

Apart from arbitrary termination clauses and shorter notice periods, domestic agreements are also skewed against Dealers in terms of providing them a fair opportunity to realise adequate return on their investment. Some of the problematic clauses pertaining to this issue are lack of consultation with Dealers for sales forecasting, opening of new dealerships etc.

Ensuring return on investment for Dealers also becomes difficult when OEMs appoint **multiple Dealers in the same territory** without consultations with existing Dealers, thereby dividing the market available to one Dealer. A recent example of this can be found in Calcutta, where an internationally renowned OEM had approved the opening of a competing dealership without any notice to the existing Dealer. The aggrieved Dealer had in fact, invested additional capital to the tune of INR 2 crores just before the authorization of the competing dealership. Given the capital-intensive nature of the business, jurisdictional exclusivity is a norm in the automobile industry to allow Dealers to recover their investments. Such exclusivity is maintained under foreign contracts and protected under foreign laws. International agreements, in fact, provide for a reasonability clause wherein the OEM must have adequate reasons for opening new dealerships in the same territory. Such reasonability clauses are enforced through a right of appeal to the aggrieved party under the Californian law (discussed in Section-D).

### 4. Lack of clarity in Indemnity provisions

OEM-Dealer agreements are mostly Principal-Principal agreements. This implies that the parties to the agreements are independent entities not liable for the others' actions. Given this contractual structure, there is a need to have robust indemnity clauses to protect both parties. While international agreements distinctly define indemnity for either party on the basis of clearly laid out obligations, domestic agreements remain **vague in terms of obligations of each party**. This lack of clarity in domestic agreements often results in the Dealer having to compensate customers even in cases where

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<sup>18</sup> “General Motors India exit leaves dealers, customers in a quandary”, Shally Seth Mohile, LiveMint, 23 May 2017, Accessed at: <https://www.livemint.com/Companies/CSDpz9qo3t3AZEEmda9dEO/General-Motors-India-exit-leaves-dealers-customers-in-a-qua.html>

<sup>19</sup> “General Motors India exit leaves dealers, customers in a quandary”, Shally Seth Mohile, LiveMint, 23 May 2017, Accessed at: <https://www.livemint.com/Companies/CSDpz9qo3t3AZEEmda9dEO/General-Motors-India-exit-leaves-dealers-customers-in-a-qua.html>



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the liability should be that of the OEM. For instance, the Honda USA agreement clearly states that Honda will indemnify the Dealer against losses caused *by any lawsuit naming Dealer as a defendant, where such lawsuit relates to: (a) an alleged breach of any Honda warranty relating to Honda Products; (b) bodily injury or property damage claimed to have been caused by a defect in the design, manufacture or assembly of a Honda Product prior to delivery thereof to Dealer.*<sup>20</sup> Contrast this with the Honda India agreement which has no such provision and merely states that, “*the parties will address the same respectively.*” As a result, Dealers are routinely made party to consumer complaints even when the liability should actually lie with the OEM. In one particular case, a Dealer of United Motorcycles Limited had to deal with a consumer complaint that arose out of manufacturing defects<sup>21</sup>, which should clearly be under the OEM’s ambit.

When OEMs exit markets suddenly, these problems get exacerbated as Dealers often find themselves at the receiving end of litigious claims from consumers because they are seen as the representatives of the OEMs, even though the OEM-Dealer agreements are Principal-Principal. Therefore, the Dealers not only have to suffer direct losses resulting from OEM exits but must also deal with the indirect legal implications. All such cases present a clear need for indemnity clauses that identify and delineate the responsibilities of both parties.

#### **5. Lack of flexibility to Dealers in taking business decisions**

OEMs exercise considerable control over Dealer business through clauses that include disallowing sale of competitor’s products, prohibition from procuring accessories or consumables from outside the OEM’s ambit, and lack of Dealer consultation in determining sales projections and inventory management.

Domestic contracts largely provide that Dealers are allowed to **sell competitive products but have to seek prior written consent**; however, in practice, as observed by the Competition Commission of India (CCI) in a landmark case<sup>22</sup>, such consent is hardly ever sought or given. International contracts, on the other hand, largely allow Dealers to open other dealerships without undue restrictions, as long as it does not impact their working capital requirements, and Dealers can fulfil their obligations under the contract.

Similarly, **procurement and selling of accessories** (such as spare parts, aesthetic additions, music systems etc.) **and consumables** (including lubricants, paints etc.) is tightly controlled by the OEMs in India, with Dealers being required to buy such items from either only the OEMs or only through a very short list of approved vendors. This control also extends to workshop equipment such as lifts, wheel balancers etc. International agreements are largely silent on such procurement practices, especially with regard to items that have no material bearing on the functioning of a vehicle, thus allowing more flexibility for Dealers. Undue restrictions in Indian agreements increase Dealer costs by preventing them from seeking the best deals available on such products in the market. The burden of these costs is ultimately borne by the consumers. Therefore, providing Dealers with flexibility vis-à-vis procurement of accessories and consumables would not only benefit the Dealers, but would also reduce overall costs borne by the consumers.

With respect to determining **stock projections and evaluation of sales targets**, the Indian agreements state that the same has to be a consultative process. However, in practice, stock projections and sales obligations are usually determined unilaterally by the OEMs. In a CCI case against Tata Motors, it was observed that the OEM tried to coerce its Dealers to order vehicles according to its own internally set targets (by compelling the Dealers to copy paste the list

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<sup>20</sup> Clause 1.7, Honda USA Dealership Agreement.

<sup>21</sup> From stakeholder discussions

<sup>22</sup> *In Re: Shamsher Kataria and Honda Siel Cars India Ltd. and Ors.*, Case No 03/2011, Para 20.6.24 (d), Competition Commission of India, Accessed at: [https://www.cci.gov.in/sites/default/files/032011\\_0.pdf](https://www.cci.gov.in/sites/default/files/032011_0.pdf)



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of vehicles provided by Tata Motors on the Dealer's letterhead and sending back the same to Tata Motors)<sup>23</sup> without regard to the actual demand in the market. International agreements, on the other hand, require sales obligations to be arrived at on the basis of reasonable criteria like pegging sales to other Dealers' performance over reasonable time, local conditions affecting performance etc.

Many Dealers also highlight that OEMs often force new Dealers to pick up more *non-moving*<sup>24</sup> parts that are likely to become obsolete quickly with no provisions for returning them if they remain unsold. This puts an unreasonable burden on the Dealers since these parts usually have no separate market. Furthermore, certain OEMs force Dealers to purchase slow selling vehicle models along with fast selling vehicle models to meet their own internal targets, further highlighting the lack of consultation in business decisions.

#### **D. FOREIGN LEGISLATIONS REGULATING DEALERSHIP AGREEMENTS**

As demonstrated in the sections above, the problems faced by automobile dealerships in India are not without solutions. Certain countries have protective legislative measures in place to address the power imbalance between OEMs and Dealers. Therefore, in addition to the contractual structures, it is also important to look into the legislative protections afforded to automobile dealerships internationally. Some of the key provisions in the international laws include those that deal with termination, repurchase obligations, fair dealing, and indemnification – issues that are of great relevance for Indian Dealers. In the section that follows, we look at the relevant protections in some US states as well as related laws of Australia, Netherlands, and South Africa. For ease of reference and brevity, a brief summary of the laws and regulations is provided below:

##### **1. USA**

In the US, vehicle and automobile laws fall under the jurisdiction of the states. For the purposes of this policy brief, an analysis of the state laws in California and New York was undertaken to understand the legal structures which may be incorporated for protecting the interests of Dealers in India

##### **a. California:**

The California Motor Vehicle Code (“CVC”) is the legislation that governs the automobile industry in the state of California, USA. The Code is a comprehensive list of rules that regulates the relationship between OEMs and Dealers. These rules include **protections against unfair trade practices, right of indemnification, right against unfair termination and the right against having a competing dealership in the same territory without good cause**<sup>25</sup>. Additionally, the CVC also envisages the constitution of a **New Motor Vehicle Board (“Board”)** which is a 9-member body<sup>26</sup> that consists of representatives from the Dealers, the government, and the civil society. The Board has been given dispute resolution and review powers, and is tasked with the overall responsibility of enhancing relations between Dealers and OEMs throughout the state by resolving disputes in an efficient, fair, and cost-effective manner.

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<sup>23</sup> *In Re. Neha Gupta and Tata Motors Ltd. and Ors.*, Case No. 21 of 2019 and Case No. 16 of 2020. Paragraph 10, Competition Commission of India, Accessed at: <http://www.cci.gov.in/sites/default/files/CNos21of201916of2020.pdf>

<sup>24</sup> From stakeholder discussions

<sup>25</sup> Under the CVC, ‘good cause’ is decided basis factors like permanency of investment, public welfare, effect on competition in the area etc.

<sup>26</sup> Article 3000, California Motor Vehicle Code, Accessed at:

[https://leginfo.ca.gov/faces/codes\\_displayText.xhtml?lawCode=VEH&division=2.&title=&part=&chapter=6.&article=1](https://leginfo.ca.gov/faces/codes_displayText.xhtml?lawCode=VEH&division=2.&title=&part=&chapter=6.&article=1).

## b. New York

The Vehicle and Traffic Law (“VAT”) is the umbrella law that regulates the automobile sector in the state of New York. In addition to a detailed description of **unfair trade practices** by OEMs<sup>27</sup>, the VAT also includes **mediation procedures in case of a dispute between Dealers and OEMs** and the right of appeal before the commissioner of motor vehicles<sup>28</sup>, who is the head of the motor vehicle department. VAT also has clearly defined indemnity obligations that depend on individual liabilities of respective parties.<sup>29</sup>

## 2. Australia

The Franchising Code of Conduct (“**the Code**”) governs the automobile industry, including OEM-Dealer relationships in Australia. Though it is called a Code of Conduct, it has legislative backing and is therefore equivalent to a law. The Code was recently amended<sup>30</sup> after concerted lobbying by the industry for much needed changes to better protect the interests of dealers<sup>31</sup>. The Australian Automotive Dealer Association has been working conscientiously towards a balanced OEM-Dealer relationship<sup>32</sup>, which resulted in the new law that now includes **mandatory notice obligations with respect to renewal and/or termination of the franchising agreements** and **general protections against unfair and arbitrary actions of the OEMs**. The provisions of the Code related to notice period for termination are especially noteworthy: If the term for an agreement exceeds 1 year, the Code requires the minimum notice period to be 12 months, and for agreements whose term is less than 1 year, the notice period should be 6 months. This gives a fair chance to Dealers to recoup their investment in case of OEMs choosing to terminate the agreement.

Under the Code, the OEMs are also prohibited from seeking a general release of liability from the dealers.<sup>33</sup>

## 3. The Netherlands

In the Netherlands, automobile franchises are governed by the Franchise Act, 2020 (“**Franchise Act**”) that is applicable to franchising agreements. The Franchise Act stipulates the requirements of a **balanced agreement** including provisions related to **disclosures by the franchisor, franchisor obligations to provide reasonable assistance and mandatory yearly consultations between the parties**, amongst others.

## 4. South Africa

In South Africa, if OEM-Dealer relationships are structured as a franchise, the agreement must comply with the requirements of the Consumer Protection Act 2008 (“**CPA**”) and the Regulations promulgated thereunder. Under the South African law, **franchisees are also treated as consumers** and are afforded specific protections under the CPA. In addition to this, there is also the South African Automotive Industry Code of Conduct 2015 (“**Code of Conduct**”) which regulates the relationship between various stakeholders in the industry and **provides for a scheme of alternative dispute resolution** between consumers and industry participants through the Motor Industry Ombudsman of South

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<sup>27</sup> Section 463, Franchised Motor Vehicle Dealer Act, New York Vehicle and Traffic Law, Accessed at: <https://www.nysenate.gov/legislation/laws/VAT/463>

<sup>28</sup> Section 471-A, Franchised Motor Vehicle Dealer Act, New York Vehicle and Traffic Law, Accessed at: <https://www.nysenate.gov/legislation/laws/VAT/471-A>

<sup>29</sup> S. 463 (2) (n) of the New York Vehicle and Traffic Law, Accessed at: <https://www.nysenate.gov/legislation/laws/VAT/463>

<sup>30</sup> Key Changes to the Australia Franchising Code of Conduct, Accessed at: <https://www.accc.gov.au/business/industry-codes/franchising-code-of-conduct/franchising-code>

<sup>31</sup> “*Landmark Reforms Announced Today for The Franchising Sector Affecting Dealers*”, 1 June 2021, Accessed at: <https://hwlebsworth.com.au/landmark-reforms-announced-today-for-the-franchising-sector-affecting-dealers/>

<sup>32</sup> “*AADA Present Powerful Case for Stronger Regulation of OEM-Dealer Relationship*”, Australian Automotive Dealer Association, Accessed at: [http://www.automotivedealer.com.au/e-content/Issue\\_33/AutoDealer-Is33.pdf](http://www.automotivedealer.com.au/e-content/Issue_33/AutoDealer-Is33.pdf)

<sup>33</sup> Clause 20 of Australia’s Franchise Code of Conduct, Accessed at: <https://www.legislation.gov.au/Details/F2021C00644>

Africa (“MIOSA”).<sup>34</sup> Since franchised automobile dealers are recognized as consumers under the CPA, they can approach the MIOSA in case of a dispute with an OEM.

The Competition Commission of South Africa also recently released some guidelines to level the playing field and address concerns of anti-competitive behaviour by OEMs<sup>35</sup>. Among other things, these guidelines require OEMs to adopt strategies and develop business models that allow for independent service providers (ISPs) to undertake service and maintenance while a vehicle is in-warranty.<sup>36</sup>

## **E. HOW CAN DEALER DISTRESS BE ALLEVIATED?**

In light of the many challenges faced by Dealers and based on international best practices, there is an urgent need to remove the power imbalance in OEM-Dealer relations in India. Incorporating the following clauses into new Dealership Agreements is important to address key concerns. **These solutions may be incorporated as requirements in Dealership Agreements by way of an Act of the Parliament, or through a notification of guidelines issued by the appropriate authority.**

### **1. Standardizing a minimum duration of agreement and terms of renewal**

It takes anywhere between 3 to 5 years for an Indian Dealer to recover their investment and that depends on a host of factors that are not necessarily under the Dealer’s control. In light of the same, the government may consider **mandating a minimum lock-in period for the term of the agreement**, keeping in mind the initial investments made by the Dealers. This may be done by incorporating a reasonable opportunity clause for Dealers to recover the return on investment. The Australian law mandates that the Dealers be given a reasonable opportunity to recover their investments.<sup>37</sup> Additionally, in case of non-renewal of a Dealership Agreement, a **longer notice period may be required depending on the duration of the agreement**. In Australia, for instance, the notice period for intimation of non-renewal is proportionate to the term of the agreement.<sup>38</sup> Furthermore, a **deadline for conversion of LOI** into a Dealership Agreement must be provided to ensure that the rights of the Dealers are adequately protected and enforceable.

### **2. Detailed termination clauses and repurchase obligations**

Abrupt OEM exits from Indian markets cause significant losses across the automobile value chain. A way to mitigate and regulate such exits would be through better and more robust termination and post-termination obligation clauses. It is imperative that the **OEM compensate the Dealers for the risks taken and investments made, should the OEM decide to exit and/or terminate the Dealership Agreement**. Furthermore, clauses regarding **no-cause terminations notice period obligations must be standardized and reasonable**. Due to the lack of government oversight in this regard, Dealers in India are often at the mercy of the OEMs and there is a need for the government to step in and balance the scales.

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<sup>34</sup> South African Automotive Industry Code of Conduct 2015, Accessed at: [http://www.miosa.co.za/SAAICC\\_17\\_Oct\\_2014\\_FINAL\\_with\\_MIOSA\\_ARF.pdf](http://www.miosa.co.za/SAAICC_17_Oct_2014_FINAL_with_MIOSA_ARF.pdf)

<sup>35</sup> Guidelines for Competition in the South African Aftermarket, Accessed at: [https://www.compcom.co.za/wp-content/uploads/2020/12/Guidelines-for-Competition-in-the-South-African-Automotive-Aftermarkets\\_10Dec2020\\_Final-1.pdf](https://www.compcom.co.za/wp-content/uploads/2020/12/Guidelines-for-Competition-in-the-South-African-Automotive-Aftermarkets_10Dec2020_Final-1.pdf)

<sup>36</sup> Franchise dealers recognised for important role played in automotive aftermarket ecosystem, National Automobile Dealers Association, Accessed at:

[https://cdn.nada.co.za/NADA/Articles/10154/FINAL\\_03June2021\\_NADAMediaRoundTableGuidelinesRelease.pdf](https://cdn.nada.co.za/NADA/Articles/10154/FINAL_03June2021_NADAMediaRoundTableGuidelinesRelease.pdf)

<sup>37</sup> Clause 46B of Australia's Franchise Code of Conduct, Accessed at: <https://www.legislation.gov.au/Details/F2021C00644>

<sup>38</sup> Clause 47 of Australia's Franchise Code of Conduct, Accessed at: <https://www.legislation.gov.au/Details/F2021C00644>

It is evident from the provisions of foreign agreements and foreign laws that Dealers are adequately protected by **imposition of repurchase obligations on OEMs which extend from unused vehicles to OEM signage**. In India, the Dealers incur significant costs to comply with the Corporate Identity (CI) norms imposed by the OEMs from time to time. Therefore, in the interest of equity; Dealership Agreements must contain clear provisions regarding repurchase obligations which must include unsold vehicles, spare parts, special equipment, OEM trademarks, signage etc. Specific provisions with regard to the scope and compliance with CI norms may also be considered.

### 3. Enabling choice and independence in business decisions

Provisions in the Indian agreements are greatly restrictive not only in terms of the Dealer's ability to sell competing OEM products, but also with respect to procurement of accessories, consumables, and allied services. In the Tata Motors case, it has been observed that the Dealership Agreement had a non-competition clause that extends to any other business.<sup>39</sup> Under this clause, a Dealer must obtain a No Objection Certificate from Tata Motors if the Dealer wishes to operate another business, even if that business completely unrelated to the automobile sector. While this matter is currently under investigation by the Competition Commission of India, the very existence of such provisions creates an urgency for government oversight. It is therefore imperative that we consider how such behaviour can be mitigated by incorporating certain provisions in the Dealership Agreement. With respect to **non-competition clauses, it is proposed that a reasonability threshold be imposed**, akin to the provisions in the Toyota USA Agreement wherein it states that **a Dealer may sell competing products insofar as it does not adversely impact the working capital of the Dealer**.

Currently, the Dealers are allowed to procure accessories and consumables only from an OEM approved list of vendors, which is greatly disadvantageous to the Dealers in terms of price. It is, therefore, proposed that the current system of an approved list of vendors be replaced by a **system of technical specifications i.e., a system wherein an OEM provides a list of technical specifications that any accessory or consumable has to meet, without requiring the Dealers to procure these from specific vendors**. This would not only enhance competition but would also be commercially viable for the Dealers.

### 4. Consultative Processes in day-to-day operations:

At present, there is little to no consultation between the OEM and the Dealers on a range of issues that ought to be decided through a transparent consultation process. With respect to practices that should be consultative such as **sales forecasting and targets**, the standard business practice seems to be a one-way street wherein the Dealer has no choice but to comply with the targets set by the OEM. Such targets, often involve significant and avoidable costs on part of the Dealer. In this regard, the procedures adopted by OEMs such as Toyota and Volvo in India can be treated as benchmarks. Toyota and Volvo have a practice of initiating a separate signed agreement on sales forecasts which is adopted only after arriving at a consensus.

Furthermore, Dealers also have no say whatsoever in instances where a competing dealership of the same OEM is authorized to operate in the same territory. This significantly impinges upon the existing Dealer's market share and adversely affects their business. In California, the OEM is obligated to provide **adequate notice to the Dealer if the OEM decides to authorize another dealership in the same territory and the Dealer has the right to approach the Board, should they feel that such a decision is without good cause and adversely affects the Dealer**.<sup>40</sup>

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<sup>39</sup> Clause 17 (b) of the Tata Motors Dealership Agreement

<sup>40</sup> Articles 3062 and 3063, California Motor Vehicle Code, Accessed at:

[https://leginfo.legislature.ca.gov/faces/codes\\_displayText.xhtml?lawCode=VEH&division=2.&title=&part=&chapter=6.&article=4](https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=VEH&division=2.&title=&part=&chapter=6.&article=4).

## 5. Indemnification

Another important issue that is often neglected is that of indemnification. It is evident from the Indian contractual structures that there are no clearly defined indemnification obligations and where they are, they are significantly tilted in favour of the OEMs. A more balanced and **clearly defined indemnification obligation would be beneficial to both parties**, as it would attribute responsibility to respective parties upon the occurrence of specific events of loss. This is a standard practice in foreign agreements as well as laws. **In Australia, the OEM is prohibited from seeking a general indemnity from the Dealer and New York laws clearly define indemnification obligations on the basis of liability.** Additionally, given that the Dealers face numerous risks of litigation initiated by aggrieved consumers upon abrupt OEM exits, the OEM indemnification obligations must also cover events of loss/liability arising directly out of OEM exit without notice.

## 6. Constitution of an adjudicatory authority

At present, disputes between the OEMs and Dealers in India are usually subject to arbitration under the dispute resolution clauses of the Dealership Agreements. However, under the terms of most Dealership Agreements, there is no recourse for the Dealer when the day-to-day business operations are against their interests. The Dealer is rarely given an opportunity of course correction before the threat of termination and/or litigation is brandished upon them. Even if a dispute arises and is referred to arbitration, the imbalance of power between the parties is very evident and would only make matters worse for the Dealer that has a huge amount of capital locked into the Dealership. Therefore, **constituting an adjudication/dispute resolution authority akin to either the Motor Industry Ombudsman of South Africa or the Motor Vehicle Board in California, that has equal representation from the Government of India, Society of Indian Automobile Manufacturers (SIAM) and the Federation of Automobile Dealers Association (FADA) would be extremely helpful in levelling the playing field.**



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## APPENDIX

As demonstrated in the Policy Brief, there are significant gaps in how Dealer – OEM relationships are governed in India. A comparative analysis was undertaken in order to understand the best practices that were reflected through both foreign agreements and laws. For the purposes of our research, we have looked at sample Dealership Agreements in India – Maruti, Honda, Ford, Hyundai, Hero MotoCorp, Ashok Leyland (AL), MG Motors; and USA - Toyota, Honda, Ford. We have also analyzed laws from the US states of New York, California, and Maryland; Australia, The Netherlands, and South Africa. This Annexure presents the analysis for a deeper understanding of the issues identified in the Policy Brief.

### I. LACK OF STANDARDIZED DURATION OF AGREEMENTS AND UNCERTAIN RENEWAL MECHANISMS

Domestic Agreements	Foreign Agreements	Relevant International Laws
<ul style="list-style-type: none"> <li>• <b>Honda agreement</b> - 1 year (intent for renewal to be given 30 days prior to expiry)</li> <li>• <b>MG Motors Letter of Intent</b> - Envisages a 2-year binding agreement followed by optional renewal for 3 years</li> <li>• <b>Hero MotoCorp agreement</b> - 3 years (with 1-year automatic renewal unless terminated)</li> <li>• <b>Hyundai India agreement</b> - 3 years</li> <li>• <b>Mahindra and Mahindra agreement</b> - 3 years</li> </ul>	<p>Not clear from the standard agreements available on the US Securities and Exchange Commission website; may vary from OEM to OEM</p>	<p><b>Australia:</b> Franchisor prohibited from entering into franchising agreements unless the agreement provides the franchisee with a reasonable <b>opportunity to make a return</b>, during the term of the agreement.<sup>41</sup></p> <p>Both franchisee and franchisor must notify each other of their intention to renew the agreement. Minimum notice period requirements depending on the term of agreement (&gt;1 year = 12 months’ notice; &lt;1 year = 6 months’ notice).<sup>42</sup></p>

<sup>41</sup> Clause 46 B of the Australian Franchising Code of Conduct, Accessed at: <https://www.legislation.gov.au/Details/F2021C00644>

<sup>42</sup> Clause 47B of the Australian Franchising Code of Conduct, Accessed at: <https://www.legislation.gov.au/Details/F2021C00644>

<ul style="list-style-type: none"> <li>• <b>Maruti Suzuki agreement</b> - 3 years (with 3 years optional renewal unless served termination notice before 90 days of expiration)</li> <li>• <b>AL agreement</b> - 6 years</li> </ul>		
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## II. UNFAIR TERMINATION AND EXIT CLAUSES

Domestic Agreements	Foreign Agreements	Relevant International Laws
<p><b>No Cause-Termination (with notice)</b> Common across domestic agreements (notice period ranges from 1 month - 3 months).</p> <p><b>Termination with immediate/short notice</b> Causes allowing immediate/short notice termination include: dealer <b>incapable of complying</b> with the Agreement (Maruti); dealer sells <b>non-genuine parts</b> (Maruti and Mahindra); inadequate <b>sales coverage</b> (Honda, AL, Mahindra). Other causes include insolvency, change in the constitution of the dealer, exit of key people etc.</p>	<p><b>No Cause Termination</b> Do not explicitly mention ‘no-cause’ termination like domestic agreements.</p> <p><b>Termination with immediate/ short notice</b> Can be done in the cases of insolvency, misrepresentation to OEM, owner convicted of felony, disagreement of senior management etc.</p> <p>For all other reasons including OEM’s exit from the market, the Dealer is required to be intimated in written and given adequate notice.</p>	<p><b>California:</b> Minimum notice period - 60 days; Franchisee has the right to approach the New Motor Vehicle Board against termination.<sup>43</sup></p> <p><b>Maryland:</b> Minimum notice period - 90 days if franchisor (OEM) decides to terminate.<sup>44</sup></p> <p><b>Australia:</b> Minimum notice period requirements depending on the term of agreement (&gt;1 year = 12 months’ notice; &lt;1 year = 6 months’ notice).<sup>45</sup></p>

<sup>43</sup>Sections 3060 and 3061 of the California Motor Vehicle Code, Accessed at: [https://leginfo.ca.gov/faces/codes\\_displayText.xhtml?lawCode=VEH&division=2.&title=&part=&chapter=6.&article=4](https://leginfo.ca.gov/faces/codes_displayText.xhtml?lawCode=VEH&division=2.&title=&part=&chapter=6.&article=4).

<sup>44</sup>Section 15-209 of the Maryland Transportation Code, Accessed at: <http://mgaleg.maryland.gov/mgaweb/Laws/StatuteText?article=gtr&section=15-209&enactments=false>

<sup>45</sup> Clause 47B of the Australian Franchising Code of Conduct, Accessed at: <https://www.legislation.gov.au/Details/F2021C00644>

<p>Agreements are usually silent on termination notices in the event of OEM exit.</p>		
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### III. LACK OF SUPPORT TO DEALERS FOR REALISING RETURN ON INVESTMENT

#### 1. Repurchase and Buyback

Domestic Agreements	Foreign Agreements	Relevant International Laws
<p>Some agreements have specific buyback clauses, while others do not.</p> <ul style="list-style-type: none"> <li>• 15-day timeline for OEM to exercise preferential right on buyback only present in Honda, Mahindra agreements.</li> <li>• Hyundai agreement provides that only products bought within 6 months of termination are eligible for repurchase.</li> <li>• No buyback clause in AL or Maruti agreements (dealer is supposed to dispose of stocks).</li> </ul>	<p>All agreements mandate repurchase obligations on OEM for all new, undamaged parts and products, specialty equipment, signages, etc.</p>	<p><b>California:</b> Franchisor obligated to pay the dealer within 90 days of termination the dealer cost, plus any charges made by the manufacturer or distributor for vehicle distribution or delivery and the cost of any dealer-installed original equipment accessories, all unused supplies, fair market value of all special tools and equipment.<sup>46</sup></p> <p><b>Maryland:</b> Franchisor obligated to reimburse Dealer for any upgrades or alterations within 2 years before termination; repurchase signage, special tools &amp; equipment. Franchisor also obligated to reimburse costs incurred for packaging &amp; transporting repurchased items.<sup>47</sup></p>

<sup>46</sup>Section 11713.13 (d) of the California Motor Vehicle Code, Accessed at: [https://leginfo.legislature.ca.gov/faces/codes\\_displayText.xhtml?lawCode=VEH&division=5.&title=&part=&chapter=4.&article=1](https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=VEH&division=5.&title=&part=&chapter=4.&article=1).

<sup>47</sup> Section 15-212.2 of the Maryland Transportation Code, Accessed at: <http://mgaleg.maryland.gov/mgawebsite/Laws/StatuteText?article=gtr&section=15-212.2&enactments=False&archived=False>

		<p><b>Australia:</b> On decision of termination of agreement, the parties must agree to a written plan with milestones for managing the winding down of the dealership, including how the franchisee's stock (including new vehicles, spare parts and service and repair equipment) will be managed over the remaining term of the agreement.<sup>48</sup></p>
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## 2. Multiple Dealerships in the same territory

Domestic Agreements	Foreign Agreements	Relevant International Laws
<ul style="list-style-type: none"> <li>• Dealer has non-exclusive right to sell OEM products.</li> <li>• Change of territory is sole discretion of OEM.</li> <li>• In case of multiple dealerships in same territory - no territorial limitation (Hyundai); OEM can transfer bookings from one Dealer to another without compensation (Hero).</li> </ul>	<ul style="list-style-type: none"> <li>• Dealer has non-exclusive right to sell OEM products.</li> <li>• Change of territory has to be justified on the basis of reasonability and necessity; OEM still reserves the right to change.</li> </ul>	<p><b>California:</b> Franchise has <b>the right to receive a notice</b> before opening of another dealership by the franchisor in the same territorial limits and to <b>lodge a protest against the franchisor</b> for new opening without "<b>good cause</b>".<sup>49</sup></p>

## IV. LACK OF CLEAR INDEMNITY PROVISIONS

Domestic Agreements	Foreign Agreements	Relevant International Laws
<ul style="list-style-type: none"> <li>• Dealer to indemnify OEM from complaints made due to dealer's omissions.</li> </ul>	<ul style="list-style-type: none"> <li>• Dealer and OEM obligations clearly stated in the agreements.</li> </ul>	<p><b>California:</b> Franchisor obligated to indemnify Franchisee against any and all damages arising out</p>

<sup>48</sup> Clause 49 of Australian Franchising Code of Conduct, Accessed at: <https://www.legislation.gov.au/Details/F2021C00644>

<sup>49</sup> Section 3062 and 3063 of the California Motor Vehicle Code, Accessed at:

[https://leginfo.ca.gov/faces/codes\\_displayText.xhtml?lawCode=VEH&division=2.&title=&part=&chapter=6.&article=4.](https://leginfo.ca.gov/faces/codes_displayText.xhtml?lawCode=VEH&division=2.&title=&part=&chapter=6.&article=4.)

<ul style="list-style-type: none"> <li>• Dealer omissions are not clearly defined in domestic agreements, except in the Hyundai agreement.</li> <li>• No clear indemnity clause in Honda agreement - only a clause on complaints.</li> </ul>	<ul style="list-style-type: none"> <li>• Indemnity distinctly defined for either party on the basis of clearly laid out obligations.</li> </ul>	<p>of third-party claims where the responsibility lies with the OEM (e.g., Condition, design, assembly of vehicles).<sup>50</sup></p> <p><b>Australia:</b> Franchise agreement must not require a franchisee to sign a general release of the franchisor from liability towards the franchisee.<sup>51</sup></p> <p><b>New York:</b> Franchisor must indemnify Franchisee against claims or proceedings that directly relate to the manufacture, assembly or design of new motor vehicles, parts or accessories or other functions of the Franchisor.<sup>52</sup></p> <p><b>South Africa:</b> OEM prohibited from imposing contractual terms that waive any liability of the supplier; that are unfair, unreasonable, or unjust.<sup>53</sup></p>
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<sup>50</sup>S.11713.13(f) of the California Motor Vehicle Code, Accessed at:

[https://leginfo.legislature.ca.gov/faces/codes\\_displayText.xhtml?lawCode=VEH&division=5.&title=&part=&chapter=4.&article=1](https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=VEH&division=5.&title=&part=&chapter=4.&article=1).

<sup>51</sup> Clause 20 of Australian Franchising Code of Conduct, Accessed at: <https://www.legislation.gov.au/Details/F2021C00644>

<sup>52</sup> Section 463 (2) (n) of the New York State's Franchised Motor Vehicle Dealer Act, Accessed at: <https://www.nysenate.gov/legislation/laws/VAT/463>

<sup>53</sup> Section 48 of the South African Consumer Protection Act 2008, Accessed at: [https://www.gov.za/sites/default/files/gcis\\_document/201409/321864670.pdf](https://www.gov.za/sites/default/files/gcis_document/201409/321864670.pdf)

## V. LACK OF FLEXIBILITY FOR DEALERS IN TAKING BUSINESS DECISIONS

### 1. Non-Compete Clauses

Domestic Agreements	Foreign Agreements	Relevant International Laws
<p>Most agreements <b>do not allow</b> Dealers to engage with other OEMs <b>without prior written consent</b>. The Competition Commission of India has earlier observed such consent is hardly ever given.<sup>54</sup></p> <ul style="list-style-type: none"> <li>• <b>AL agreement - Blanket prohibition on selling other products.</b></li> <li>• <b>Mahindra agreement</b> - Prior consent <b>will not be unreasonably withheld</b> if Dealer assures it will not hamper company standards or cause customer inconvenience.</li> <li>• <b>Skoda agreement</b> - Allows for engagement but calls <b>to be informed in writing</b>. Dealer is not allowed to sell under the same trade name.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Honda agreement</b> allows while <b>Toyota agreement</b> mandates exclusivity of facility.</li> <li>• No such clause in <b>Ford</b> agreement. Largely allows the Dealer to establish other business entities.</li> </ul>	<p><b>California:</b> Franchisor cannot prevent a dealer from acquiring, adding, or maintaining a sales or service operation for a competitor at the same or expanded facility where the dealer operates.<sup>55</sup></p> <p><b>New York:</b> Franchisor is prohibited from directly or indirectly imposing non-competition covenants on the Franchisee.<sup>56</sup></p>

<sup>54</sup> *In Re: Shamsher Kataria and Honda Siel Cars India Ltd. and Ors.*, Case No 03/2011, Para 20.6.24 (d), Competition Commission of India, Accessed at: [https://www.cci.gov.in/sites/default/files/032011\\_0.pdf](https://www.cci.gov.in/sites/default/files/032011_0.pdf)

<sup>55</sup> S.11713.13(a) of the California Motor Vehicle Code, Accessed at:

[https://leginfo.legislature.ca.gov/faces/codes\\_displayText.xhtml?lawCode=VEH&division=5.&title=&part=&chapter=4.&article=1](https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=VEH&division=5.&title=&part=&chapter=4.&article=1)

<sup>56</sup> Section 466 of New York State's Franchised Motor Vehicle Dealer Act, Accessed at: <https://www.nysenate.gov/legislation/laws/VAT/466>

## 2. Procurement of Accessories and Consumables

Domestic Agreements	Foreign Agreements	Relevant International Laws
<ul style="list-style-type: none"> <li>Dealers either <b>forced to buy OEM products (Hyundai, AL, Mahindra, Hero agreements);</b> or</li> <li>They can supplement procurement from approved suppliers (<b>Honda and Maruti, Skoda agreements</b>)</li> </ul>	<p>Mostly silent on usage of non-genuine parts (example Honda) or allow Dealers to use non-genuine parts for out-of-warranty vehicles with full knowledge of customer (Toyota).</p> <p><b>Ford</b> entitles Dealers to allowances, incentives, discounts and return privileges on purchase of genuine parts.</p>	<p><b>Maryland: OEM prohibited to require or coerce dealer to purchase goods or services from a vendor</b> who is selected by OEM.<sup>57</sup></p> <p><b>South Africa:</b> OEMs prohibited from imposing a condition on the dealer to purchase any particular goods or services from a designated third party.<sup>58</sup></p>

## 3. Sales Forecast

Domestic Agreements	Foreign Agreements	Relevant International Laws
<ul style="list-style-type: none"> <li><b>AL agreement</b> - The number of products to be taken by the Dealer from AL under any fresh agreement will be estimated and determined by AL on the basis of sales target that <b>are determined by AL.</b></li> <li><b>Skoda agreement-</b> Dealer to order products as per periodic <b>targets set by Skoda.</b></li> </ul>	<p>Evaluation is done on a reasonable criteria and parameters broadly laid out in the agreement (pegging sales to other Dealers' performance over reasonable time, local conditions affecting performance, etc.).</p>	<p><b><u>Stocks:</u></b></p> <p><b>New York:</b> Coercing the dealer to accept delivery of vehicles, accessories, appliances, special tools, and equipment etc. is prohibited.<sup>59</sup></p> <p><b>Maryland:</b> OEM prohibited from forcing any dealer to order or accept delivery of any vehicle, equipment, parts, or accessories or any other</p>

<sup>57</sup> Section 15-207 (k) (2) (i) of the Maryland Transportation Code, Accessed at: <http://mgaleg.maryland.gov/mgaweb/Laws/StatuteText?article=gtr&section=15-207&enactments=False&archived=False>

<sup>58</sup> Section 13 of the South African Consumer Protection Act 2008, Accessed at: [https://www.gov.za/sites/default/files/gcis\\_document/201409/321864670.pdf](https://www.gov.za/sites/default/files/gcis_document/201409/321864670.pdf)

<sup>59</sup> Section 463 of New York State's Franchised Motor Vehicle Dealer Act, Accessed at: <https://www.nysenate.gov/legislation/laws/VAT/463>

<ul style="list-style-type: none"> <li>• <b>Honda</b> and <b>Hyundai</b> agreements have (to some degree) laid out processes for determining sales plan and evaluation criteria.</li> </ul>		<p>commodity that is not required by law or by the dealer's franchise.<sup>60</sup></p> <p><b>South Africa:</b> OEM prohibited from using coercion, undue influence, pressure, duress or harassment, unfair tactics against the dealer during the course of business (including marketing, supply, negotiations etc.).<sup>61</sup></p> <p><b><u>Performance Standards:</u></b></p> <p><b>Maryland:</b> Franchisees cannot be forced to adhere to performance standards that are not uniformly applied.<sup>62</sup></p> <p><b>California:</b> Franchisor cannot establish or maintain a performance standard, sales objective, or program for measuring a Dealer's sales, service, or customer service performance that may materially affect the Dealer.<sup>63</sup></p>
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<sup>60</sup>Section 15-207 (c) of Maryland Transportation Code, Accessed at: <http://mgaleg.maryland.gov/mgawebsite/Laws/StatuteText?article=gtr&section=15-207&enactments=False&archived=False>

<sup>61</sup> Section 40 of the South African Consumer Protection Act 2008, Accessed at: [https://www.gov.za/sites/default/files/gcis\\_document/201409/321864670.pdf](https://www.gov.za/sites/default/files/gcis_document/201409/321864670.pdf)

<sup>62</sup>Section 15-207 (e) (2) of Maryland Transportation Code, Accessed at: <http://mgaleg.maryland.gov/mgawebsite/Laws/StatuteText?article=gtr&section=15-207&enactments=False&archived=False>

<sup>63</sup> Section 11713(g) of the California Motor Vehicle Code, Accessed at: [https://leginfo.ca.gov/faces/codes\\_displayText.xhtml?lawCode=VEH&division=5.&title=&part=&chapter=4.&article=1](https://leginfo.ca.gov/faces/codes_displayText.xhtml?lawCode=VEH&division=5.&title=&part=&chapter=4.&article=1).

		<p><b><u>Consultation:</u></b></p> <p><b>Netherlands:</b> The Franchisor and franchisee must have a consultation at least once a year.<sup>64</sup> Franchisor to provide reasonable assistance, commercial and technical support to Franchisee.<sup>65</sup></p>
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<sup>64</sup> Article 916 (3) of the Netherlands Franchise Act 2020 (OFFICIAL TRANSLATION UNAVAILABLE)

<sup>65</sup> Article 919 (1) of the Netherlands Franchise Act 2020 (OFFICIAL TRANSLATION UNAVAILABLE)