

Competition Law Hotline

February 09, 2016

END OF BUMPY RIDE FOR UBER? CCI SMOOTHENS THE ROAD

- CCI holds that Uber does not hold a dominant position in Kolkata and dismisses claim filed by Meru Cabs
- CCI holds Kolkata's market to be a peculiar market and hence relevant product market would include services offered by radio taxis as well as yellow taxis.
- CCI holds that the relevant geographic market, for services that were regulated by an authority would be the territory over which such authority exercised its powers.

BACKGROUND

The Competition Commission of India ("**Commission**") in *In Re: Meru Travel Solutions (Private) Ltd v Uber India Systems (Private) Ltd.*¹ ("**Uber Order**") held that Uber India did not hold a dominant position within the city of Kolkata and therefore no case could be made out for directing an investigation by the Director General for abuse of dominant position.

The Commission rejected allegations that Uber was held a dominant position in the market for as the evidence put on record did not justify the conclusion. Consequently, the Commission dismissed the claim against Uber. This must come as a welcome relief to Uber particularly since in 2015, the Commission thought it fit to direct investigation into Ola regarding its practices in Bengaluru.² ("**Ola Order**")

FACTS

Meru Travel Solutions (Private) Ltd ("**Informant**") alleged that Uber India Systems (Private) Ltd, Uber BV and Uber Technologies International Inc. (collectively "**OPs**") held a dominant position in the market and were abusing their dominant position, in contravention of Section 3 and Section 4 of the Competition Act, 2002 ("**Act**"), by engaging in practices such as predatory pricing.

The Informant averred that the average market price for radio taxis in Kolkata prior to the OPs' launch in the market was between Rs 20 and 22 per km. In August 2014 the OPs strategically launched their service in Kolkata, much below the prevailing market price, at Rs 15 per km.

Later the OPs reduced the price charged per km to Rs 9. In response the Informant was compelled to reduce the price it charged to Rs 15 km per hour. In addition to following a strategic pricing policy, the OPs enticed taxi drivers and customers by providing driver incentives and customer discounts, respectively. As a result, the Informant alleged, other players in the market, including the Informant, observed a reduction in their market share.

CONTENTION OF PARTIES

Informant's Contentions

1. The OPs held a dominant position in the relevant product market for radio taxis. Reliance was placed on a report on the market for radio taxi service in Kolkata prepared by TechSci Research Private Limited ("**Report**") to contend that the 54% of the active fleet of radio taxis in Kolkata were available with the OPs and out of the total trips made on an average in the city during any given day, the OPs' share was about 61% .
2. The pricing strategy adopted by the OPs was predatory in nature and that the other operators in the market were able compete only at a loss.
3. The OPs used to forgo their share of the revenue from providing taxi services, opting instead to give the entire share to the drivers; intending to poach drivers from other radio taxi providers.
4. The discounts and loyalty rebates offered by the OPs to its customers lead to discrimination in pricing.

Contentions of the OPs

1. The OPs contended that the relevant product market would include all modes of public transportation as well as private transport. At the very least the ubiquitous local yellow taxis operating in Kolkata would form a part of the relevant product market. Based on this, OPs would not be in a dominant position in Kolkata.
2. The active presence of yellow taxis in Kolkata posed a strong competitive constraint on radio taxis; this warranted the inclusion of yellow taxis in the relevant product market definition.
3. The Report relied upon by Informant was unreliable since it was prepared based on a low sample size. Details such as active fleet size, total fleet size and other market share parameters kept changing on a real time basis since drivers could accept bookings from various platforms; therefore the Report could not be relied upon for determining the dominant position of any particular player in the radio taxi services market.

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4. Kolkata had witnessed a drastic increase in the availability of radio taxis since multiple players had started providing radio taxi services, this was accompanied by a reduction in prices. This was in the interests of competition law since it promoted consumer welfare.

5. It was the entry of Ola in the market which affected the market share of the Informant.

ORDER

The Commission examined the material on record to conclude that a *prima facie* case under Section 26 (1) of the Act was not made out. The Commission noted the argument by the OPs that the ubiquitous yellow taxis played an active role in providing taxi services to the public. These taxis being substitutable with radio taxis constituted a significant competitive constraint to the operations of radio taxis such as the Informant and the OPs, since they were relied on extensively by the public for commuting. The Commission therefore was of the view that the relevant product market included services offered by radio taxi operators as well as yellow taxis within the city of Kolkata.

The Commission noted that the due to “*region specific demand by the end consumer*” and “*difference in regulatory architecture*” each city or state, as the case may be would constitute a different market in itself.

The Commission rejected the Report and Informant's reliance on the same to contend that OPs were in a dominant position. The Commission noted that the Report did not take into consideration data pertaining to yellow taxis though they formed a part of the relevant product market. The Commission also noted that the Report was prepared based on incomplete information and that the Report was deficient since the OPs were not even interviewed while preparing it.

The Commission noted that Ola, another radio taxi operator had a large market share and there was healthy competition between the OPs and Ola. OPs contended that if yellow taxis were considered the OPs market share was merely 5.8% and hence, OPs could not be considered to be enjoying a dominant position. The Commission, accepting the arguments made by the OPs held that it could not be said that OPs were in a dominant position and consequently, no case of violation under Section 3 and 4 of the Act was made out by the Informant.

ANALYSIS

In the Uber Order, Kolkata's ubiquitous yellow taxis merited inclusion in the relevant product market since they were relied upon extensively by the general public for transport. These submissions by the OPs had a material bearing on the ultimate decision of the Commission.

Earlier in 2015, upon consideration of a complaint filed by Fast Track (another radio taxi operator) against Ola the Commission directed the Director General to investigate into the allegations of anticompetitive practices such as predatory pricing.³ The informant in that case made averments that Ola, a recipient of foreign investments, was engaging in predatory pricing and was offering unprecedented incentives to drivers. In this case, based on material placed before it the Commission was of the *prima facie* view that a case was made for the Director General to conduct an investigation.

The Commission while considering an application for interim reliefs filed by Fast Track⁴ directed Ola to restructure its pricing policy in such a way that the incentives offered to drivers of the radio taxis would not exceed the passenger revenue collected by it. These orders also highlight the importance of presenting material facts and evidences at the initial stage because of which the OPs were able to refute allegations of abuse of dominant position.

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You can direct your queries or comments to the authors

¹ Case No. 81 of 2015. Order dated December 22, 2015

² *In Re: Fast Track Call Cab Company Pvt Ltd and M/s Ani Technologies*, Case No 6 of 2015. Order dated April 24, 2015

³ *Supra* N.2

⁴ *In Re: Fast Track Call Cab Company Pvt Ltd and M/s Ani Technologies*, Case No 6 of 2015, Order dated September 9, 2015

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