Online Taxi Aggregator Services: CCI on relevant market

Introduction

Online taxi aggregators[1] have been in the spotlight for considerable time in the Indian start-up sector. Their business model is based on an online platform to connect customers and drivers for a share on each ride. They neither employ drivers nor own vehicles. An estimated 1.6 million vehicles in India run as taxis and aggregators provide a unique opportunity to the taxi drivers for making a living without actually being employees. With tremendous investment from global venture capitalists, the aggregators appear to have made local taxi companies in India irrelevant. For instance, ANI Technologies (the company that owns Ola) gained more than INR 40 billion (USD 700 million)[2] funds whereas Uber committed more than INR 100 billion (USD 1 billion) for the Indian market.[3] With their rapid rise and billions at their disposal it is not surprising that there have been allegations of anti-competitive practices against them. The Competition Commission of India ("**CCI**") has recently passed orders adjudicating allegations of anti-competitive agreements[4] and abuse of dominance[5] under the Competition Act, 2002 (the "**Act**").

This newsletter aims to critically analyze 2 CCI orders namely: (i) *In Re: Meru Travel Solutions Private Limited vs. Uber India Systems Private Limited*[6]; and (ii) *In Re: M/s Mega Cabs Pvt. Ltd. vs. M/s ANI Technologies Pvt. Ltd.*[7] It attempts to project the impact of these orders on the online taxi aggregation sector.

1. Facts

The informant Meru Travel Solutions Pvt. Ltd. ("**Meru**") entered the Kolkata region in 2014 to provide radio taxi services with the brand name Meru Flexi. They alleged that the respondents Uber[8] ("**Uber**"), using the brand names Uber X and Uber Go, were involved in anti-competitive practices by abusing their dominance in contravention of S. 4 of the Act. The average price for radio taxis in Kolkata was within INR 20-22 per km ($0.30), while Uber launched its services in Kolkata for a price of INR 15 per km ($0.22), which forced Meru to drop their prices as well. However, Uber further reduced the prices to INR 9 per km ($0.13). Meru's primary contention was that Uber's pricing strategy was predatory[9] which they could not

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[1] Aggregator is commonly understood as a person or entity collecting data to make it available at one place. (Referred from www.businessdictionary.com/definition/aggregator.html) (Last accessed on March 23, 2016)

[2] USD 1 = about INR 66.52

[3] Taxi Wars: Ola vs. Uber vs. Everybody else, August 2015, accessible at http://www.businesstoday.in/magazine/cover-story/india-taxi-market-war-heats-up-ola-cabs-uber-strategy-leaders/story/222542.html (Last accessed on March 23, 2016)

[4] Anti-competitive agreements are considered unlawful under section 3 of the Act. It occurs when an enterprise or association or person enters into an agreement which causes or is likely to cause adverse effect on competition within India

[5] Abuse of dominance is considered unlawful under section 4 of the Act, it occurs when a dominant player in the market intends to eliminate a competitor or deter entry of future competitor's in the market

[6] Case no. 81 of 2015, Order dated December 22, 2015

[7] Case no. 82 of 2015, Order dated February 9, 2016

[8] The respondents were Uber India Systems Pvt. Ltd., Uber BV and Uber Technologies International Inc.

[9] Predatory pricing means the sale of goods and services at a cost which is well below the cost of production, with a view to reduce competition and eliminate competitors. [section 4, Explanation Clause (b)]

match, except at a loss. Relying on market research done by a company called TechSci, Meru submitted that Uber had approximately 52% share of the total number of cars in the radio taxis network making their position in terms of size and importance, economic power and commercial advantage unparalleled.

Refuting Meru's allegation, Uber contended that the relevant product market is much broader than "radio taxi services" in Kolkata. The product market should include yellow taxis as well, since they were substitutable with radio taxis due to common features like ease of availability, comparable fare structure. While challenging the veracity of TechSci's report, Uber submitted that its market share was far below the alleged percentage and was erroneous due to the limited sampling size of 180 radio taxi drivers from only 6 companies with exclusion of other players including Uber. According to Uber, on the basis of their fleet size they had 38.5% market share which was lesser than Ola's market share of 41.7%. Further, Uber urged that any assessment on market share premised on data relating to shorter period of time should be considered inconclusive. Regarding predatory pricing strategy, Uber stated that despite additional price reductions in Uber Go from INR 9 ($0.13).) to 7 ($0.11) per km in other regions, no price reduction was done in Kolkata indicating that no specific action was targeted to drive out Meru.

1.1 CCI Order

To prove dominant position of an entity, relevant market must be ascertained. Relevant market is the combination of a relevant geographic[10] and product market[11]. CCI concluded that yellow taxis provide viable alternative to radio taxis due to their features like ease in booking, predictability in terms of availability and low pricing making them substitutable services. Therefore, CCI ruled that the relevant product market would be "services offered by radio taxis and yellow taxis". Regarding the relevant geographic market, CCI concluded that since taxi service market is largely regulated by state transport authorities and transport being a state subject, the geographical market would be "Kolkata". Thus, the relevant market was identified as "services offered by radio taxis and yellow taxis in Kolkata."

Regarding allegations of abuse of dominance, CCI rejected TechSci's report as it was prepared without taking yellow taxis into consideration which significantly constrained the behavior of other taxi operators in Kolkata. Further, it was observed that the market share information was not verifiable and Uber could not hold a dominant position with 38.4% when its competitor Ola held 41.7%. Based on this CCI ruled that Uber did not hold a dominant position and was not in breach of S.4.

2. Facts of the Ola Case

The informant Mega Cabs Pvt. Ltd. ("**Mega**") provided radio taxi services in the Delhi-NCR region under the brand name Mega Cabs. The respondent ANI Technologies Pvt. Ltd. ("**Ola**") providing similar services using the brand name Ola entered the market in 2014. Mega alleged that Ola held dominant position in radio taxi services market in Delhi-NCR region and

[10] As per S. 2(s), relevant geographic market means the market area where conditions of competition are homogenous and can be distinguished from those prevailing in the neighbouring areas.
[11] As per S. 2(t), relevant product market means a market comprising of all those products or services which are interchangeable or substitutable by the consumer.

was engaged in anti-competitive and abusive practices violating S.3 & 4 of the Act. Based on the market research conducted by a consultancy firm 6Wresearch, Mega's primary contention was that Ola held a dominant position in the relevant market holding more than 50% of market share in terms of fleet size, active fleet size, monthly revenue and number of daily trips. Further, Ola was abusing its dominance by adopting predatory pricing strategies (such as low share in revenue per trip; providing rebates and incentives to drivers; providing rebates, discounts, free rides, cash back schemes, special prizes, etc. to customers) despite incurring revenue losses. Mega argued that such abusive practices resulted in Mega suffering revenue losses, loss of radio taxis on its network, and reduced number of bookings and trips. Additionally, relying on the declining number of drivers on its network, Mega submitted that Ola's agreements with the drivers were anti-competitive. Heavy dependence on technology, higher costs for creating apps, commission sharing model, and incentive schemes for drivers as used by Ola were not viable for new players and were in the nature of entry barriers.

In response to Mega's allegations, Ola challenged the veracity of 6Wresearch report as it was meant for internal use of some anonymous client; and even if the report were to be considered accurate, the data inevitably highlighted the deplorable performance of Mega rather than Ola's dominance. It submitted that unlike Mega whose operations followed an own-assets model i.e. all taxis on Mega's network were owned by it, Ola operated on an aggregators' model where the taxis were owned by the drivers and as such "active fleet size" parameter should not be applied to assess Mega's market share which was in absolute control of the taxis on its network. Further, Ola highlighted that Mega did not use its capacity and resources efficiently which was the main reason for its poor performance. In response to allegation that Mega incurred losses due to Ola's predatory pricing, it was stated that Mega had been suffering losses for 6 to 7 years after entering the market. Furthermore, substantiating the reasons for incurring loss of revenue, it was submitted that it was a peculiarity associated with gestation period of businesses. Regarding the strategy of offering discounts to customer, Ola urged that offering discounts was legal, natural in every market and is an essential component of the market competition.

2.1 CCI Order

The CCI began with determination of the relevant market. Relying on its earlier order[12], CCI observed that the distinct features of radio taxi services such as convenience of time saving, point-to-point pick and drop, pre-booking facility, ease of availability, predictability in terms of expected travel and waiting time, dedicated consumer base, etc. makes the model unique and non-substitutable with other transportation modes. On this basis, the relevant product market was identified as radio taxi services. While determining the relevant geographic market, CCI restricted the market to Delhi and observed that the regulatory regime for taxis in Delhi was different from NCR region making the competitive conditions homogenous only for taxis operating in Delhi. Thus, the relevant market was identified as radio taxi services in Delhi. CCI accepted Ola's arguments and held the report to be inconclusive. On allegations of Ola having dominant position, CCI ruling in the negative observed that there is insufficient data from verifiable sources which will substantiate that Ola had dominant presence and had the ability to operate independent of competitive forces in a highly competitive relevant market.

[12] In Re: Fast Track Call Cab Private Limited v. M/S ANI Technologies Case No. 01 of 2015, Order dated September 3, 2015

Lastly, CCI ruled that inability of existing or new players to cope with technological advancements and innovative models cannot per se be considered to create entry barriers causing anti-competitive effects; and hence, there was no breach of S.3 of the Act.

Analyses

It is interesting to witness varied approach adopted by CCI for determining relevant market in both the abovementioned cases. In the Uber case, relevant product market included yellow taxis in Kolkata, even though it did not have the distinct features of radio taxi services as decided by CCI earlier[13] like point-to-point pick and drop, pre-booking facility, use of technology, dedicated commuter base, etc. In contrast to this, CCI strongly relied on the distinct features of radio taxi services to restrict the purview of relevant product market in Ola case. Thus, there is no fixed precedent that CCI follows to determine the relevant product market in taxi aggregator services sector, and the ultimate analysis is premised on identifying existence of competitors and the extent of competition exerted by them in the concerned relevant market. This determination is extremely critical as it is key to determine whether the alleged dominant player operates independent of its market forces; and a thorough investigation into abuse is unlikely unless the dominance is proven based on verifiable facts.

Conclusion

With the ever increasing consumer demand and large fleet of taxis, the immediate future of radio taxi aggregators seems promising. The use of advanced technology to operate aggregator model has been the key to success of their businesses, enabling them to provide efficient services at effective costs which makes the market highly competitive. The Competition (Amendment) Bill, 2012 seeks to include the concept of "collective dominance" wherein market share of 2 or more entities shall be considered to determine dominant position and such entities can be jointly held guilty of abuse of dominance. Once, the Bill is enacted, it will be interesting to see how competing aggregators will be clubbed to hold dominance in the radio taxi aggregator services market and how CCI rules on allegations of abusive practices.

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[13] Supra note 16