



**COMPETITION COMMISSION OF INDIA**

**Case No. 06 of 2015**

**In Re:**

**M/s Fast Track Call Cab Private Ltd.,  
26, Jayalakshmipuram,  
Nungambakkam, Chennai.**

**Informant**

**And**

**M/s ANI Technologies Pvt. Ltd.,  
4th Floor, 'A' Wing, Sunteck Centre,  
37-40, Vile Parle (East), Mumbai.**

**Opposite Party**

**CORAM**

**Mr. Ashok Chawla  
Chairperson**

**Mr.S. L. Bunker  
Member**

**Mr. SudhirMital  
Member**

**Augustine Peter  
Member**

**Mr. M. S. Sahoo**



**Member**

**Justice (Retd.) Mr. G. P. Mittal**

**Member**

**Appearances:**

*For the Informant:*

Mr.A.N. Haksar, Sr. Advocate  
Mr. Udayan Jain, Advocate  
Ms. ChitraParande, Advocate  
Mr. Rajiv M. Brahma, Advocate

*For the Opposite Party:*

Mr. Ramji Srinivasan, Sr. Advocate  
Ms. Nisha Kaur Uberoi, Advocate  
Mr. Bharat Budholia, Advocate  
Ms. NanditaSahai, Advocate  
Mr. Arvind, Advocate  
Ms. Sara Sundaram, Advocate

**Order under Section 33 of the Competition Act, 2002**

This order shall dispose of the prayer made by M/s Fast Track Call Cab Private Limited (hereinafter, the '**Informant**'), vide its application dated 08.06.2015, for grant of interim relief under section 33 of the Competition Act, 2002 (hereinafter, the '**Act**'). The Informant has primarily prayed for an order from the Commission directing M/s ANI Technologies Pvt. Ltd. (hereinafter, the '**Opposite Party**') to restrain from indulging in alleged practice of predatory pricing.

2. Briefly, the Commission, vide its order dated 24.04.2015 passed under section 26(1) of the Act, *prima facie* held that the Opposite Party has abused its dominant position in violation of section 4 of the Act. The matter was accordingly sent to



सत्यमेव जयते



the Office of Director General (hereinafter, the ‘**DG**’) for detailed investigation. Pursuant to the said order, the Informant had filed an application seeking interim relief which was considered by the Commission in its meeting dated 17.06.2015 and it was decided to accord an opportunity of hearing to the Informant as well as to the Opposite Party. The Informant and the Opposite Party were represented by their legal counsels in the ordinary meeting of the Commission dated 15.07.2015 wherein detailed submissions were made on the interim application filed by the Informant.

3. Bereft of details, the Informant, in the Information, *inter alia*, has alleged that the Opposite Party, armed with moneybags from various funding agencies, has unleashed a series of abusive practices of unfair conditions, predatory pricing *etc.* to establish its monopoly and eliminate otherwise equally efficient competitors, who cannot indulge in such predatory pricing in the radio taxi services market in the city of Bengaluru. It was contended that the Opposite Party, under the brand name Ola cabs, is offering various unrealistic discounts and rates to lure the customers and unviable incentives to its drivers thereby resulting in business loss for the Informant. It was also alleged that such conduct is resulting in ousting the existing players out of the market and is also creating entry barrier for the potential players.
4. The Commission, while placing reliance on the material submitted by the Informant, *prima facie*, held the Opposite Party to be dominant in the relevant market of ‘Radio Taxi services in the city of Bengaluru’. The Commission was of the view that the Opposite Party was spending more money on discounts and incentives on customers and drivers compared to the revenue it was earning, thereby contravening the provisions of section 4 of the Act. While passing the order under section 26(1) of the Act, the Commission observed that while the veracity of the figures submitted by the Informant is a subject matter of investigation, *prima facie*, such figures indicated low cost pricing by the Opposite Party to oust other players from the market.



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5. In the interim relief application, the Informant has contended that the Opposite Party after having received funds of about \$250 Million from Soft Bank, Japan in March, 2014 unleashed an onslaught of anti-competitive practices resulting in large scale erosion of market share of the Informant. It was alleged that as a financial impact, monthly revenue of the Informant in the Bengaluru market eroded from Rs. 23 lakh in March 2014 to about Rs. 9.5 lakh by December 2014 leading to significant losses. It was also highlighted that despite the *prima facie* order of the Commission, the Opposite Party has not stopped its practices of charging predatory prices.
6. The Informant has also stated that the radio taxi business model relies heavily on the network effect. That a competitors' practice of unduly luring away drivers from its network significantly reduces its ability to serve customers and similarly a competitors low prices to customers also lures away customers from using its network. Under such situation, the Informants' ability to bounce back from a reduced business is extremely difficult and next to impossible. The Informant has pointed out that the Opposite Party was fully aware of the effects of killing the competitor's network and instead of using good operational and ethical business practices, it had allegedly adopted predatory pricing tactics. It is averred that if such policy of the Opposite Party continues then in no time entrepreneurs like the Informant will be forced to exit from the market.
7. The Informant has further contended that the balance of convenience is in its favour since it is on the verge of being eliminated from the market due to the abusive conduct of the Opposite Party. It is urged that if immediate ad-interim ex-parte orders are not granted in its favour, the informant shall suffer irreparable loss and injury, which cannot be compensated in terms of money.
8. Based on these averments, the Informant has sought interim relief from the Commission and prayed that an ex-parte ad-interim stay should be granted and the



सत्यमेव जयते



Opposite Party be directed to restrain from indulging in predatory pricing with immediate effect.

9. The Opposite Party, on the other hand, has submitted that the Informant's interim relief application is misconceived on account of discrepancies in the facts and figures submitted before the Commission at the time of filing the Information and at the time of filing the interim relief application. The counsels for the Opposite Party highlighted that the per trip loss to the Opposite Party was stated to be Rs. 230 in the Information whereas, the data submitted by the Informant along with the interim relief application shows that the average per trip loss to the Opposite Party to be around Rs. 84 (Rs. 9415 loss for 112 trips). Further, it is submitted that the Opposite Party has a complex pricing mechanism in place and the incentives and discounts are designed to compete with similarly placed service providers in the market like Uber.
10. The Opposite Party has submitted that the Informant failed to give details about its business model and costing. In such a scenario, it would be unfair to attribute the Informant's failure to sustain itself in the market on account of its inefficiencies to the Opposite Party. It is also argued that the market is contestable in nature and any other service provider can also resort to venture funding the way the Opposite Party is doing. Accordingly, the Opposite Party submitted that the reliefs prayed for by the Informant are baseless and should not be allowed by the Commission.
11. The Commission has perused the documents submitted by the parties and heard their counsels in detail. The principles for deciding the interim relief application under section 33 of the Act have been laid down by the Hon'ble Supreme Court in *CCI v. SAIL (2010 CompLR 0061 SC)* matter wherein the Hon'ble Supreme Court mandated that while recording a reasoned order under section 33 of the Act, the Commission shall, *inter alia*, ensure fulfilment of following conditions:



सत्यमेव जयते



- a) *record its satisfaction (which has to be of much higher degree than formation of a prima facie view under Section 26(1) of the Act) in clear terms that an act in contravention of the stated provisions has been committed and continues to be committed or is about to be committed;*
- b) *it is necessary to issue order of restraint and*
- c) *from the record before the Commission, there is every likelihood that the party to the lis would suffer irreparable and irretrievable damage, or there is definite apprehension that it would have adverse effect on competition in the market*

12. On the first element it may be mentioned that the Commission has already held that the Informant has a *prima facie* case and has directed the DG to conduct investigation in the matter. At the same time, the figures cited by the Informant regarding per trip loss incurred by the Opposite Party have already been modified in the interim relief application filed by the Informant. These figures are yet to be examined by the DG. Thus, simply because the Informant has a *prima facie* case, by itself will not entitle him to the grant of interim relief, unless, he satisfies that there is irreparable loss and injury to him and that the balance of convenience also lies in his favour.

13. The existence of the second element, *i.e.*, irreparable loss to the Informant or definite apprehension of adverse effect on competition in the market has also not been satisfied in the instant case. The Informant has contended that its active pool of 600 taxis in March, 2014, came down to a mere 250 taxis in March, 2015, because of the anti-competitive strategy of the Opposite Party. The Opposite Party, however, argued that out of 350 taxis which moved out of the Informant's network, only around 120 taxis came on the network of the Opposite Party. Furthermore, the Informant has stated in the interim relief application that



सत्यमेव जयते



monthly revenue of the Informant in Bengaluru market has eroded from Rs. 23 lakh in March 2014 to about Rs. 9.5 lakh by December 2014 leading to significant losses. The Opposite Party has contested these losses stating that in the absence of further evidence from the Informant, it is extremely difficult to conclude whether the said losses are attributable to the conduct of the Opposite Party or due to the inefficiency of the Informant. Further, the Opposite Party argued that the Informant has not able to demonstrate how its prices negatively affect other competitors or the consumers. The Commission observes that the figures submitted by the Informant need to be investigated before any conclusions can be drawn upon them at this stage. Also, since the damages in this case are quantifiable in terms of money, the harm does not appear to irreparable. Though the Informant has contended that it will be difficult to calculate the compensation at a later stage, this does not impress the Commission to grant an interim relief especially when the interim relief application clearly mentions the loss to the Informant in monetary terms.

14. Further, the balance of convenience also does not seem to lie in Informant's favour. The Opposite Party has contended that its incentives and discounts are devised as part of its competitive strategy to compete with similarly placed aggregators in the market like Uber. The Informant has alleged the same to be predatory in nature aimed at ousting players like the Informant out of the market. The Commission has already stated earlier that the figures cited by the Informant regarding per trip loss incurred by the Informant were subsequently modified by the Informant. Though such a discrepancy does not affect the *prima facie* view of the Commission, it cautions that such figures cannot be relied upon further unless the same are verified by the DG in its investigation.
15. The issue of predatory pricing by the Opposite Party is already under investigation by the DG, pending which the Commission is not convinced that any interim relief is required to be granted in this case. For the aforesaid reasons, the prayer of the Informant is disallowed.



16. The Secretary is directed to inform all concerned suitably.

**Sd/-**  
**(Ashok Chawla)**  
**Chairperson**

**Sd/-**  
**(S .L. Bunker)**  
**Member**

**Sd/-**  
**(SudhirMital)**  
**Member**

**Sd/-**  
**(M. S. Sahoo)**  
**Member**

**Sd/-**  
**Justice (Retd.) Mr. G. P. Mittal**  
**Member**

**New Delhi**  
**Date: 03.09.2015**



COMPETITION COMMISSION OF INDIA

CASE NO. 06/2015

DISSENT NOTE

UNDER SECTION 33 OF THE COMPETITION ACT, 2002

PER

AUGUSTINE PETER, MEMBER

1. I am unable to agree with the analysis and conclusions by the learned Members and, therefore, write a separate Order.
2. M/s Fast Track Call Cab Private Limited (hereinafter, the '**Informant**'), a company incorporated under the Companies Act, 1956, engaged in the business of providing radio taxi services under the brand name 'Fast Track' in southern India, filed the Information in the present case under Section 19(1) (a) of the Competition Act, 2002 (hereinafter, the '**Act**') against M/s ANI Technologies Pvt. Ltd. (hereinafter, the '**Opposite Party**'), a company engaged in the provision of services of radio taxi under the brand name 'OLA', alleging, *inter alia*, contravention of the provisions of section 4 of the Act.
3. As per the Information, the Opposite Party, backed by huge funding from various agencies, has indulged in a series of abusive practices including predatory pricing with a view to establishing its monopoly and eliminate otherwise equally efficient competitors from the radio taxi services market. The Informant averred that the Opposite Party held a dominant position in the market of radio taxi services in Bengaluru and abused such dominance through unrealistic incentivisation of drivers leading to



सत्यमेव जयते



exclusion of existing competitors and creating entry barriers for the potential entrants. It was further alleged that the Opposite Party restricted its driver fleet operators from using any other competing platform for providing their services and that the Opposite Party's 'direct cost' for providing taxi services was way above its revenue from customers. Moreover, the Opposite Party has allegedly been offering general discounts and loyalty rebates to its customers through its wallet system, which apart from fidelity building, also leads to discriminatory pricing. As a result, the Informant purportedly is losing cabs on its network and consequently passengers, witnessing a significant drop in the Informant's revenue leading to huge financial loss. The conduct of the Opposite Party was alleged to be in contravention of the provisions of section 4(2) (a) (i) and (ii) of the Act.

4. The Commission, upon perusal of the facts and circumstances of the case and the materials available on record, defined the relevant market in the present case as the market for '*Radio taxi services in the city of Bengaluru*'. Taking note of the Opposite Party's market share of 69% in the relevant market in terms of trips per day (as computed in the market research report on 'Bangalore Radio Taxi Service market analysis' prepared by 'New Age TechSci Research Pvt. Ltd. and presented by the Informant) including that of 'Taxi for Sure' (with market share of 21.3 percent in the relevant market) which has been recently acquired by the Opposite Party, in conjunction with the fact that such high market share was achieved in a short span of three to four years, the Commission formed a *prima facie* view that the Opposite Party held a dominant position in the relevant market for radio taxi services in the city of Bengaluru.
5. The Commission further observed that the Opposite Party was spending more money on discounts and incentives (apart from the other variable



सत्यमेव जयते



costs that it may be incurring) on customers and drivers compared to the revenue it was earning, which formed the basis of the Commission's *prima facie* view that the Opposite Party was indulging in predatory pricing to oust other players from the relevant market and that its conduct amounted to abuse of dominant position within the meaning of section 4 of the Act. The Commission, vide its order issued under the provisions of section 26(1) of the Act on 24.4.2015, directed the Director General (hereinafter, the 'DG') to cause an investigation into the matter.

### **Application for Interim Relief**

6. The Informant has filed an application dated 8.6.2015 seeking interim relief under Section 33 of the Act. The Informant claims that despite the Commission's order for initiating investigation against the Opposite Party, the Opposite Party has not refrained from its predatory practices. In support of its claim, the Informant has provided a copy of an account statement of the Opposite Party vis-à-vis a cab operator in the relevant market for May 1 2015 to June 1, 2015. Besides the Informant has also furnished copies of OLA Cab Blogs dated 17<sup>th</sup> and 24<sup>th</sup> July 2015.
7. The Informant reiterated that it had an active pool of 600 taxis attached to its network till March 2014 which was doing approximately about 2500 trips per day and it was expected to reach an active pool size of 800 taxis by the end of December 2014 doing approximately 4000 trips per day. But the alleged anti-competitive practices of the Opposite Party since March 2014 after it received \$250 million from Soft Bank, Japan, resulted in large scale erosion of market share of the Informant. By the end of December 2014, the Informant was left with an active pool size of 250 taxis doing about 1200 trips per day.



सत्यमेव जयते



8. When the Informant approached the Commission for interim relief under section 33 of the Act it was indicated that owing to the continued onslaught of alleged predation by the Opposite Party, the Informant's network further reduced to 110 taxis making about 400 trips per day. The monthly revenue of the Informant has come down to about Rs 4.4 lakh from Rs 23 lakh in March 2014 and the Informant purportedly has been suffering heavy losses. The Informant has pleaded that in view of its precarious position if the Commission did not interfere by passing an ex-parte ad-interim injunction order against the Opposite Party, the Informant would be eliminated from the relevant market in no time.
  
9. It has been argued that the radio taxi business model relies heavily on the network effect and that a competitor's practice of unduly luring away drivers from its network significantly reduces the Informant's ability to serve customers. This, coupled with the Opposite Party's unduly low prices for customers affect the ability of the Informant to compete and bounce back from a reduced business.
  
10. The Informant further apprised that the Opposite Party, since the filing of the Information, has received an additional funding from Soft Bank, Japan and other investors to the extent of \$400 million in April 2015, thus taking its total foreign funding to \$800 million. A news article was appended in support of the statement. The Opposite Party allegedly has been burning money in the market to eliminate its competitors with no possibility of slowing down on predation, which will force the Informant to exit the market. It has been further averred that due to the additional funding and with continuous predation, many other players in the market would either be eliminated or would be forced to merge their operations. In this connection, it was mentioned that Serendipity Infolabs Pvt. Ltd running 'Taxi For Sure' merged its operations with the Opposite Party under pressure created by such predatory pricing mechanism.



सत्यमेव जयते



11. The Informant pleaded that the balance of convenience was in favour of grant of immediate ex-parte interim injunction against the Opposite Party since it was on the verge of being eliminated from the relevant market due to the abusive conduct of the Opposite Party.
12. Both the Parties were heard by the Commission on 15.7.2015. The Opposite Party was given the opportunity to make known its views on the prayer of the Informant for interim relief. The counsel for the Opposite Party did not, however, contradict any of the allegations by the Informant, and argued that: (a) the Informant being an inefficient player in the market is feeling pressure due the presence of the OP; (b) most of the players in the relevant market are receiving funds from abroad (to support this relevant newspaper clippings were circulated by the OP to the Commission during the hearing). No written submissions were made by the OP.

### **Assessment**

13. The principles laid out by the Hon'ble Supreme Court of India in the case of (*CCI v. SAIL (2010)*) form the basis for granting interim relief under section 33 of the Act. The judgment enunciated the conditions to be satisfied by the Commission while recording a reasoned order under section 33 of the Act, who *inter alia*, should:
  - (a) record its satisfaction (which has to be of much higher degree than for formation of a *prima facie* view under Section 26(1) of the Act) in clear terms that an act in contravention of the stated provisions has been committed and continues to be committed or is about to be committed;
  - (b) It is necessary to issue order of restraint; and



(c) From the record before the Commission, there is every likelihood that the party to the lis would suffer irreparable and irretrievable damage, or there is definite apprehension that it would have adverse effect on competition in the market.

14. The Informant's prayer for interim relief in the present case has been evaluated in terms of these three conditions.

**Contravention of the provisions of the Act and continuation thereof**

15. The Informant and the Opposite Party are engaged in the provision of radio taxi services in Bengaluru city which essentially entails a technology-enabled linking of drivers/cabs on one hand with customers needing taxi services on the other. The indirect network effects in such markets create a positive feedback loop with the number of customers depending on the number of cabs attached to a network and vice-versa. In the present case, as evidenced in the materials on record and information available in the public domain, the Opposite Party offers steep incentives to drivers as a driver acquisition and retention measure while also providing deep discounts on passenger fares to get customers onto its network.

16. The market research report on '*Bangalore Radio Taxi Service Market Analysis*' by New Age TechSci Research Pvt. Ltd. placed on record by the Informant shows that the standard radio taxi day/night fare of the Opposite Party in the relevant market comprises of flag down fares of Rs 100, Rs 150 and Rs 200 for the first 6 kms and Rs. 10, Rs. 13 and Rs 18 per km for every subsequent km for mini cars, sedans and luxury cars respectively. Taxi for Sure, which has been acquired by the Opposite Party, charges flag down fares of Rs 25 for the first 2 kms for mini cars, Rs 49 for the first 4 kms for hatchbacks and Rs 200 for the first 10 km



सत्यमेव जयते



for sedans. The charge for every subsequent km is fixed at Rs 10 for mini cars, Rs 14 for hatchbacks and Rs 16 for sedans. The fare structure of the other players such as Meru cabs, Mega cabs and Easy cabs include a flag down day fare of Rs 80 for first 4 kms and the corresponding night fare of Rs 88, with Rs 19.5 being charged for every subsequent km in the day and Rs 21.5 in the night. Uber's flag down fare for first 4 kms is Rs 50 for Uber X and Rs 80 for Uber Black. For every subsequent km Rs 15 is charged for Uber X and Rs 18 for Uber Black. Evidently, the Opposite party offers the lowest per km rates among the major players in the relevant market. In addition, the Opposite Party offers discounts such as first free ride for a new customer, discount for OLA wallet users, cash incentives for using OLA money etc. leading to even lower effective prices for passengers.

17. Low prices generally benefit consumers and pricing below competitors' prices occurs in many competitive markets which does not violate the provisions of the Act. However, in the present case it was observed that the low prices charged to the customers and the corresponding low revenues accruing to the Opposite Party were not sufficient to offset the payments made by the Opposite Party to the drivers/cab operators including the sizeable incentive payments, not to speak of other variable costs, thereby involving significant per trip losses as well as overall losses. Such low prices therefore can in no manner be viewed as an outcome of efficiency gains achieved by the Opposite Party.
18. The share of passenger revenue and the incentives paid to the drivers/taxi owners by the Opposite Party clearly exceeds the revenue it earns, as reflected in the information related to sample taxis submitted by the Informant. The argument of the Opposite Party that the losses brought out by the two separate sample taxis differed substantially is not of any consequence because these are two account statements pertaining to



separate taxi owners at two different points of time. The first account statement submitted at the time of filing of Information was with respect to one driver for the period of December 1, 2014 to January 13, 2015 and the second account statement submitted at the time of filing application for interim relief was with respect to one operator for the period of May 1 to June 1, 2015. Further, the Opposite Party is known to be changing its incentive schemes frequently. The fact remains that both the samples reflected high losses to the Opposite Party and this has not been contradicted by it. Since the Opposite Party operates through taxi operators and do not own taxis, the payments of passenger revenue share and incentives to drivers form part of 'variable cost'. The Informant in pages 39-41 of the Information provided extracts of the Annual Report of the Opposite Party for the year 2013-14 where revenues from operations was shown to be much lower than the variable cost. The breakup of the revenue and variable cost was also made available, where revenue from operations was Rs. 49.61 crores and total variable cost of operations was Rs. 74.31 crores. During the hearing on 15<sup>th</sup> July 2015 the Informant invited the attention of the Opposite Party to these figures which were relating to a period before the period of alleged predation and requested that the latter may make available similar information for FY 2014-15, which was not available in the public domain. No information was made available by the Opposite Party during the hearing nor thereafter by way of written submission.

19. Direct or indirect imposition of unfair price including predatory price by a dominant enterprise is prohibited under section 4(2) (a) (ii) of the Act. According to the Explanation (b) to Section 4 of the Act, "*predatory price*' means the sale of goods or provision of services, at a price which is below the cost, as may be determined by regulations, of production of the goods or provision of services, with a view to reduce competition or



*eliminate the competitors.” Thus, a dominant enterprise will be judged as guilty of predatory pricing if it is found to be charging its customers below-cost price. The phrase ‘with a view to’ implies that exclusionary intent has also to be demonstrated.*

20. The Competition Commission of India (Determination of Cost of Production) Regulations, 2009 defines cost as follows:

*“(1) “Cost” in the Explanation to section 4 of the Act shall, generally, be taken as average variable cost, as a proxy for marginal cost:*

*Provided that in specific cases, for reasons to be recorded in writing, the Commission may, depending on the nature of the industry, market and technology used, consider any other relevant cost concept such as avoidable cost, long run average incremental cost, market value*

21. There is no unique form of below cost pricing given also there is no unique concept of ‘cost’ under the Act, read with the Regulations. Below cost pricing could broadly be divided into ‘below average total cost pricing’ and ‘below average variable cost pricing’. In case pricing is above average variable cost but below average total cost it is possible that the pricing behaviour of the enterprise could make some business sense and therefore ‘*intent*’ in the sense of *malafide* has to be positively established. In the present case pricing has been below average variable cost (as reflected in the account statements submitted by the Informant and as discussed in para 18 above). Selling below average variable cost does not make any business sense for an enterprise except in very limited special circumstances like low market demand for the product or service concerned or recession like conditions in the market or as promotional measure at the time of entry into the market by the enterprise concerned,



or to face competition, for a limited period of time. A dominant player does not have any need or compulsion to price below average variable cost, except that it intends to drive out competitors or reduce competition in the relevant market. The behaviour of the Opposite Party, with a market share of 69 per cent, continuing with below average variable cost pricing is a clear pointer to predatory intent since no other rational explanation can be attached to its behaviour. This has to be also seen in the context of the Opposite Party acquiring recently (in March, 2015) its major competitor in the relevant market viz. 'Taxi for Sure' at a cost of \$ 200 million. None of the special circumstances justifying below average cost pricing as a business strategy exists in the relevant market during the period of alleged predatory pricing by the Opposite Party. Market has been expanding at exponential rates. Direct evidence for 'intent' is therefore not needed at all.

22. I have further examined whether the market conditions in the present case were conducive for a credible predatory strategy. "Asymmetric access to financial resources" is one of the preconditions on which the strategic theories of predation are founded. On the basis of the information and evidence obtained, there is reason to suppose that it is the superior financial endowment of the Opposite Party compared to its competitors in the relevant market that underpins its ability to withstand short-term losses and engage in predatory strategy. The fund flows to the Opposite Party is continuing. The Opposite Party has acquired its next largest competitor. It continues to announce new schemes of lower prices for customers in the Bengaluru market. All these point in one direction only, that predation is continuing and with more intensity than when the Informant came first to the Commission and also when the Commission issued order under section 26(1) of the Act. While forming view on the matter, note was also taken of the fact that the Opposite Party failed to present any cognizable evidence or argument to the contrary. The



सत्यमेव जयते



Opposite Party has not made any written submission when given opportunity to do so. The oral submissions were limited largely to the following: (i) it is the inefficiency of the informant that is responsible for its current woes; (ii) other players in the relevant market are also accessing funds and (iii) the pricing strategy of the Opposite Party is to face competition from rivals like Uber. None of these arguments can carry the day for the Opposite Party. It is very clear that it is the consistent pricing below average variable cost by the Opposite Party that is responsible for the fall in the market share of the other players in the relevant market, including the Informant. As for the argument that funds are accessed by other parties as well, including the Informant it needs to be clarified that competition law envisages competition on prices and not on discounts. Deep pocket cannot be the determining factor for success in the market place. The argument that the pricing strategy is to face competition from Uber is not cogent in that Uber has less than 2 per cent share in the relevant market.

23. On the other hand, the particular urgency for an order of restraint in the present case arises from the fact that the Opposite Party has continued to pursue its loss-entailing price-incentive scheme in the relevant market even after the order of the Commission for initiation of investigation. The data made available by the Informant on the collection from passengers (net of all discounts) and related expenses incurred by the Opposite Party pertaining to a given cab operator in the relevant market for the period of May 1 to June 1, 2015 shows that the payments made to the operator (i.e. 'operator's share' @80% of total collection and 'incentives') outstripped the total collection from passengers. The discussions in para 18 is also relevant in this context. While the veracity of the data is a subject matter of investigation, the fact remains that it was not challenged by the Opposite Party. Nor did the Opposite Party bring its own cost-price data on record for the Commission's perusal.



सत्यमेव जयते



24. That the predatory behaviour of the Opposite Party has been continuing even after the 26 (1) order by the Commission on 24-04-2015 is further corroborated by the following information submitted by the Informant.

a. OLA Cabs Blog dated 24<sup>th</sup> July 2015 which reads as follows:

“Now take an Ola wherever you go in Bangalore because we’re giving you 25% OFF on every Ola ride! You can enjoy FLAT 25% OFF on your next 7 cab rides between 24<sup>th</sup> July – 31<sup>st</sup> July 2015 when you pay using Ola Money.”

b. OLA Cabs Blog dated 17<sup>th</sup> July 2015 which reads as follows:

“We are trying to hook you up with the best ride options possible. With that in mind, we recently brought the super-economical TaxiForSure Hatchbacks on your Ola app. What’s even better is that now TaxiForSure has further reduced its fare from Rs 14/km to Rs 6/km\* only”

“What are you waiting for? Just open the Ola app:www.ola.bz/b, click on the “TFS icon, hit RIDE NOW and #ChaloNicklo”

25. The latter Blog indicates without doubt that OLA is also extending its below cost pricing strategy to the newly acquired TaxiForSure cabs under its control.



### **Adverse effect on competition and need for order of restraint**

26. I have carefully looked at the market structure for ‘radio taxi services in Bengaluru’. It is a highly concentrated market with the Opposite Party commanding about 69 per cent of the market. The Opposite Party’s recent acquisition of its closest competitor Taxi for Sure in the relevant market has resulted in a highly asymmetric market share composition. The next competitor (MERU Cabs) has only 13.7 per cent market share. Informant has only 2.3 per cent market share. Each of the other players accounts for less than 5% of the relevant market. Uber, which is the other major taxi aggregator in the country, has an insignificant presence (less than 2% market share) in the relevant market. The transaction was not available for antitrust scrutiny by the Commission. The market structure seen in conjunction with a number of other important relevant factors such as the asymmetric access to financial resources of the players, the rapid erosion of market share and revenue of the Informant and the network effects tipping the market increasingly in favour of the Opposite Party, indicates that if the Opposite Party is allowed to continue with its practice of providing steep incentives-deep discounts so as to expand its network and retain customers/drivers, there is a strong likelihood of the smaller players ( and in the relevant market all the other players are small compared to the Opposite Party) being forced to exit the market. Predation literally means elimination of the prey, and naturally the Act refers to the behaviour as that “*with a view to reduce competition or eliminate the competitors*”. In a situation of continued pricing below average variable cost and with reported fall in the absolute number of taxis of the Informant from 600 in March 2014 to 250 in December 2014 and further to 110 when the Informant came to the Commission for interim relief, and given the deep pocket of the Opposite Party with the continued inflow of funds, the elimination of the Informant is imminent.



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27. What weighs on my mind while considering the urgency of the matter are the following: (a) the Opposite Party is pricing below average variable cost which is inconsistent with rational business behaviour by a dominant player, not requiring proof of predatory intent; (b) substantial funds continue to flow to the Opposite Party and it continues to divert such funds for incentivisation of drivers and for lower prices for customers, unjustified by any business rationale; (c) the conduct of the party is resulting in higher and higher concentration in the relevant market, reducing competition in the market and with a near certain effect on the viability of competitors in the relevant market unless these competitors also have substantial access to funds which they decide to divert for pricing below variable cost to meet the challenge from the Opposite Party and that too for an indefinite period of time; (d) such predatory behaviour by the Opposite Party which has presence in multi markets in India ( the Opposite Party has radio taxi services in at least 67 towns/cities in India) will have reputational effects in those markets as well because knowing about the deep pocket of the Opposite Party and its continued access to finance and its behaviour in the Bengaluru market, competitors in other markets would tend to meekly surrender in those markets if and when the Opposite Party exhibits such predatory behaviour in those markets (the Commission does not have any information on such behaviour at this point of time). The Opposite Party has to be stopped on its tracks so that damage in other markets in India is avoided. The Commission's mandate is to 'eliminate practices having adverse effect on competition in *markets* (emphasis added) in India'.
28. The Opposite Party being a dominant player in the relevant market is in a position of strength to affect the relevant market in its favour. While its deep-pocket may enable it to provide its services at a loss, it creates a risky probability that: (i) competition in the relevant market would be reduced; and (ii) competitors, who, even if they are as efficient as the



Opposite Party, but because of their lower financial resources and disinclination to engage in non-business like 'below average variable cost pricing' war, are incapable of matching the incentives and fares offered by the Opposite Party, get eliminated causing irreparable damage to competition in the relevant market.

### **Conclusion**

29. Based on the above I am of the view that there is a clearer case than what is required for a *prima facie* order that the Opposite Party is engaging in predatory pricing in the relevant market. Since the pricing is below 'average variable cost', there is no need to prove 'intent' as there is no other rational justification for such pricing behaviour by a dominant player given the structure and characteristics of the relevant market. There is an imminent danger of the Informant and even other players in the relevant market getting totally eliminated from the relevant market within a short span of time, and there is an urgent need to stop the Opposite Party on its tracks. This is coupled with the real danger of competition in the relevant market further getting considerably reduced, verging on monopolisation. Reputational effects are likely to vitiate the other markets in which M/s ANI Technologies Pvt. Ltd is operating currently. In case the Informant is made to wait for the final order by the Commission there is a very high likelihood that the Informant and other players in the market may by that time have been eliminated from the market and substantial reduction in competition would have occurred by weakening of the other players in the market and through the network being created purely based on incentives and below average variable cost pricing. Once the Informant and other competitors are eliminated from the market, re-entry for those players is not at all easy given the nature of the market which is network based and is highly dominated by the Opposite Party who continues to have access to substantial financial



resources which it is diverting for pricing below ‘average variable cost’, irreconcilable with rational business behaviour. The Opposite Party is not competing on price, but on discounts and therefore its market performance is not based on its efficiency but on deep pocket and predatory strategy. In the same way the travails of the Informant cannot be attributed to his inefficiency, but due to the predatory practices of the Opposite Party. The Majority order appears to take on its face value the arguments by the Opposite party that: (i) other players in the relevant market also have access to funds; (b) the pricing strategy of the Opposite Party is due to competition from Uber and other competitors; and (c) inefficiency of the Informant is the reason for its travails. As brought out in Para 22 above none of these arguments of the Opposite Party are tenable.

### **Order**

30. It is therefore ordered as follows:

- (i) With immediate effect the Opposite Party shall organize its pricing system in the relevant market in such a way that the incentives paid by the Opposite Party to the cab operators/drivers together with the share of the passenger revenue passed on to the cab operators and other variable costs do not exceed the passenger revenue collected by it. This order does not imply determination of the price at which the Opposite Party may provide its services in the relevant market.
- (ii) The Opposite Party shall notify the Commission about the details of its pricing schemes in the market for ‘radio taxi services in the city of Bengaluru’ as on 17-02-2015, when the



Informant brought the information to the Commission, within ten days of this Order.

- (iii) The Director General shall complete investigation of the case within 60 days from the date of this order and submit its report to the Commission.
- (iv) This order shall be applicable only until the final decision is taken by the Commission relating to the alleged abuse of dominance by the Opposite Party.
- (v) Secretary is directed to convey this decision to the Parties and to the Director General for compliance.

**Sd/-**  
**(Augustine Peter)**  
**Member**

New Delhi

Date: 03 / 09 /2015