



COMPETITION COMMISSION OF INDIA

Case No. 82 of 2015

In Re:

**M/s Mega Cabs Pvt. Ltd.
261, Ground Floor, Okhla Ind. Estate- III,
New Delhi**

Informant

And

**M/s ANI Technologies Pvt. Ltd.
4th Floor, Sunteck Centre, Vile Parle (East),
Mumbai**

Opposite Party

CORAM :

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

**Mr. Sudhir Mital
Member**

**Mr. U.C. Nahta
Member**

**Mr. M.S. Sahoo
Member**

**Justice G.P. Mittal
Member**

Appearances:

For Informant:

Mr. T. Sundar Ramanathan, Advocate
Mr. Abir Roy, Advocate
Ms. Geetanjali Sharma, Advocate

For ANI Technologies (OLA):

Mr. Ramji Srinivasan, Sr. Advocate
Ms. Nisha Kaur Uberoi, Advocate
Mr. Bharat Budholia, Advocate



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Order under Section 26(2) of the Competition Act, 2002

The present information is filed by Mega Cabs Private Limited (hereinafter, the “**Informant**”) under Section 19(1)(a) of the Competition Act, 2002 (hereinafter, the “**Act**”) against M/s ANI Technologies Pvt. Ltd. (hereinafter, the “**Opposite Party**”/“**OP**”) alleging violation of the provisions of Sections 3 and 4 of the Act.

2. Bereft of details, the facts in brief are that the Informant is engaged in the business of providing radio taxi services under the brand name “*Mega Cabs*”. The Informant has filed a case against another radio taxi service operator *i.e.* the OP who is providing services under the brand name ‘OLA’. OP is stated to be operating in the radio taxi services market in Delhi-NCR since early 2014. The Informant has primarily alleged that the OP is dominant in the said market and is abusing its dominant position in terms of Section 4 of the Act. Besides, it has also been alleged that the OP has entered into anti-competitive agreements with the taxi drivers registered on its network which has adversely affected the competition in the market within the meaning of Section 3 of the Act.
3. It is alleged that by way of multiple rounds of venture funding, the OP has managed to raise huge investments in order to acquire a position of dominance in the Delhi-NCR region and has engaged itself in abusive tactics like predatory pricing, offering periodical discounts to consumers and incentivising drivers with the sole aim to eliminate competition from the market. Further, it is stated that OP’s recent acquisition of its competitor ‘Taxi for Sure’, has strengthened its market position tremendously enabling it further to indulge in abusive tactics.
4. The Informant has proposed the relevant product market as the market comprising of radio taxis stating that the features of radio taxis like



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convenient booking with a personal device, payment through credit card, mobile, wallet or cash, GPS device for tracking, convenience in terms of time saving, point-to-point pick up and drop, pre-booking facility, ease of availability even at obscure places, round the clock availability, predictability in terms of expected waiting/ journey time *etc.* make them fall under a different and distinct category, generally non-substitutable by other traditional taxis. Reliance has also been placed on the Commission's order dated 24.04.2015 in Case No. 06 of 2015 wherein the relevant product market was defined as the market for 'radio taxi services'.

5. With respect to the relevant geographic market, the Informant has submitted that each city would be a separate relevant market in itself for the simple reason that the customer desirous of taking a taxi for travel within a city would have to rely upon the existing radio cab operators in the said city itself owing to convenience purposes. It is stated that for the purposes of Radio Taxi Services, Delhi-NCR market is a separate and independent geographic market from both supply as well as demand-side perspective of services. Thus, the relevant market is proposed to be the market for '*radio taxi services in Delhi-NCR*'.
6. In support of its contention regarding OP's dominance in the proposed relevant market, the Informant has placed reliance on a market report for radio taxis in the Delhi-NCR titled '*Delhi/NCR Radio Taxi Market Analysis (2015)*' prepared by a market research and consulting firm named '*6Wresearch*' (hereinafter, the '*6Wresearch report*'). Based on this report, it is stated that the OP along with its recently acquired radio taxi company 'Taxi for Sure' commands a market share of 52.9%, 54.3% , 52.3%, 57.5% in terms of fleet size, active fleet size, monthly revenue and daily trips respectively, as on 08.04.2015.



7. With regard to abuse of dominance, the Informant has primarily alleged contravention of Section 4(2)(a)(ii) of the Act stating that the OP has indulged in predatory pricing with a view to reduce competition in the market and has been able to achieve the said objective. It has been alleged that the predation is evident from the OP's annual report for the year 2013-2014 wherein its revenue from operations is clearly less than the variable cost as can be inferred from its balance sheet which has been enclosed with the information. It has been averred that the 'Rates and Payment Agreement' entered into between the drivers and the OP (copy of which has been attached with the information) indicates that for every cab trip, OP receives 15% of the actual billing and the remaining 85% is remitted to the service providers as their revenue (*i.e.* drivers providing their services to OLA). Furthermore, it is stated that over and above the 85% revenue share which is retained by the driver out of the trip receipt, OP provides further rebates and incentives to its drivers. The Informant claims that OP is suffering a loss of around Rs. 15.80 on every trip. Further, the Informant has submitted data illustrating the losses suffered by OP (actual and notional) for each driver for the last two years. Illustrating such data, the Informant has claimed that the OP is indulging in below cost pricing with the aim to oust other players from the market.
8. It is further stated that OP provides a large number of rebates and discounts to the customers as well by offering free rides, cash-back schemes on recharge, reduction in the minimum fare, special bonuses, special prizes for customers *etc.* which further adds up to its costs and are solely aimed at excluding other players from the market.
9. It is alleged that due to the actions of the OP, the radio taxi service market has become distorted and the Informant is losing its revenues as well as radio taxis on its network. The Informant has stated that in the Delhi-NCR



region, its total number of bookings has reduced by 29% since April 2013. It has specifically stated to have suffered loss in the call centre segment where the number of bookings has gone down by 31% during 2013-2015. Even in the airport segment, where the Informant holds a special license to operate, its total number of bookings has reduced by 5% during 2013-2015. Similarly, the Informant's average number of trips per day has seen a decline of 31% during this period.

10. With regard to the alleged contravention of Section 3 of the Act, the Informant has stated that the agreements between the OP and the taxi drivers on its network are anti-competitive in nature as they seek to create barriers to new entrants in the market for radio taxi services by restricting the drivers from coming on the network of OP's competitors.
11. Based on the aforesaid allegations, the Informant has prayed that the Commission investigates the matter and direct the OP not to indulge in alleged predatory pricing and imposition of restrictive conditions.
12. The Commission has examined the information and heard the respective counsels for the Informant and the OP in its meeting dated 05.11.2015. During the preliminary hearing, the learned counsel of the Informant reiterated the contentions stated in the information. Besides, the learned counsel of the Informant submitted that the incentives and discounts offered by the OP are unrealistic and difficult to match, thus, creating entry barriers for the potential entrants in the market. It was submitted that the strategies adopted by the OP, if not predatory, are at least amounting to unfair pricing. It was further suggested that the abusive practices of the OP can be looked into under Section 4(1) of the Act independently even if such practices are not specifically falling under any of the sub-heads enumerated under Section 4(2) of the Act.



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13. The learned counsel for the OP, on the other hand, refuted all the allegations levelled by the Informant. It was argued that the Informant has wrongly relied upon the financial statements of the OP for the year 2012-13 and 2013-14, when the OP was not even present in the Delhi-NCR market. It was submitted that the OP entered the said market only in April 2014; therefore, the reduction in the Informant's number of bookings by 29% since April 2013 cannot be attributed to OP.
14. The learned counsel for the OP discredited the research report relied upon by the Informant stating that the same is prepared by *6Wresearch* for the internal usage of some client who remains to be unknown. It was further submitted that the data used in the said research report, if at all accurate, reflects on the poor performance of the Informant. OP highlighted that the Informant operates on own-assets model wherein all the taxis in its fleet size are owned by it as opposed to the OP which operates on an aggregators' model wherein taxi are not owned by OP but are attached to its network by the taxi owners. It was submitted that in such a scenario the connotation of 'active fleet size' should not be applicable to the Informant who has absolute control on its taxis. As per the OP, therefore, the Informant which has 400 taxis as its active fleet size out of the total fleet size of 650 is a highly inefficient player having 250 inactive taxis. Further, the OP submitted that as per the *6Wresearch* report submitted by the Informant, the daily trips of each radio taxi on its network are around 6 whereas the Informant's taxis are undertaking only 4 trips per taxi per day, further showing that the Informant is indeed an inefficient player in the market.
15. OP contended that the Informant has been complaining about OP's losses and linking it to predatory pricing whereas the Informant was also suffering losses for 6-7 years after entering the market. It was alleged that every market segment is peculiar in itself having a gestation period till when the



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players generally suffer losses for establishing a position in the market. Responding to the Commission's query regarding heavy discounts to consumers, OP submitted that discounts are natural in every market, especially for new players trying to gain a presence in the market segment. Relying on the Commission's order in Case No. 80 of 2012 [*H.L.S. Asia Limited vs. Schlumberger Asia Services Ltd. and Other*], the OP argued that the Commission has held that giving rebates and adopting similar practices are an essential component of the competitive process and law cannot condemn such practices. With regard to incentives to the drivers, the OP justified by stating that being an aggregator, it needs to ensure that the taxi drivers who are attached to its network stay motivated to provide their services in the most efficient manner. It was submitted that like the Informant makes investments to expand its fleet size, aggregators like OP invest in the taxi drivers to keep them on their network.

16. Based on the foregoing submissions, the OP submitted that it is an efficient and innovative player in the radio taxi services market and all its strategies are aimed at meeting the competition and establishing a presence in an otherwise competitive market.
17. The Commission has carefully considered the submissions made by the respective counsels for the parties. The Informant is primarily aggrieved by the conduct of OP which has been alleged to be abusive under Section 4 of the Act. Additionally, the Informant has also alleged that the OP has entered into anti-competitive agreements with the taxi drivers in contravention of Section 3 of the Act pursuant to which the market is foreclosed for existing players as well as new entrants.
18. With regard to the allegation pertaining to abuse of dominant position by the OP, the Commission notes that this being an issue pertaining to Section 4 of the Act, determination of relevant market comprising of relevant product



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market and relevant geographic market would serve as the starting point to assess whether the entity in question holds a dominant position or not. In view of the provisions of Sections 2(r), (s) and (t) of the Act, such determination is to be made after taking into account the factors laid down under Sections 19(6) and (7) of the Act. It is only after the dominance of the said entity is established that its conduct becomes assessable under Section 4 of the Act.

19. The purpose of defining the relevant market in both its product and geographic definition is to identify those actual competitors who are capable of constraining the behaviour of the enterprise in question and of preventing it from behaving independent of the market forces. Accordingly, the relevant product market would require identification of those products/services which may be considered as substitutable by the consumers on the basis of their basic characteristics, intended end-use, price *etc.* The Commission, in its earlier orders in Case Nos. 06 of 2015 and 74 of 2015 has already noted that the features of radio taxis like convenience of time saving, point-to-point pick and drop, pre-booking facility, ease of availability even at obscure places, round the clock availability, predictability in terms of expected waiting/ journey time *etc.* makes them different from other modes of transport like auto-rickshaws, buses and other private taxis. The Commission also noted that there was a dedicated category of commuters who use radio cabs, especially executives, professionals, tourists *etc.* who will not switch to auto-rickshaws or buses under normal circumstances even though they have to pay a little higher for radio taxis than the other modes of transport. The Commission is hence of the view that in the present case also, the similar relevant product market definition would be appropriate considering the growing dependence of commuters on radio taxis owing to their various distinctive features highlighted above.



20. With regard to the relevant geographic market, the Commission is of the view that the geographic market in the radio taxi services industry has to be defined on the basis of city/State in which they are operating. Since transport is a state subject under the Constitution, the radio taxi services market is also largely regulated by the State Transport Authorities making the conditions of competition homogenous only in a particular city/State. Moreover, it will not make economic sense for the consumers willing to travel within a particular city or geographic region to book/hire a radio taxi operating in another city/State. At the first instance, the taxi operators in Delhi seem to be constrained by the operation of similar competitive forces in both Delhi and NCR region as these operators (OLA, UBER, MERU *etc.*) run their radio taxis in Delhi as well as NCR. However, it is observed that the regulatory architecture is different for Delhi and the other regions that fall in the NCR *e.g.* the Delhi High Court's order in the recent past directing the taxi operators to use CNG vehicles within Delhi. Similarly, it is possible that there might be other regulatory requirements also in the NCR which the radio taxis operating in Delhi might not be required to fulfil.
21. Further, the demarcation of Delhi as a separate relevant geographic market is also corroborated by the fact that the app (*i.e.* applications) designed by such aggregators (*i.e.* OP, UBER *etc.*) also specifically distinguishes between taxis available for booking within Delhi and those available for booking for commuting from Delhi to NCR. Therefore, it appears that the radio taxis operating in Delhi region face homogenous competitive constraints distinct from those prevailing in other cities/States. For the foregoing reasons, the Commission is of the view that the relevant geographic market in the instant case will be '*Delhi*'. Accordingly, the relevant market is '*Radio Taxi services in Delhi*'.



22. The Informant has alleged that the OP holds a dominant position owing to high market shares computed on the basis of various parameters such as fleet size, active fleet size, monthly revenue and daily trips. Relying on the observations and findings of the *6Wresearch report*, the Informant has contended that the combined market share of the OP and its newly acquired company, 'Taxi for Sure', is highest as on 08.04.2015 on the basis of different parameters named above in the relevant market of radio taxi services market of Delhi-NCR. It has been alleged that the OP has the highest market share in terms of fleet size (52.9%), active fleet size (54.3%), monthly revenue (52.3%) and number of daily trips (57.5). It is also stated that the foreign funding further strengthens the OP's position in the relevant market. It is thus, pressed that the OP holds a dominant position in the market which has been abused by it to adversely affect competition in the relevant market.
23. The Commission notes that during the hearing, OP challenged the authenticity of the *6Wresearch report* stating that the same is commissioned on the instructions of a particular client whose identity could not be verified. It is further observed that though the initial hypothesis in the methodology section of the report states that the information has been taken from companies' websites, press releases and news articles, most of the data used in the report is silent as to the specific source from where such data has been gathered. Thus, it remains questionable as to whether all the prominent radio taxi operators were interviewed or not and the extent to which the data used in the report is reliable. The Commission does not find it appropriate to conclude OP's dominance in the relevant market on the basis of such a report.
24. Even otherwise, the *6Wresearch report* demonstrates that there are various players (besides the OP and the Informant) in the radio taxi services market



with significant presence, thus, negating the hypothesis that the OP could have acted in the market independent of its competitors. As such the radio taxi services market in Delhi seems to be competitive and even though OP is a prominent player in the said market, it does not seem to be dominant.

25. In view of the foregoing, the Commission is of the opinion that since the OP does not appear to be dominant, therefore, there is no need to go into the examination of OP's conduct in such relevant market to ascertain abuse of dominance. Hence, no contravention of Section 4 of the Act is made out against the OP.
26. With regard to Section 3 of the Act, the Informant has alleged that the agreement between OP and the taxi drivers is foreclosing the market for existing players. To support its contention, the Informant has highlighted the decline in the number of drivers on its network. The Informant has also illustrated the actual migration of drivers from its network to that of the OP's network. Further, the Informant has alleged that owing to heavy dependence on technology, costs involved in creating apps and fitting in those services in place along with the additional burden to share commission with the drivers and provide them incentives to continue operations, it is not viable for any new player to enter into the market. It was also averred that a new entrant will not have such financial backing and hence it would be difficult for it to enter the market. This, as per the Informant, has led to a violation of Section 3 of the Act.
27. The Commission, however, finds that the allegations raised by the Informant are opposed to the basic tenets of competition law. Inability of the existing players or new entrants to match the innovative technology or app developed by any player or the model created for operating in a particular industry cannot be said to be creating entry barriers in itself. Further, the route of venture funding, with which the OP is bearing the costs of giving



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incentives to its drivers and discounts to the consumers are not exclusively available to the OP. Any existing player or new player entering the market can access the venture funding source subject to the mandatory procedure involved therein. Therefore, the contention of the Informant appears to be misplaced and liable to be rejected. No case of contravention of Section 3 is thus made out against the OP.

28. The present case is accordingly directed to be closed under Section 26(2) of the Act as no case under either Section 3 or Section 4 is made out against the OP.

29. The Secretary is directed to inform the parties accordingly.

Sd/-
(S .L. Bunker)
Member

Sd/-
(Sudhir Mital)
Member

Sd/-
(U.C. Nahta)
Member

Sd/-
(M.S. Sahoo)
Member

Sd/-
(Justice G.P. Mittal)
Member

New Delhi
Date: 09.02.2016