



COMPETITION COMMISSION OF INDIA

Case No. 37 of 2018

In Re:

Samir Agrawal

A-206, ATS Greens, Sector-50,
Noida- 201301

Informant

And

ANI Technologies Pvt. Ltd.

Regent Insignia,
414, 3rd Floor, 4th Block,
17th Main, 100 Feet Road
Koramangala, Bengaluru-560034,
Karnataka

Opposite Party No. 1

Uber India Systems Pvt. Ltd.

Regus Business Center Pvt. Ltd.
Level 13, Platinum Techno Park,
Plot No. 17/18, Sector 30A,
Vashi, Navi Mumbai-400703

Opposite Party No. 2

Uber B.V.

Vijzelstraat 68, Amsterdam 1017,
HL The Netherlands

Opposite Party No. 3

Uber Technologies Inc.

182, Howard Street, No. 8,
San Francisco CA 94105,
USA

Opposite Party No. 4

CORAM:

Mr. Sudhir Mital

Chairperson

Mr. Augustine Peter

Member

Mr. U.C. Nahta

Member



Appearances

For Informant : Mr. Samir Agrawal, Informant in person

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

1. The present information has been filed under Section 19(1)(a) of the Competition Act, 2002 (hereinafter the ‘Act’) by Mr. Samir Agrawal (hereinafter the ‘Informant’) against ANI Technologies Pvt. Ltd. (hereinafter the ‘Opposite Party No. 1/ OP-1/Ola’), Uber India Systems Pvt. Ltd. (hereinafter the ‘Opposite Party No. 2/ OP-2/Uber’), and Uber B.V., Amsterdam, Netherlands (hereinafter the ‘Opposite Party No. 3/ OP-3’) and Uber Technologies Inc., San Francisco, U.S.A (hereinafter the ‘Opposite Party No. 4/ OP-4’) (collectively referred to as ‘Opposite Parties’/ ‘OPs’) alleging contravention of the provisions of Sections 3 of the Act.

Facts, as stated in the information

2. OP-1, a domestic app-based radio taxi service provider, acts as an intermediary between riders and drivers for provision of its services through a software application, ‘Ola’ app. Similarly, OP-2 to OP-4, as a group, are engaged in the business of facilitating on-demand taxi service through ‘Uber’ app in India among other countries. The OP-4, based out of USA, is the holding company of Uber group. The OP-3 enters into contract with different taxi owners attached to Uber network and is responsible for making payment of rider services as well as incentives to drivers. The OP-2 acts as an agent of OP-3 for conducting business in India and provides assistance in connection with marketing and promotion of services.



3. The Informant, stated to be an independent law practitioner, is a consumer of services provided by OP-1 ('Ola') and OP-2 ('Uber'). He is primarily aggrieved by the pricing mechanism adopted by the aforesaid OPs while providing radio taxi services. The Informant has alleged that the algorithmic pricing adopted by the OPs takes away the liberty of individual drivers to compete with each other and thus, amounts to price fixing by the OPs, in contravention of the provisions of Section 3 of the Act.
4. The Informant has stated that OPs essentially operate as platforms through a mobile application which allows commuter and driver (two sides of the platform) to interact. The commuters and drivers can download the 'App' on their smartphones and register themselves. Using the App of a respective OP, the rider opts for a ride and the driver accepts the ride, pursuant to which the driver provides end-to-end services from pick-up of rider to drop at their destination. The fare is calculated by the algorithm based on many factors, including the expected time and distance which is shown to the rider before the rider opts for a ride. The App facilitates payment of the fare by digital mode of credit card/debit card/Ola money and serves as the driver's limited payment collection agent, and sends a receipt of the same to the rider's email address.
5. The Informant has submitted that due to algorithmic pricing, riders are not able to negotiate fares with individual drivers for rides matched through App nor drivers are able to offer any discounts. Thus, the algorithm takes away the freedom of the riders and drivers to choose the other side on the basis of price competition and both have to accept the price set by the algorithm. It is further alleged that the algorithm calculates the fare based on a base amount, ride distance, and time spent in transit, which is multiplied by a 'surge' factor during periods of high demand. The drivers who use the Ola/Uber App, instead of competing on price, accept the fare which is the outcome of Ola/Uber pricing algorithm. Further, the



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drivers who are attached to OPs' networks do not function as their employees, but as independent third party service providers. It has been alleged that the OPs, *i.e.* Ola/Uber, act as 'Hub' where 'spokes' (competing drivers) collude on prices.

6. As per the Driver Terms and Conditions, which are agreed upon between the cab aggregators (*i.e.* Ola/Uber) with their respective drivers, the taxi fare is reflected on the App at the end of the trip which the driver is bound to accept without having any discretion. The drivers receive their share after deduction of commission by Ola/Uber.
7. The Informant has contended that, being a platform, Ola/Uber does not own any taxi and operate only as a platform; and in this sense, their model is comparable to Zomato, Trivago or Airbnb who do not own any restaurants, properties or hotels, respectively, but acts only as platforms that connect buyers and sellers. In none of these models, price is fixed by the platform. Rather the independent restaurants, properties or hotels fix the prices; however, in case of Ola/Uber, the driver is assigned a ride for a fare determined by the App, due to which suppliers/competitors/drivers indulge in price fixation. The Informant has alleged that Ola's/Uber's pricing algorithm artificially manipulates supply and demand, which guarantees higher fares to drivers who would otherwise compete against one another on price and would not be able to command such high prices. As Ola/Uber and its drivers do not share any agency/employee relationship, they do not function as single economic entity, and as such the cooperation between drivers orchestrated by Ola/Uber results in 'concerted action' under Section 3(3)(a) read with Section 3(1) of the Act.
8. The Informant has further submitted that Ola/Uber App prevents drivers from competing on fares akin to a trade association that facilitates a cartel, and in this regard has cited *Builders Associations v. Cement manufacturers Association and Ors.* (Case no. 29 of 2010) wherein a trade association that facilitated a cartel was



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penalised. The Informant has submitted that a cartel is a cartel, even if price fixing is achieved by way of an App and the OPs cannot claim any immunity from the provisions of the Act on the pretext of 'App' based pricing.

9. The Informant has stated that the OPs have greater bargaining power than riders/commuters in determination of price for a ride owing to availability of asymmetric information. Owing to this information asymmetry, OPs are enabled to implement perfect price discrimination, whereby riders are charged on the basis of their willingness to pay. Since they are under no legal obligation to publicly disclose data regarding the calculation of such prices, OPs use personalised data of the riders to manipulate prices. It is also stated that drivers have a common motive to adhere to OPs' pricing algorithm which results in artificially high fares. If such motive was not present, individual drivers would have sought to differentiate themselves from other drivers on the basis of price, among other factors.
10. The Informant has further alleged that Ola/Uber and its drivers are in a vertical relationship wherein Ola/Uber imposes a minimum price level on the drivers, resulting in a contravention of Resale Price Maintenance under Section 3(4)(e) of the Act. The Informant has stated that Ola/Uber's algorithm determines the price, below which drivers cannot charge which results in a minimum fixed price. The Informant has relied upon the Commission's order in *Fx Enterprise Solutions India Pvt. Ltd. v. Hyundai Motor India Limited*, Case no. 36 and 82 of 2014, decided on 14.06.2017, wherein the Commission observed that an agreement that has as its direct or indirect object in the establishment of a fixed or minimum resale price level, may restrict competition. It has been submitted that the Commission had emphasised the linkage between intra-brand price competition and its subsequent impact on inter-brand price competition in the said case, which



is particularly significant from a pricing perspective and therefore, affects the ultimate consumer.

Observations and findings of the Commission

11. The Commission considered the information in its ordinary meeting held on 18.09.2018 and decided to hear the Informant in a preliminary conference on 24.10.2018. On 24.10.2018, the Informant appeared before the Commission and reiterated the facts and allegation as stated in the information, which are not reproduced herein for the sake of brevity, unless the context demand otherwise.
12. The Commission notes that the OPs, *i.e.* Ola and Uber (hereinafter collectively referred to as ‘**Cab Aggregators**’), provide on-demand radio taxi services that match riders with drivers through their respective software applications/Apps. For availing the services of Cab Aggregators, the consumers download the App onto their smartphone free of charge. The potential riders book a cab using the respective App of the Cab Aggregator which connects the riders and drivers and provides an estimate of the fare/price beforehand, using an algorithm. The *first* allegation of the Informant is that the algorithms used by Cab Aggregators entrusts them with the centralised power to fix the ride prices for rides booked through their respective Apps. The Cab Aggregators use their respective algorithms to fix price [Section 3(3)(a) read with Section 3(1) of the Act] for every ride and do not allow the drivers to compete on prices. The Informant has alleged that since drivers are attached to Cab Aggregators as independent third party service providers and not as their employees, the impugned price determination by Cab Aggregators amounts to price fixing on behalf of drivers. Such arrangement acts as hub and spoke arrangement, akin to a traditional association/platform that facilitates price fixing. The Informant relied upon some of the earlier orders of the Commission where trade associations were penalised



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for facilitating cartel activities between similarly players market players. *Secondly*, it has been alleged that such price fixing acts as an imposition of minimum resale price maintenance agreement [Section 3(4)(e) of the Act] between Cab Aggregators and their drivers as the latter have no liberty to reject the price calculated by the algorithm or offer their services at a price lower than the said price. *Thirdly*, it has been averred that owing to information asymmetry, *i.e.* Cab Aggregators possessing considerable personalised information about every rider, have been able to price discriminate to the disadvantage of the riders. It has been claimed that if such situation had not been there, the drivers could have differentiated themselves on the basis of price. All these allegations are dealt in the following paragraphs.

13. At the outset, it is highlighted that though the Commission has dealt with few cases in this sector, the allegations in the present case are different from those earlier cases. The present case alleges that Cab Aggregators have used their respective algorithms to facilitate price-fixing between drivers. The Informant has not alleged collusion between the Cab Aggregators *i.e.* Ola and Uber through their algorithms; rather collusion has been alleged on the part of drivers through the platform of these Cab Aggregators, who purportedly use algorithms to fix prices which the drivers are bound to accept.
14. The Informant has defined the business model of Ola/ Uber as a hub and spoke cartel, alleging that the platforms of these Cab Aggregators have acted as a hub for the collusion between the spokes, *i.e.* drivers. In support of his allegation regarding hub and spoke, the Informant relied upon a US class action suit (*Meyer v. Kalanick*, Case No. 1:2015cv09796) filed by one of the riders against the ex-CEO of Uber. In the said case the plaintiff Mr. Meyer alleged that Mr. Kalanick, while disclaiming that he was running a transportation company, had conspired with Uber drivers to use Uber's pricing algorithm to set the prices charged to



Uber riders, thereby restricting price competition among drivers to the detriment of Uber riders. The Informant stated that though the case is under investigation, the fact that it was sent by the US courts for investigation shows the merit in the plea raised by the Informant before the Commission. The Commission has considered the argument of the Informant but is not convinced that mere initiation of investigation by another competition authority necessarily/automatically warrants an action under the Act. Whether an investigation is warranted depends on the existence of a *prima facie* case of contravention under the provisions of the Act. Thus, the allegations of the Informant are tested in the following paragraphs, based on the mandate of the Act to assess whether a *prima facie* case of contravention has been made out.

15. In the conventional sense, hub and spoke arrangement refers to exchange of sensitive information between competitors through a third party that facilitates the cartelistic behaviour of such competitors. The same does not seem to apply to the facts of the present case. In case of Cab Aggregators model, the estimation of fare through App is done by the algorithm on the basis of large data sets, popularly referred to as '*big data*'. Such algorithm seemingly takes into account personalised information of riders along with other factors *e.g.* time of the day, traffic situation, special conditions/events, festival, weekday/weekend which all determine the demand-supply situation *etc.* Resultantly, the algorithmically determined pricing for each rider and each trip tends to be different owing to the interplay of large data sets. Such pricing does not appear to be similar to the 'hub and spoke' arrangement as understood in the traditional competition parlance. A hub and spoke arrangement generally requires the spokes to use a third party platform (hub) for exchange of sensitive information, including information on prices which can facilitate price fixing. For a cartel to operate as a hub and spoke, there needs to be a conspiracy to fix prices, which requires existence of collusion in the first place. In the present case, the drivers may have acceded to the



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algorithmically determined prices by the platform (Ola/Uber), this cannot be said to be amounting to collusion between the drivers. In the case of ride-sourcing and ride-sharing services, a hub-and-spoke cartel would require an agreement between all drivers to set prices through the platform, or an agreement for the platform to coordinate prices between them. There does not appear to be any such agreement between drivers *inter-se* to delegate this pricing power to the platform/Cab Aggregators. Thus, the Commission finds no substance in the first allegation raised by the Informant.

16. The second allegation pertains to minimum resale price maintenance agreement between Cab Aggregators and their drivers as the latter allegedly have no liberty to reject the price calculated by the algorithm or offer their services at a price lower than the said price. The Informant has alleged that this arrangement amounts to a contravention of Section 3(4)(e) of the Act. Further, the third allegation is that owing to information asymmetry, *i.e.* Cab Aggregators price discriminate to the disadvantage of the riders. The Commission will deal with these two allegations simultaneously in the following paragraphs.
17. The Informant has alleged that the OPs, by setting the prices to be charged by their driver-partners to the riders, have indulged in resale price maintenance in contravention of Section 3(4)(e) of the Act. Resale is fundamental to the conduct of resale price maintenance. In the context of app-based taxi services, the OPs do not sell any good/service to the drivers that the drivers resell to the riders. While the drivers offer the physical service of transportation to the riders and are legally independent entities, they are effectively extensions or agents of the OPs when they operate through the OPs' platforms. A single transaction takes place between the rider and Ola/Uber, who provides a composite service of the driver-rider matchmaking, the ride, GPS tracking *etc.* and price is generated only once. The OPs, by performing a centralized aggregation function that rests on algorithmic



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determination of prices, have the sole control over prices. In absence of any resale of services, the allegation of resale price maintenance is not tenable. Determination of price by the OPs is integral to the functioning of the aggregation-based models, which the OPs employ for providing app-based taxi services. The pricing algorithms allow for adjustment and optimization of prices based on multiple factors, including available stock and anticipated demand. Consequently, the fares of the OPs are dynamic in nature and are updated based on real-time market and traffic conditions. Resale price maintenance, under the provisions of the Act, is essentially setting of a floor price on resale. In case of app-based taxi services, the dynamic pricing can and does on many occasions drive the prices to levels much lower than the fares that would have been charged by independent taxi drivers. Thus, there does not seem to be any fixed floor price that is set and maintained by the aggregators for all drivers and the centralized pricing mechanism cannot be viewed as a vertical instrument employed to orchestrate price-fixing cartel amongst the drivers. The Commission is of the view that the Informant has come to an erroneous conclusion, without placing any evidence on record, that an algorithm determined price as explained above will eliminate price competition and that the price so determined will be necessarily higher than the prices that are negotiated by drivers and the riders on an individual trip basis. Thus, the allegation of the Informant that the OPs impose a resale price maintenance on the drivers, in contravention of Section 3(4)(e) of the Act, is not tenable.

18. Based on the foregoing discussion, the allegations raised by the Informant with regard to price fixing under section 3(3)(a) read with section 3(1), resale price maintenance agreement under section 3(4)(e) read with section 3(1). Moreover, the Commission observes that existence of an agreement, understanding or arrangement, demonstrating/indicating meeting of minds, is a *sine qua non* for establishing a contravention under Section 3 of the Act. In the present case



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neither there appears to be any such agreement or meeting of minds between the Cab Aggregators and their respective drivers nor between the drivers *inter-se*. In result thereof, no contravention of the provisions of Section 3 of the Act appears to be made out given the facts of the present case.

19. Further, the allegation as regards price discrimination also seems to be misplaced and unsupported by any evidence on record. Price discrimination can perhaps be scrutinised under Section 4 of the Act, which has not been alleged by the Informant. Imposition of discriminatory price is prohibited under Section 4(2)(a)(ii) of the Act only when indulged in by a dominant enterprise. It is not the Informant's case that any of the OPs is dominant in the app-based taxi services market. Given this, the Commission does not find it appropriate to delve into such analysis given that the market in question features two players, Ola as well as Uber, none of which is alleged to be dominant. Further, the provisions of the Act clearly stipulate dominant position by only one enterprise or one group and does not recognise collective dominance. This position was amply made clear in *Case Nos. 6 & 74 of 2015* and later reiterated in *Case Nos. 25, 26, 27 & 28 of 2017*, both matters pertaining to the Cab Aggregators market. Thus, given these facts and legal position, the Commission rejects the allegation of the Informant with regard to price discrimination.
20. Before parting with the present order, the Commission notes that the Informant has placed reliance on the Commission's judgement of *Builders Association v. Cement Manufacturers Association & Ors*, (Case No. 29 of 2010 decided on 31.08.2016) in support of his allegations and has demanded its uniform application in the present case. It has been alleged that as the trade association of cement manufacturers (Cements Manufactures Association) facilitated a cartel of cement companies in the said case through traditional mode, Ola/Uber has facilitated a cartel of drivers in a digital mode and should be accorded a similar



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treatment/liability under the Act. The Commission finds this argument devoid of an understanding of economic literature and practical realities of the digital markets. The situation of cement manufacturers colluding through a trade association is different from an App providing taxi/cab services. If drivers were colluding using an App as a platform, the said arrangement would have amounted to cartelisation; however, this cannot be equated with the facts of the present cases as demanded by the Informant. Ola and Uber are not an association of drivers, rather they act as separate entities from their respective drivers. In the present situation, a rider books his/her ride at any given time which is accepted by an anonymous driver available in the area, and there is no opportunity for such driver to coordinate its action with other drivers. This cannot be termed as a cartel activity/conduct through Ola/Uber's platform. Thus, the present case is different from the *Cement* case, not only with regard to adoption of digital App but also with regard to other relevant aspects as elucidated hereinbefore.

21. Further, comparison of the Ola/Uber App with Airbnb, Trivago and Zomato *etc.* is also misconstrued where sellers on those platform have their own identities or brand value *vis-à-vis* the consumers. The consumers buying through Zomato have a preference for a particular restaurant, and consumers booking hotels through Trivago wishes to know the options available in terms of their offerings and characteristics *etc.* It cannot be equated with a Cab Aggregators' app where the consumers have no material information about the drivers available in its area of demand. As such, the rides offered by individual drivers, through Ola/Uber App constitute homogenous products where riders are indifferent between different drivers registered with a particular Cab Aggregators.
22. Moreover, in *Fast Track Call Cabs vs. ANI Technologies* (Case No. 06 and 74 of 2015 decided on 19.07.2017), the Commission considered Ola as a radio taxi operator and not merely as a platform. The European Court of Justice has also



held Uber as a transport service company which not only intermediates between drivers but also acts as service provider, in *Asociación Profesional Élite Taxi v. Uber Systems Spain SL* (C-434/15). Thus, it may not be appropriate to equate Ola/Uber App with Airbnb, Trivago and Zomato *etc.* which purely acts as platforms.

23. Based on the foregoing, the Commission is of the view that no case of contravention of the provisions of Section 3 has been made out and the matter is accordingly closed herewith under Section 26(2) of the Act.
24. The Secretary is directed to inform the parties accordingly.

**Sd/-
(Sudhir Mital)
Chairperson**

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

**Sd/-
(U.C. Nahta)
Member**

**New Delhi
Date: 06/11/2018**