



COMPETITION COMMISSION OF INDIA

Case No. 81 of 2015

In Re:

**Meru Travel Solutions Private Limited (MTSPL)
128, IJMIMA-Raheja Metroplex,
Behind Goregaon Sports Club, Off. Link Road,
Malad (W), Mumbai – 400064**

Informant

And

**Uber India Systems Pvt. Ltd.
Regus Business Center Pvt. Ltd.
Level 13, Platinum Techno Park, Plot No. 17/18,
Sector 30 A, Vashi Navi Mumbai
Also At: B-101, South City – 1,
Near Signature Towers,
Gurgaon, Haryana**

Opposite Party No. 1

**Uber BV,
Vijzelstraat 68,
Amsterdam 1017, HL, The Netherlands**

Opposite Party No. 2

**Uber Technologies International Inc.
182, Howard Street # 8, San Francisco CA 94105**

Opposite Party No. 3

CORAM

**Mr. Ashok Chawla
Chairperson**



2. The Informant is a company engaged in radio taxi business in India through its fully owned subsidiaries Meru Cab Company Pvt. Ltd., (MCCPL) and V-Link Automotive Services Pvt. Ltd. (hereinafter referred to as '**V-Link**' or '**VASPL**'). Both the aforesaid subsidiaries of the Informant provide radio taxi services under the brand names 'Meru', 'Meru Genie' and 'Meru Flexi' in many major cities across India, like Delhi, Mumbai, Bengaluru, Kolkata, Hyderabad, Chennai, Pune, Jaipur, Surat, Ahmedabad, Vadodara *etc.* The Informant claims to have started offering radio taxi service in Kolkata through its subsidiary VASPL in September 2014 with brand name 'Meru Flexi'.

3. It is stated that OP-1 is a company incorporated under the Companies Act, 1956. OP-2, which is a part of the Uber Group, has its registered office at the Netherlands. OP-3 is the ultimate holding company of the Uber economic entity based in San Francisco. OP-1, 2 and 3 (collectively referred to as the OP Group/Uber) are engaged in the provision of radio taxi services under the brand name 'Uber'. Uber entered into the Indian market sometime in the year 2013 and it started its operations in Kolkata in August 2014. The radio taxi services in Kolkata are being offered by OP Group through two different categories/ brands, '**Uber X**' (sedan cars) and '**Uber Go**' (low range hatch back cars).

4. OP-1 is stated to be the marketing arm of Uber Group which promotes its business, gets car owners attached to the Uber network, provides training to the drivers and acts as the agent of OP-2 for doing business in India. All such services are provided by OP-1 to OP-2 under a contract executed between them. OP-2 directly enters into a contract with different taxi owners attached to the Uber network and also with the passengers who use Uber radio taxi services. OP-2 is also responsible for making payment of driver's share from the fare collected from the passengers and for the payment of incentives to the drivers. The Informant has contended that OP-1 is merely the face of Uber Group in India which helps it in logistics and operations in India and disseminates information



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about the group activities in India, including information related to driver incentives and customer discounts.

5. OP-3 has allegedly received a total funding of about \$ 10 Billion (as on the date of the information) through venture capital and private equity investors. The Informant has cited various series of funding through which OP Group has raised capital to fund its Indian operations. The Informant has alleged that armed with global funding, OP Group has brazenly adopted anti-competitive business model and has unleashed a series of abusive practices that are proscribed by the Act to strengthen its position of dominance in different markets and to eliminate otherwise equally efficient competitors from the market.
6. As per the information, the Informant started its business of radio taxis with self owned cars in Mumbai in the year 2007 and later started offering radio taxi services with aggregation model as well. The Informant claims that as on December 2013, it was the biggest radio taxi service provider in terms of revenue generated in India purely based on its quality and efficiency. However, in early 2014, various players entered the market and their predatory strategies reduced competition in the market and led to exclusion of many players.
7. The Informant has primarily alleged abuse of dominant position by OP Group in the radio taxi services market in Kolkata. It is alleged that though there are various other players in the Kolkata radio taxi services market apart from OP Group e.g. OLA (including Taxi For Sure), Sure Taxies, Mega Cabs etc., the market position of OP Group surpasses all others enabling it to operate independent of its competitors in the said market.
8. The Informant has stated that the average market price of the radio taxis in Kolkata before the launch of Uber (OP Group) was in the range of about Rs. 20-22 per km. Uber entered the Kolkata market in August 2014 and introduced its



services at a rate of Rs. 15 per km. Thereafter, the Informant entered Kolkata market in September 2014 when the market was already facing hostile conditions due to predation by the OP Group. Owing to its brand value and efficient business model, the Informant was able to attach radio taxis to its network at the rate of Rs. 20 per km without any consumer promotions or driver incentivisation. However, to match OP Group's unabated predatory pricing, the Informant was forced to drop its price to Rs. 15 per km by November 2014 and also started giving incentives to its drivers so that they remain attached to its network. Thereafter, admittedly the business of Informant started growing and in the month of January 2015, the Informant also started offering promotional discounts to its passengers. The business of the Informant, in terms of number of trips, grew at an average rate of around of 65% by the month of February 2015 and showed great promise.

9. It is alleged that, OP Group dropped their prices to an unreasonably low rate of Rs. 9 per km along with aggressive driver incentives and customer discounting, as a result of which the Informant's market share started coming down in terms of number of cars attached to its network and number of trips.
10. The Informant has submitted that it had already spent a considerable sum of money on driver incentives and had forgone consumer revenue to match OP's price and incentives. The Informant has contended that other players in the market also suffered *e.g.*, Mega cabs which, in December 2013, had about 300 cars attached to its network and was doing about 705 trips per day suffered drastically and was left with only 250 cars on its network, doing about 588 trips per day. Further, the smaller players in Kolkata put together had about 555 cars attached to their network in December 2013 and were doing about 833 trips per day which reduced to about 300 cars doing around 450 trips per day.



11. The Informant has asserted that OP Group holds a dominant position in the relevant product market in Kolkata by virtue of their market share and other factors laid down under section 19(4) of the Act. Relying on the research report prepared by 'TechSci Research Private Limited' on the Kolkata radio taxi service market (hereinafter, TechSci report), based on the figures available as of July 2015, the Informant has submitted that a total number of about 11,600 cars available on Radio Cabs network in Kolkata out of which only 7,470 were part of the active fleet size. It has been further averred that out of total cars in the radio cabs network, OP has a share of about 52%. Out of the active fleet size OP had a share of about 54% cars available with it at any given point of time. Further, out of the total trips made on an average in the city during any given day, OP had a share of about 61%.
12. Further, it is stated that in terms of its size and importance, economic power and commercial advantage etc., the position of OP in the Kolkata market at present is unparalleled. Furthermore, there is no countervailing buying power in the market as the consumers are dependent on the service providers and OP Group having the largest number of cabs running on its network has an advantage and dependence of consumers on its network. Citing all these factors, the Informant has contended that OP Group holds a dominant position in the radio taxi services market in Kolkata and has acted independent of its competitors and consumers pursuant to such dominant position.
13. The Informant has *inter alia* alleged that the pricing strategy of the OP group is predatory in nature which cannot be matched by the competitors except at a loss. The Informant has stated that the OP group incurs cost by way of getting fleet of cars attached to its network, screening of cabs and drivers attached to the network, setting up of appropriate software, setting up a call centre, fixed and sunk establishment costs, variable costs of running and maintaining this basic set-up etc. However, the only source of revenue for OP Group is the revenue share



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per ride which is around 20% of the price paid by the customers per ride. Therefore, all the above expenses (both fixed and variable) have to be incurred and recovered out of the said share of 20%. It is stated that the OP Group takes a share of about 20% out of the consumer revenue from its drivers but on most occasions it even foregoes such share and gives the entire share to its drivers. This reduction in share is with a view to poach the drivers from the network of other operators; the same also leaves OP with a lesser share to cover its expenses thus making the case of predation even stronger.

14. The Informant has also highlighted that the discounts and loyalty rebates offered by OP to its customers through its wallet system, which apart from fidelity building also lead to discrimination of pricing. Few examples of such discounts and other incentive schemes have also been cited in the information which are not reproduced herein for the sake of brevity.
15. Based on the aforesaid facts, the Informant has prayed that the Commission may direct the DG to investigate the matter and hold the conduct of OP Group to be abusive in the relevant market.
16. The Commission has analysed the material available on record and has heard the respective counsel of the Informant and OP-1 in its ordinary meeting dated 20.10.2015. The counsel of the Informant reiterated the allegations contained in the information, which for the sake of brevity are not reproduced herein.
17. The counsel of OP-1 argued that allegations raised by the Informant are liable to be rejected being without any basis. It was urged by OP-1 that the relevant product market is much broader than the provision of 'radio taxi services' as suggested by the Informant and should include all modes of public transportation (such as buses, auto rickshaws, trams and metro), as well as private transport which are substitutable with one another in transporting a person from one



particular point to another. It was further submitted that at the very least, yellow taxis should form a part of the relevant product market in Kolkata as they can be 'flagged down' by any passenger on the street and need not be booked in advance and further their fare (price per km) is comparable to those of radio taxis.

18. It was submitted that there are stark differences between the present case and the earlier cases filed against OLA (i.e. Case Nos. 06 of 2015 and 74 of 2015) wherein the Commission has ordered investigation in the geographic region of Bengaluru. It was contended that the active presence of yellow taxis in Kolkata poses a strong competitive constraint on radio taxis which warrants inclusion of yellow taxis in the relevant product market definition.
19. It was also alleged by OP-1 that the research report prepared by TechSci relied upon by the Informant is unreliable owing to various reasons and cannot be used as a basis to prove the dominance of any enterprise. It was highlighted that TechSci report was based on the information obtained through telephonic interviews conducted with 180 radio taxi drivers operating in Kolkata, which is a mere fraction of the number of drivers and cabs in the market. It was further stated that though the report states that TechSci interviewed 20 respondents from 10 radio taxi companies, the report lists only 6 companies, i.e. Meru Cabs, Mega Cabs, Sure Taxis, Taxi4Sure, Book My Cab and Fast Track, as companies interviewed for the purposes of preparing the said report. OP-1 has challenged the data pertaining to its fleet size and number of trips stating that it was not even interviewed by TechSci, even though it was concluded as being the leader in Kolkata market.
20. OP-1 has further highlighted the disclaimer incorporated in the report which clearly stated that TechSci does not guarantee the accuracy, adequacy or completeness of the information in the report, and that the information in the report was liable to change without notice.



21. In contrast to the allegedly incorrect data relied upon by TechSci, OP-1 submitted that its total fleet size (total number of cars registered on the Uber platform) in Kolkata as on 31.05.2015 (the period considered in the TechSci Report) was 3,512 vehicles and not 6,000 vehicles as alleged in the Report and relied upon by the Informant. Therefore, as per OP-1, even assuming that the details of all other competitors in the TechSci Report are correct, its share in the radio taxi services market (taking into account its actual total fleet size) is 38.54%, which was alleged to be less than OLA's market share of 41.7%. It was also contended that OLA's fleet size is much bigger than that stated in the report.
22. OP-1 also urged that it has only been in existence in Kolkata for approximately 1 year and any assessment as to its market share based on the data pertaining to such short period of time would be inconclusive. In contrast, the market under review in the OLA Cabs case was the city of Bengaluru where OLA was alleged to be operating for almost 4 years. Highlighting the pace of growth in the radio taxi industry in Kolkata, OP-1 urged the Commission to take into account the state of constant change and innovation in the said industry in the geographic region of Kolkata.
23. OP-1 negated the contention of the Informant regarding exclusivity conditions for the driver-partners on its platform. It was confirmed by OP-1 that there is no restriction on the drivers to accept bookings from multiple platforms over the course of a day. Further, it was asserted that, the active fleet size, total fleet size and other market share parameters keep changing on a real time basis and should not be relied upon for determining the dominant position of any particular player in the radio taxi services market.
24. On the allegations of predatory pricing, OP-1 submitted that it commenced operations in Kolkata in August 2014 launching its 'Uber X' service. This was



one month prior to the launch of Informant's services in Kolkata in September 2014. At launch, in August 2014, the distance fare for Uber X was INR 12/km. In November 2014, in addition to its Uber X service, OP-1 launched its lower cost service 'Uber Go', in numerous cities across India, including Kolkata. Pricing on the Uber Go platform at the time of launch across several cities in India, including Kolkata was INR 9/km. Subsequently, in February 2015, prices for Uber Go were reduced in several cities across India to INR 7/km, with the exception of Kolkata where the fare remained at INR 9/km. This, according to OP-1, demonstrates that Uber was not reducing its prices in Kolkata as a result of Informant's entry into the market.

25. In November 2014, OLA launched operations in Kolkata under the brand of 'OLA Sedan'. Subsequently, OLA launched its low cost 'OLA Mini' services in Kolkata in March 2015. Informant has submitted that its business began to suffer only after February 2015, i.e. March 2015. Therefore, as per OP-1, the Informant's fall in business cannot be attributed to it and in fact seems to be attributable more to the entry of OLA Mini.

26. OP-1 further claimed that its business model is based on efficiencies, with a view to lower costs and pass such benefits to the consumers. OP-1 asserted that Kolkata has already witnessed a drastic increase in the availability of radio taxis and a significant reduction in price. This is precisely consumer welfare that competition law seeks to promote. Therefore, highlighting the fierce competition, immense benefits to drivers, riders and society at large (decrease in pollution, lesser congestion, safer travel, and allocative efficiencies), and the inability to recoup losses through supra normal pricing, OP-1 urged that the Commission may close the present proceedings against it.

27. The Commission has perused the material placed before it and has analysed the contentions made by both the parties. The Commission notes that the primary allegation against the OP group (OP-1, OP-2 and OP-3 being part of the same



group) pertain to abuse of dominant position by way of predatory pricing under section 4 of the Act. The allegation pertaining to imposition of exclusivity restriction on drivers under section 3(4) of the Act when contested by OP 1 was given up by the Informant during oral hearing.

28. With regard to the allegation pertaining to abuse of dominant position by OP Group, the Commission notes that this being an issue pertaining to section 4 of the Act, determination of relevant market, comprising of relevant product 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 section 2(r), (s) and (t) of the Act, such determination is to be made after taking into account the factors laid down under section 19(6) and (7) of the Act.

29. As far as the relevant product market is concerned, the decisive factor for ascertaining the contours of relevant product market is substitutability of the product/service as perceived by the consumer. The basic characteristics, intended end-use, price etc. of different alternatives are some of the factors that help in determining whether the two products are substitutable or not. 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. Further, other critical factors that were taken into account for determining the relevant product market in those cases were consumers' growing dependence on radio taxis because of their easy availability and predictability. In this regard, however, it is notable that commuters in Kolkata rely on the yellow taxis for their day to day travelling/transportation requirements owing to their ease in booking, predictability in terms of



availability, low pricing etc. Therefore, the Commission notes that Kolkata is a peculiar market in itself. The active presence of yellow taxis and the continuous reliance of commuters on such taxis indicate that yellow taxis provides a viable alternative, in effect posing a significant competitive constraint on the radio taxi operators. In such a scenario, it may be appropriate to include yellow taxis within the relevant product market as both these types of taxis seem to be posing competitive pressure on each other in Kolkata. Further, OP-1 has submitted that OLA cab has recently added 1000 yellow taxis onto its platform in Kolkata. This fact further demonstrates that yellow taxis, with regard to the city of Kolkata, are substitutable with the radio taxis. Therefore, the Commission is of the view that relevant product market in the present case would be the market for '*services offered by radio taxis and yellow taxis*'.

30. With regard to the relevant geographic market, the Commission is of the view that owing to region specific demand by the end consumer and difference in regulatory architecture, each city/ State would constitute a different market in itself. The operations of taxis are restricted to the city/ State limits and they generally do not have the permit to go beyond the boundaries of a city/ State. Moreover, customers desirous of taking a taxi for travel in a city/ State would have to rely upon existing taxi operators in the city/ State itself. The alternative of opting such services from a company beyond the geographical limit of the city/state would not be feasible for the consumers but also for the company considering the distance, cost factor, etc. Moreover, since transport is a state subject under the Indian constitution, the taxi services market is largely regulated by State transport authorities making the conditions of competition homogenous only within a particular city/ State. Keeping into consideration the foregoing, and having regard to the distinctive conditions of competition in Kolkata, the relevant geographic market in the present case would be 'Kolkata'. Hence the relevant market would be market for '*services offered by radio taxis and yellow taxis in Kolkata*'.



31. Relying on the TechSci report, the Informant has claimed that the OP Group holds a dominant position in the radio taxi services market in Kolkata on the basis of fleet size (52%) and number of trips per day (61%). During the preliminary hearing, OP 1 challenged the authenticity of the said research report and provided data pertaining to its fleet size according to which its market share is 38.54%, which is lesser than OLA's market share of 41.7%. Even if the market share as projected by OP 1 is not believed, veracity of Techsci report is also highly doubtful. OP-1 was not even interviewed by the TechSci Research Private Limited prior to preparing the said research report. Hence, the conclusions based on incomplete information are not found to be reliable. Moreover, the Informant failed to counter the data provided by OP-1 pertaining to OP-1's fleet size. Besides, it is evident that the TechSci report was prepared without taking into account the data pertaining to yellow cabs, which is part of the relevant market delineated by the Commission. It appears that there exists stiff competition between Uber and OLA with regard to the services they offer in the radio taxi industry in Kolkata. Therefore, even if the relevant market definition proposed by the Informant is accepted, the OP Group does not seem to hold a dominant position owing to an even larger share held by one of its competitors. Furthermore, in the relevant market determined by the Commission i.e. *services offered by radio taxis and yellow taxis in Kolkata*, the market share of OP Group is even smaller. As per the information submitted by OP-1, the inclusion of yellow taxis in the relevant market would dilute the market share of OP group to 5.8% on the basis of fleet size in Kolkata. As discussed earlier, the Commission is of the view that the existence of yellow taxis poses a significant constraint on the behaviour of other taxi operators in the city of Kolkata. In such a scenario, the Commission finds it difficult to accept the contention of the Informant regarding OP Group's dominance in the relevant market based on the TechSci report.



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32. Considering the aforesaid, the Commission is of the view that the OP Group does not hold a dominant position in the relevant market. Since OP Group does not seem to be dominant, there is no need to go into the examination of OP Group's conduct in such relevant market. The present case is accordingly directed to be closed under section 26(2) of the Act as no case under section 3 or 4 is made out against the OP Group.

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

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

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

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

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

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

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

**New Delhi
Date: 22.12.2015**