

## COMPAT orders CCI to investigate Uber for an alleged Abuse of Dominance

**Sakya Singha Chaudhuri**, Partner, HSA Advocates

**Shuchi Singh and Ikleen Kaur**, Associates, HSA Advocates

The recent decision of Competition Appellate Tribunal (“**COMPAT**”) in the matter of M/s Meru Travel Solutions Pvt. Ltd. vs Uber India Systems Pvt. Ltd & Ors referring the complaint of Meru, which had been earlier rejected by Competition Commission of India (“**CCI**”), for further investigation, highlights certain important issues in competition jurisprudence.

Meru Travel Solutions Pvt. Ltd, (‘Meru’) which is engaged in the business of radio taxi service business in India had in 2015 approached the CCI<sup>1</sup> in 2015 against the Uber Group alleging that Uber, owing to its deep pockets had resorted to numerous anti-competitive practices to strengthen its dominant position in the radio taxi services market in the National Capital Region (NCR) area. Meru had also alleged that Uber was offering huge discounts in addition to already reduced tariffs to consumers and high incentives to retain drivers at the cost of losing Rs. 204/- per trip. According to Meru, Uber’s policy of charging prices below cost with an objective to eliminate competitors and recoup investment at a later stage amounted to predatory pricing. Uber’s policy was based solely to gain the loyalty of the taxi owners and to prevent passengers/customers from obtaining radio taxi services from other radio taxi services operators. Meru also alleged that Uber was entering into exclusive contracts with taxi owners whereby the taxi drivers were restrained from getting attached to any other competing radio taxi operators’ network. In support of its complaint, Meru claimed that pursuant to such predatory pricing by Uber, Meru’s market share had diminished from 18% in December 2013 to about 11% in September 2015, whereas Uber’s market share had increased from nowhere to a market share of about 50%. To establish Uber’s dominant position, Meru had relied upon two market research reports prepared by New Age TechSci Research Pvt. Ltd. (“**the TechSci report**”) and 6Wresearch (“**the 6Wresearch report**”).

After hearing both Meru and Uber, the CCI took a prima facie view that the relevant geographic market for the radio taxi services was Delhi as opposed to NCR, and that Uber did not enjoy a

---

<sup>1</sup> Meru Travel Solutions Private Limited V. Uber India Systems Pvt. Ltd & Ors, Case No. 96 of 2015, available at [http://www.cci.gov.in/sites/default/files/26%282%29\\_96%20of%202015.pdf](http://www.cci.gov.in/sites/default/files/26%282%29_96%20of%202015.pdf)

dominant position in the Delhi market since there is a vibrant and dynamic radio taxi service market in Delhi consisting of several service providers considering the fluctuating market share figures of the various players. CCI also observed that the radio taxi services market in Delhi is competitive in nature and Uber does not appear to be holding a dominant position in the relevant market. Therefore, CCI was primarily guided by the market share of Uber to conclude that it did not enjoy a dominant position. Accordingly, the complaint was dismissed at the preliminary stage without any further investigation into the matter by the DG Investigation.

Meru challenged CCI's order dismissing its complaint before the Appellate Authority. COMPAT has set aside the order of CCI and remanded the matter to CCI for investigation. The observations made by COMPAT in its judgment are of significant importance and reiterate some of the basic parameters for defining dominance, and at the same time the expected role of CCI in dealing with complaints at the initial stages while taking a prima facie view on the admission of complaints. Some of the important takeaways from the judgment are:

- The determination of whether an entity is dominant in a particular market is not necessarily dependent on the market share of the entity in such market. It may be determined on the basis of other factors such as size and resources of the enterprise, size of the competitors, economic power of the enterprise including commercial advantages over competitors and such other factors indicated in Section 19 of the Competition Act. In this case, the COMPAT looked at the ultimate parent companies that had set up Uber in India, their financial position worldwide and the funding made available to Uber in India.
- When a complaint is filed against any anti-competitive conduct, a deeper determinative exercise either on the relevant market or the existence of anti-competitive conditions may not be required to take a preliminary view to refer the matter for further investigation.
- The mere fact that the information provided by the informant has conflicting inputs should not necessarily be a ground for rejecting such information. The Commission should weigh the information independently for forming its opinion.

The first issue is of significant importance for competition jurisprudence. The judgment of COMPAT underlines the fact that market share is only one of the tools to consider dominance, and that even new entrants in a market may come under the scanner of CCI, if the promotional tools/ incentives introduced by them are not justified in terms of costing combined with the size

and economic power of such entity or its promoters in other markets, whether domestic or in other jurisdictions.