

THE COMPETITION COMMISSION WEIGHS IN ON ALGORITHMS IN THE CAB INDUSTRY

1. INTRODUCTION

Earlier this month, the Competition Commission of India (the “**Commission**”) rejected allegations of antitrust law violations against the cab aggregators, *Ola* and *Uber* relating to price fixing, resale price maintenance and cartelisation.¹

The allegation was that the two *app based* taxi service providers, *Ola* and *Uber* (the “**Cab Aggregators**”) were colluding to fix prices by adopting algorithmic pricing.

Finding no merit in the allegations, the Commission, disposed of the matter under Section 26(2) of the Competition Act, 2002 (the “**Act**”) (*order passed by the Commission when in its opinion, there exists no prima facie case of violation of the Act*).

We summarise the case below and the potential implications that may arise.

2. ALGORITHMIC FIXING OF PRICES

In the instant case, the informant had alleged that the algorithms used by the Cab Aggregators through their respective app platforms were facilitating a cartel for price-fixing among the cab drivers associated with each platform, resulting in a *hub and spoke* arrangement between the app based taxi service providers’ platform and the drivers. In a traditional *hub and spoke* arrangement, an exchange of sensitive information between competitors takes place conventionally, through a third party that facilitates the cartelistic behaviour of such competitors.

The informant had essentially alleged that the app platforms of the Cab Aggregators, by fixing the prices to be charged, prevented price competition among the drivers of each platform since the cab drivers were not in a position to negotiate such prices. Interestingly, the allegation was not directed towards collusion among the Cab Aggregators’ platforms (as suggested by the memo of parties in the information filed) but instead targeted each platform individually as a facilitator for collusion.

The Commission, however, took the view that as the fares are estimated through an app by using algorithms which relies on ‘*big data*’ and factors such as the time of the day, the local traffic situation, and other special conditions such as events, festivals, weekdays or weekends, the resultant price for each trip

¹ *Samir Agrawal v. ANI Technologies Pvt. Ltd. ANI Technologies Pvt. Ltd. and Uber India Systems Pvt. Ltd.* (Case No. 37 of 2018), decision of the CCI dated November 06, 2018

is *dynamic* in nature and doesn't involve any human intervention, being largely based on the demand-supply situation determined by the algorithms.

Even though, in the present case, the driver partners of the Cab Aggregators may have acceded to the algorithmically determined price, the Commission stood firm in its view that such conduct could not amount to collusion between the drivers as the fare for each trip is determined on the basis of a variety of factors, highlighted above.

Furthermore, evidence to suggest an agreement between the drivers to fix prices or coordinate prices which are offered to passengers or to delegate the pricing power to the Cab Aggregators, was absent in the present matter. Therefore, the Commission found no substance in the cartelisation allegation on the basis of algorithmic price fixing.

3. **INDUSLAW VIEW**

Technological innovations and scientific advancements worldwide have made it challenging for competition regulators across the globe to keep pace with the fast changing dynamics of the data driven digital economy.

In the aftermath of the current airline ticket pricing controversy involving self-learning algorithms, and the likelihood expressed by the Commission to look into such algorithms in relation to price fixing allegations, this particular order by the Commission becomes relevant, suggesting how it will likely determine such a question.

In addition to having appreciated the relevant market for such cases to be a market for online services², by this order, the Commission, for the first time, has specifically delved into the concept of algorithmic pricing.

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² *All India Online Vendors Association v Flipkart India Pvt. Ltd.* (Case No. 20 of 2018), decision of the CCI dated November 06, 2018

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