

SAMIR AGRAWAL VS. ANI TECHNOLOGIES PVT. LTD. & OTHERS

Case No. 37/2018

Decision date: 06/11/2018

Keywords: hub and spoke cartel, preferential treatment, pricing algorithm, abuse of dominant position

Issue: Whether the pricing algorithms adopted by Uber/Ola is in contravention of Section 3 of the Act.

Rule: Sec. 3 and 4 of the Competition Act, 2002.

The case arose out of allegations made by Mr. Samir Agrawal against ANI Technologies Pvt Ltd (“Ola”), Uber India Systems Pvt Ltd (“Uber”), Uber B V Amsterdam, Netherlands (“Uber BV”) and Uber Technologies Inc., San Francisco, USA (“Uber Technologies”), for violating Section 3 of the Competition Act. The CCI considered the issues and decided in the following manner.

First, on the matter of Uber and Ola causing hub and spoke cartelisation, it was alleged that Uber and Ola were acting as ‘hubs’ for their drivers, who were the ‘spokes’ and consequently colluding on prices. More specifically, it was submitted that Ola and Uber were using their respective pricing algorithms to fix prices between their drivers, thereby facilitating a cartel, in direct contravention of Section 3. It was also submitted that in the absence of such a pricing algorithm, drivers would compete on prices, as a result of which they would be prevented from commanding high prices. CCI dismissed these allegations and laid down two essential conditions for a hub and spoke cartel to exist – i) the ‘spokes’ must use a third party platform, or the ‘hub’ to exchange sensitive information, including information on prices, and ii) there needs to exist a conspiracy to fix prices, which requires the existence of collusion. The CCI observed that the acceptance of algorithmically determined prices by the platform by the drivers would not amount to collusion. There was no agreement between the drivers per se, through which they delegated pricing decisions to the platform.

Second, it was contended that Ola/Uber and its drivers were in a vertical relationship, wherein Ola/Uber would impose a floor price on drivers, creating a resale price mechanism in contravention of Section 3(4)(e) of the Act. The drivers are not free to reject prices by the

algorithm or offer consumers a lower price. This argument was rejected by the CCI on the grounds that an essential ingredient for a resale price mechanism allegation – reselling a service – was not present. There exists an agency relationship wherein a single transaction takes place between the ride and Ola/Uber. *Third*, it was submitted that cab aggregators are in possession of a considerable amount of personalised information about riders, which they would use to price discriminate. The CCI, relying on an earlier decisions in *Fast Track Call Cab and Meru v ANI Technologies*, and *Meru v ANI Technologies*, dismissed these allegations stating that Section 4 does not recognise the concept of “joint or collective dominance”.

The CCI went on to distinguish Ola and Uber from platforms like Airbnb, Trivago and Zomato by noting that riders on Ola/Uber do not possess material information or preference as regards drivers available in their area of demand. The CCI held that Uber/Ola were not pure platforms like the examples listed earlier, but qualified as “radio taxi operators” or “transport service companies”.