

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE****Working Party No. 2 on Competition and Regulation****Taxi, ride-sourcing and ride-sharing services - Note by India****4 June 2018**

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Please contact Mr Chris PIKE if you have any questions about this document
[Email: Chris.Pike@oecd.org]

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India

1. Brief Background of current regulatory structure and the changes made thereof

1. Taxi industry in India has undergone a radical change in the last 7 years owing to the relentless disruptions caused by technology and innovation. The arrival of innovative app-based ride services, generically referred to as Cab Aggregators, caught the regulatory authorities off-guard, as initially the cab aggregators did not fall under established regulatory structures.

2. At the time when cab aggregators like Ola (a domestic online cab aggregator) and Uber (global cab aggregator) entered the Indian markets, in 2010 and 2013, respectively, India apparently had no legislative framework to specifically regulate digital cab aggregators.

3. There existed a legislative vacuum even with regard to the classification of services offered by them *i.e.* whether they act as taxi-operating companies or as information technology companies. The taxi schemes prevalent in various States¹ only regulated the taxis operated under the asset owned model and thus, the cab aggregators, who were merely acting as platforms claimed ‘no-regulation’ under the said taxi schemes. The cab aggregators contended that they do not own or lease any vehicles, employ any drivers, but rather act as a mobile platform for customers to connect with drivers. On the other hand, the traditional players argued that the cab aggregators are functionally providing the same service (taxi transportation service) as them and thus, are obliged to follow the regulatory requirements under the existing regulatory architecture governing conventional taxis. Any exemption from such regulatory requirements was alleged to give these cab aggregators an unfair advantage of saving regulatory costs. The regulatory burden on the traditional taxi operators, which was as such not borne by the online cab aggregators, was on account of fleet size, vehicle profile, working conditions, driver profile, and the cost for obtaining a license (permit) and for its renewal, although in India the cost for obtaining a permit is not very high².

4. The regulatory gap in India with regard to online cab aggregators was first experienced when a woman traveller reported molestation by an Uber Driver in December, 2014 and the question of ascribing liability for such incidents arose. India’s

¹ In India, Motor Vehicles and other mechanically propelled vehicles fall under the concurrent list which means that the Union Government along with the State Government(s) possess the power to legislate on the matters relating to regulation of transport. Though both the central as well as state government can make laws on these subjects, the law made by the Union prevails over the State for concurrent matters. Although there is a central law, viz. The Motor Vehicles Act, 1988, that regulates road transport vehicles, the Act grants the power to State authorities to issue rules regulating taxis. In exercise of this power, State governments have introduced radio taxi schemes at State level, which regulate the operation of traditional radio taxis in their particular geographical region.

² Refer to the link for detailed information on permit fees and period. http://delhi.gov.in/wps/wcm/connect/doi_transport/Transport/Home/Permits/Permit+Fees+And+Permit+Period

Central Government immediately warned the States against allowing unlicensed online cab aggregators. In October 2015, the Ministry of Road Transport and Highways (a department of central government) issued advisory for ‘Licensing, Compliance and Liability of on-demand Information Technology based Transportation Aggregator’ (*i.e.* online cab aggregators) operating within the jurisdiction of India. Through this advisory, detailed terms and conditions for cab aggregator to solicit, canvass and operate within the jurisdiction of a particular State Transport Department were specified and State governments were advised to take into consideration the said advisory while modifying their existing city taxi schemes to bring online cab aggregators within their regulatory architecture.

2. At the Central Level

5. At the central level, Motor Vehicles (Amendment) Bill, 2016 has been introduced which has the following salient (as regards cab aggregators) features:

- This Bill amends the Motor Vehicles Act, 1988 to address issues such as third party insurance, regulation of taxi aggregators, and road safety.
- Section 2(1A) defines aggregator as a digital intermediary or market place for a passenger to connect with a driver for the purpose of transportation;
- Section 93 mandates obtaining of licence by an aggregator, on the fulfilment of following conditions:
 - Provided that while issuing the licence to an aggregator the State Government shall follow such guidelines as may be issued by the Central Government;
 - Provided further that every aggregator shall comply with the provisions of the Information Technology Act, 2000 and the rules and regulations made thereunder."
- Currently, State Governments determine guidelines for plying of taxis. There could be cases where State taxi guidelines are at variance with the central guidelines on aggregators. Once this bill becomes a law, the State governments will have to comply with these mandatory guidelines, if any, issued by the Centre. However, it should be noted that recently (in February 2017) the Parliamentary Standing Committee on Transport, Culture and Tourism in its Report No. 243 has observed and recommended as follows³:

“The Committee feels that the control of transport vehicles are the exclusive domain of the State Governments. Through this amendment, the balance of power between the Centre and the State has been tilted and the Central Government will get a preponderance of power to control the aggregators throughout India. The Committee believes that there is no need to take away the rights of the State Governments with regard to control of transport vehicles. The Committee, therefore, recommends that every State Government should have its own powers and guidelines to control the operations of aggregators within the State. The

³ Available at <http://www.prsindia.org/uploads/media/Motor%20Vehicles,%202016/SCR-%20Motor%20Vehicles%20Bill,%202016.pdf>, last seen on 23rd April, 2018.

Committee further recommends that in Clause 34, Section 93, sub-section (iii) (b) proviso, in place of the "State Government shall follow" with words "State Government may follow" be substituted."

6. While the Motor Vehicles (Amendment) Bill, 2016 awaits approval, it could eventually turn out to be the case where the State Governments may retain the right to determine how cab aggregators are regulated and may disregard the advisory issued in this regard by the Central Government.

7. On the judicial front also, certain cases against the operation of these cab aggregators were filed in various High Courts (in different States) on issues such as surge pricing, passenger safety, environmental concerns etc. In December 2016, the Ministry of Road Transport and Highways (MoRTH), on the directions of the judiciary in India⁴, came up with 'New Policy Guidelines to Promote Urban Mobility', which *inter-alia* provided for following:

- *Legal Status of Cab Aggregators:* Inclusion of cab-aggregators within the same market definition as radio taxi operators and traditional city taxis.
 - *Tariff Regulation:* State regulators empowered to fix the minimum and maximum Tariff/fares that can be charged by aggregators with respect to economy class vehicles.
 - *Surge Pricing:* Range bound dynamic pricing to be allowed to effectively match the demand and supply, with maximum tariff being permitted is 3 times the minimum tariff during day time and 4 times during night hours (12 midnight to 5 am);
 - *Validity of Algorithm used for calculating Fares:* App based cab aggregators need to validate their algorithms of surge pricing through validation from Standardisation Testing and Quality Certification (STQC) or any other certification agency authorised by the Ministry of Electronic and Information Technology;
 - *Ride-Sharing:* Sharing of a seat permitted in the cabs, subject to express consent of passengers.
 - *Data Security Issues:* Online cab aggregators to be prepared for audits and must take measures like a firewall for enhanced user data security of the passengers.
 - *Measures for ensuring women/passenger safety:* Mandatory fitting of GPS panic devices in the taxis, facility of SOS alerts by the passengers, mandatory requirement of display board in the cab with identification of driver along with the photo and the registration number etc.
8. These guidelines are only recommendatory in nature. In the recent past many State Governments⁵ have also formulated or modified their regulatory regime to bring cab

⁴ Delhi High Court.

⁵ State Governments of Karnataka, West Bengal, Delhi, Maharashtra *etc.* have come up with regulatory regime to cover these can aggregators. Their radio taxi schemes can be accessed from the following web links:

aggregators within their regulatory net, so as to ensure that the cab aggregators go through all the regulatory requisites as applicable on other radio taxi operators; capping the maximum prices, so as to ensure that surge pricing does not go unregulated; licensing requirement; issues related to safety *etc.*

9. As per the domestic commentators, most of the regulatory intervention in the cab industry at the Central and State level is perception based, without any evidence based assessment, and probably motivated by continuous lobbying by the traditional taxi companies, who owing to their outdated business model, were not able to catch up with the new entrants.⁶

10. Thus, on one hand the cases relating to alleged predatory pricing by online cab aggregators were received by CCI, while on the other various complaints were received by CCI regarding the practice of surge pricing adopted by online cab aggregators, *i.e.* the practice of automatically increasing fare prices through an algorithm (irrespective to the sector to which it relates), during periods of high demand. It was found that despite there being no evidence based assessment of the impact of surge pricing and the requirement of capping the same, various State governments, through their respective taxi schemes were contemplating regulating the pricing mechanism of these players. Thus, in its role as a market regulator, the CCI found it appropriate to conduct a research study on this issue. Accordingly, in order to assess the need for optimal intervention in this sector, the CCI considered it imperative to undertake a research/ study on ‘*Competition and Regulatory Issues related to Taxi and Cab Aggregator Industry*’. The study is expected to analyse the practice of surge pricing in select Indian States, based on empirical research, from competition as well as economic policy perspective and the outcome of the study is expected to guide policy-makers in regulatory re-design.

3. Decisional Practice of the CCI

11. As many as 10 cases have been received in the radio taxi industry by the CCI. These have been filed by the traditional radio taxi players against online cab-aggregators (Ola and/or Uber) alleging abusive low pricing strategies (predatory pricing) by the online cab aggregators which allegedly the former were not able to match because of the high capital investment in the owned fleet.

Delhi:

<http://delhi.gov.in/wps/wcm/connect/f9c68480499d268a87b99f018ef168b1/Taxi.compressed.pdf?MOD=AJPERES&lmod=-370276847>

Karnataka: http://transport.karnataka.gov.in/uploads/notice/Aggreagator2_4_2016.pdf

West Bengal: <https://wbxpress.com/wp-content/uploads/2016/03/4450-WT.pdf>

Maharashtra: <https://transport.maharashtra.gov.in/Site/Upload/Pdf/mahacts17%20.pdf>

⁶Aashish Chandorkar, Why India Should Urgently Address App-Based Cab Regulation Issues, Swarajya, 21st August 2016, available at <https://swarajyamag.com/business/why-india-should-urgently-address-app-based-cab-regulation-issues>. Also read Here’s why Niti Ayog is right to back Ola and Uber apps, Financial express, 16th November 2016, available at <http://www.financialexpress.com/opinion/heres-why-niti-ayog-is-right-to-back-ola-and-uber-apps/446812/>.

12. Most of these cases were closed at the *prima facie* level as the CCI did not find any of the cab-aggregators to be dominant in the relevant market and in the absence of dominance, an enquiry with regard to abuse could not have been looked into as per the scheme of Competition Act, 2002. However, one case⁷ concerning abuse of dominant position by a domestic cab aggregator (*namely*, ‘OLA’) in the relevant market of Bengaluru (a city in Karnataka) was sent for investigation. The DG, after detailed investigation, was of the view that OLA does not hold a dominant position in the relevant market because of the presence of competitive constraints posed by UBER (a global cab aggregator).

13. While assessing the dominance of OLA, CCI applied a nuanced approach considering the challenges posed by traditional antitrust tools and approaches. CCI disregarded high market share held by OLA, realizing that over-reliance on market shares in the assessment of such cases may lead to absurd outcomes. CCI noted that market share is but one of the indicators for assessing dominance, and the same cannot be seen in isolation to give a conclusive finding. Though market share can be an important indicator for lack of competitive constraints, there cannot be any set guideline and criteria for determining uniform market share thresholds and a standard time-period to apply in all cases. The variance across industries in terms of their inherent characteristics, such as nature of competition, technology and innovation dimensions, calls for a case-by-case assessment of market share and its implications for dominance with reference to the totality of the market dynamics and competitive strategies of firms. CCI also recognized the limitation of market shares as an indicator of market power in case of new market economy cases. Rather CCI relied on factors such as strength of network effect, entry barriers, and assessment of strategies adopted by the players to assess dominance. Based on these factors, CCI found that the OLA did not hold the position of dominance in the relevant market for ‘*radio taxi services in Bengaluru*’ and was not able to act independent of the competitive forces in the market.

14. It was further noted that in two-sided markets, network effects may enable a large platform/network to become dominant and insulate itself from potential competition as entrants may find it difficult to challenge the large incumbent. However, there can be certain countervailing market forces that reduce the ability of even a very large platform to insulate itself from competition. CCI noted that despite OLA having the largest network, the network effect was not strong enough to deter entry and rapid expansion of other big competitor ‘UBER’ who was competing fiercely with OLA. Further, there were no significant costs preventing consumers from switching between different radio taxi apps. The radio taxi apps are offered for free and can be easily downloaded on smartphones and can coexist on the same handset, thus, multi-homing was found to be possible for both drivers and riders. The CCI also noted that the competition in the relevant market was still unfolding and decided not to interfere in a market which is yet to fully evolve. The following paragraph from the concluding paragraphs of the order also shows the approach adopted by CCI:

“123. At this stage, it is difficult to determine with certainty the long-term impact of this pricing strategy as the market is yet to mature. Without going into the legitimacy of OP’s pricing strategy, suffice to say that besides statutory

⁷ Case No. 6 & 74 of 2015, *Fast-Track Call Cabs and Anr.v. ANI Technologies Pvt. Ltd.*, 19th July 2017, available at <http://www.cci.gov.in/sites/default/files/6%20%26%2074%20of%202015.pdf>.

compulsion of non-intervention in the present case, as OP is not dominant in the relevant market, the Commission is hesitant to interfere in a market, which is yet to fully evolve. Any interference at this stage will not only disturb the market dynamics, but also pose a risk of prescribing sub-optimal solution to a nascent market situation.”⁸

15. Presently, CCI is also looking at cases⁹ where dominance by OLA and UBER has been alleged collectively and/or as part of the same ‘group’. Though collective dominance is not recognized under the Indian Competition Act, the CCI is contemplating if both the cab aggregators can be considered as part of the same ‘group’ pursuant to common shareholding. Some of the domestic commentators are of the view that pursuant to these common shareholders investing in both these cab aggregators, competition between them may not make any real sense¹⁰. These cases are yet to be decided.

16. Recently, there have been news reports of the proposed consolidation of OLA and UBER. As per the news report the Softbank, which has emerged as the largest shareholder in both Uber and Ola, has been hoping to ‘make peace between them (Ola and Uber) at some point’ through this proposed consolidation.¹¹ Considering that the asset/turnover threshold in the Indian combination regime may lead to this deal falling outside the purview of notifiable transaction, recent news report of the proposed consolidation of OLA and UBER has added more complexity to the issues that are yet to be decided.

⁸ Case No. 6 & 74 of 2015, Fast-Track Call Cabs and anr. V. Ani Technologies Pvt. Ltd., 19th July 2017, available at <http://www.cci.gov.in/sites/default/files/6%20%26%2074%20of%202015.pdf>.

⁹Case Nos. 25, 26, 27 & 28 of 2017. These cases are pending at the *prima facie* stage as on 23rd April, 2018.

¹⁰ See ‘India’s taxi wars may be headed for a truce, thanks to Softbank’, Quartz India, 13th November, 2017, available at <https://qz.com/1101673/ola-vs-uber-thanks-to-softbank-indias-taxi-wars-may-be-headed-for-a-truce/>, last visited on 23rd April, 2018. Also see, Soft Bank—not Uber—is the real king of ride-hailing, 23rd January, 2018, available at <https://qz.com/1187144/softbank-not-uber-is-the-real-king-of-ride-hailing/>, last visited on 23rd April, 2018.

¹¹See Madhav Chanchani, ‘What makes an Ola-Uber consolidation deal complicated’, ET Tech, 03rd April, 2018, available at <https://tech.economictimes.indiatimes.com/news/mobile/what-makes-an-ola-uber-consolidation-deal-complicated/63593399>, last visited on 23rd April, 2018.