



COMPETITION COMMISSION OF INDIA

Case No. 21 of 2016

In Re:

**Mr. Vilakshan Kumar Yadav
C-93/2 Yadav Nagar,
Samaypur,
Delhi-42**

Informant No. 1

**Mr. Rizwan
A-1122 Gali no. 28,
Shri Ram Colony,
Delhi-94**

Informant No. 2

**Mr. Shiv Shankar
338 JJ Camp,
Anand Vihar,
Delhi-92**

Informant No. 3

And

**M/s ANI Technologies Private Limited
4th Floor, Sunteck Centre,
Vile Parle (East),
Mumbai -400057**

Opposite Party

CORAM:

**Mr. Devender Kumar Sikri
Chairperson**

**Mr. S. L. Bunker
Member**

**Mr. Sudhir Mital
Member**

**Mr. Augustine Peter
Member**

**Mr. U.C. Nahta
Member**



Dr. M.S. Sahoo
Member

Justice G.P. Mittal
Member

Appearances:

For the Informants: Mr. Sumit Kumar Modi, Advocate

For OP: Mr. Ramji Srinivasan, Senior Advocate
Mr. Bharat Budholia, Advocate
Mr. Nandita Sahai, Advocate
Mr. Tushar Bhardwaj, Advocate
Mr. Ridima Bhargava, Head Legal

Order under Section 26(2) of the Competition Act, 2002

1. The present information has been filed by Mr. Vilakshan Kumar Yadav (hereinafter, the '**Informant No. 1**'), Mr. Rizwan (hereinafter, the '**Informant No. 2**') and Mr. Shiv Shankar (hereinafter, the '**Informant No. 3**'), collectively referred to as Informants, under Section 19(1)(a) of the Competition Act, 2002 (hereinafter, the '**Act**') against M/s ANI Technologies Private Limited, (hereinafter, the '**Opposite Party/OP**'), alleging *inter alia* contravention of the provisions of Section 4 of the Act.
2. As per the information, the Informants are drivers of auto rickshaws and taxis who are currently plying their vehicles in Delhi. Some of them also hold permits to ply in the National Capital Region ('NCR').
3. The Opposite Party is a Mumbai based company providing radio taxi services in various States/cities in India under the brand name 'OLA' and 'Taxi For



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Sure'. It is stated to be holding a dominant position in the market for auto rickshaw and city taxi services– collectively referred to as the 'Paratransit Services'. It is alleged that the Opposite Party has been contravening the provisions of Section 4 of the Act by paying more money to the drivers than it collects from the passengers. This, as per the Informants, is driving out existing players from the market and preventing new players from entering the market.

4. The Informants have proposed 'Paratransit Services', comprising of auto-rickshaws, black-yellow taxis and city taxis, as the relevant product market. It is asserted that all these mediums, *i.e.* auto- rickshaws, black-yellow taxis and city taxis, are used for point to point commutation by passengers and, thus, compete within the same space. Further, since they all draw drivers from the same pool, they are claimed to be a part of the same relevant product market.
5. With regard to the relevant geographic market, it is submitted that the geographic market should be 'NCR'. NCR comprises of the entire state of Delhi and certain districts of 3 others States, namely, Haryana, Uttar Pradesh and Rajasthan. The Informants have placed reliance on an agreement which was signed amongst the respective Governments of these four States to, *inter alia*, issue permits for auto rickshaws and taxis with an unrestricted movement within the NCR.
6. It is claimed that the Opposite Party is the largest provider of paratransit services in the country, with its fleet of 3, 20,000 vehicles and 7, 50,000 rides per day, having a market share of around 80% in India. It is stated that the Opposite Party has 16,000 auto rickshaws registered on its network. The Informants have also highlighted that the Opposite Party has received huge



funds in the form of venture and private equity funds since 2011 and is very resourceful. Thus, it allegedly holds a dominant position in the market for 'Paratransit Services in NCR'.

7. With regard to abuse, the Informants have contended that the Opposite Party provides huge discounts to the riders (consumers) and offers incentives per trip to the drivers. The fare charged by it from its riders is alleged to be abysmally low and is claimed to be less than one-third of the government prescribed rates.
8. The Informants have pointed out that barely five days after the Commission's *prima facie* order dated 24th April 2015 in Case No. 06/2015 (*M/s Fast Track Call Cab Pvt. Ltd. v. ANI Technologies*), the Opposite Party sent a message (SMS) to its riders offering rides at 'Rs. zero/km' in NCR. It is submitted that other efficient players, including the Informants, cannot provide services at a price lower than the cost of provision of services even though their cost is lower than that of the drivers attached on the network of the Opposite Party. It is further submitted that they have no venture funding to rely upon, and hence they may be driven out from the market for Paratransit Services. Thus, the Opposite Party is abusing its dominant position in the relevant market by indulging in predatory pricing, gradually forcing other competitors out of the market, thereby violating Section 4(2)(a)(ii) of the Act.
9. Based on the foregoing, the Informants have, *inter alia*, prayed before the Commission for an investigation into the matter under the provisions of Section 26(1) of the Act and a direction to the Opposite Party to stop indulging into predatory pricing.



10. The Commission has considered the facts and allegations stated in the information and heard the parties on 07th June 2016. During the preliminary conference on 07th June 2016, the counsel appearing on behalf of the Informants reiterated the contentions spelt out in the information. The counsel appearing for the Opposite Party summarily denied the allegations. The Opposite Party challenged the relevant market proposed by the Informant and submitted that auto- rickshaws, black-yellow taxis and city taxis cannot be stated to be competing in the same relevant market. The Opposite Party also denied the claim of the Informants regarding dominance and abuse of dominant position. Besides, the Opposite Party raised a preliminary objection with regard to non-filing of affidavit by Informant Nos. 2 and 3.
11. With regard to the preliminary objection of the Opposite Party, the Commission notes that the affidavit filed by Informant No. 1, along with the information, clearly specifies that the affidavit dated 01st February 2016 is filed by Informant No. 1 on behalf of all the Informants. That being so, the objections of the Opposite Party is not maintainable and does not require any further discussion.
12. Coming to the merits, the allegations in the present case pertain to abuse of dominant position by the Opposite Party under Section 4 of the Act. Thus, the delineation of the relevant market, in its product and geographic dimension, would be required for assessing the position of the Opposite Party.
13. The Informants are stated to be auto rickshaw and taxi drivers currently operating in Delhi and/or NCR. They are primarily aggrieved by the conduct of the Opposite Party of charging of low prices from riders and paying huge incentive to drivers. As per the Informants, the relevant product market is 'Para-transit Services' consisting of auto rickshaw, black-yellow taxis and city taxis.



14. The relevant product market, as defined under Section 2(t) of the Act, should comprise of all those products which are regarded as substitutable by the consumer, by reason of their characteristics, prices and intended use. Thus, while defining the relevant product market in the present case, different options available for travel from one destination point to another within the city/state are to be seen from the point of view of the consumers, to measure the extent of substitutability. The Commission observes that auto rickshaws and taxis, despite offering similar services, are different from each other by virtue of their basic characteristics, consumer preference, prices *etc.* Within a city, consumers can travel/commute by local or private buses, taxis, auto rickshaws, *etc.* However, owing to the difference in comfort, time taken by various modes of transportation, buying power of the consumer (rider) *etc.*, these different alternatives do not qualify to be substitutes for each other. Thus, these are not substitutable in terms of the factors provided under the Act and cannot be categorized as part of the same relevant market. Auto rickshaws and taxis may be serving the same intended use but owing to different perception they hold in the eyes of the consumers in terms of convenience, prices and facilities *etc.*, they fall under different relevant product markets.
15. Even with regard to taxis, it is noted that the Opposite Party provides radio taxi services which can be distinguished from the other traditional taxis (yellow-black taxis, city taxis *etc.*). The Commission has already opined in past cases (Case No. 06/2015, 74/2015, 81/2015, 82/2015 and 96/2015) that the radio taxis form a distinct market in itself. In the said cases, the Commission, while *prima facie* defining the relevant product market as 'Radio Taxi services', took into consideration factors like- convenience, point-to-point pick and drop, pre-booking facility, ease of availability even at obscure places, round the clock availability, predictability in terms of



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expected waiting/ journey time *etc.* Hence, based on the holding of the Commission in those cases, the relevant product market in the present case will be '*market for provision of radio taxi services*'.

16. The Commission notes that the Informants have alleged abusive pricing strategy by the Opposite Party in the auto-rickshaw segment also. Thus, in addition to the relevant product market defined above, the position of the Opposite Party needs to be assessed in the '*market for auto rickshaw services*' also.
17. With regard to the delineation of the relevant geographic market, it is observed that the Commission has already taken a view in the cases mentioned above that the geographic market in the radio taxi services industry has to be defined on the basis of city/State in which they are operating. Since transport is a state subject under the Constitution, the radio taxi services market is largely regulated by the State Transport Authorities, making the conditions of competition homogenous only in a particular city/State. Moreover, it may not be economically viable for a consumer, willing to travel within a particular city or geographic region, to book/hire a radio taxi operating in another city/State.
18. The Informants, however, have proposed the geographic market should be Delhi- NCR. The Informants have relied on the agreement dated 14th October 2008, entered into amongst the governments of four states, *i.e.* Delhi, Haryana, U.P and Rajasthan to issue permits for auto rickshaws and taxis to ensure unrestricted movement within NCR. In this regard, the Commission notes that the taxis and auto-rickshaws commuting in the NCR region, and thus eligible for a free movement under the agreement between the four governments mentioned above, hold a separate permit. Such auto-rickshaws or taxis might be commuting from Delhi to NCR and *vice-versa*, to a limited



extent. However, these do not seem to pose an effective competitive constraint on the existing fleet of auto/taxis in Delhi. The same kind of argument will hold good for other regions in NCR. Further, although taxis and auto rickshaws may be permitted to travel from Delhi to NCR, it may not be feasible from the riders' point of view to book a taxi or auto rickshaw from these regions if the requirement to commute is within Delhi. Further, due to other State specific peculiarities and regulatory architecture, the conditions of competition are not homogenous across NCR.

19. For the foregoing reasons, the Commission is of the view that the relevant geographic market in the instant case will be 'Delhi'. Accordingly, in the present matter, there will be two relevant markets is '*provision of Radio Taxi services in Delhi*' and '*provision of auto rickshaw services in Delhi*'. In both these markets, the Opposite Party provides its services to the consumers (riders) through various radio taxis and auto-rickshaws registered on its network.
20. In respect of the position of the Opposite Party in the market for radio taxi services in Delhi, the Commission recently analysed the competitive landscape in the radio taxi services market in Delhi in Case No. 82/2015 and 96/2015 wherein the conduct of the Opposite Party and another radio taxi operator, Uber, respectively, was under scrutiny. The Commission took into account the data and material placed on record, including the research reports containing the market size and data pertaining to various players in the radio taxi service industry, including the Opposite Party. *Vide* its orders dated 09th February 2016 and 10th February 2016, passed under Section 26(2) of the Act in Case Nos. 82/2015 and 96/2015, respectively, the Commission concluded that there exists stiff competition, at least between Ola (*i.e.* the Opposite Party) and Uber, with regard to the radio taxi service industry in Delhi.



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Further, it was noted that, apart from them, various other players were also operating in the relevant market.

21. The Commission is of the view that the present information, filed on 18th February 2016, did not bring out any new/additional fact which would warrant a different decision than that taken by the Commission in recent cases discussed above, namely Case Nos. 82/2015 and 96/2016. It appears that the market is competitive and none of the players can be said to be dominant in the market for radio taxi services in Delhi at present.
22. In view of the foregoing, the Opposite Party is not found to be dominant in radio taxi services market in Delhi. Hence, the question of abuse does not arise.
23. With regard to the market for auto-rickshaws in Delhi, the Informants have submitted that there are approximately 16,000 auto rickshaws under the Opposite Party's network in Delhi. As per the information available on the website of Government of NCT of Delhi (Economic Survey 2014-15, Planning Department), the number of auto-rickshaws in Delhi was around 81,000 in 2014-15. Even assuming that this number has not increased substantially, the market share of Opposite Party would be around 19.75%. Though market share is not the only factor to assess dominance, it is one of the key factors in determining the position of dominance. It seems implausible that with such a low market share, the Opposite Party would be in a dominant position in the market for auto rickshaws in Delhi. In the absence of Opposite Party holding a dominant position in the relevant market for auto rickshaws in Delhi, the question of abuse by it does not arise.
24. In view of the aforesaid discussion, no case under Section 4 of the Act is made out against the Opposite Party in any of the relevant markets defined above.



This case is, thus, closed under the provisions of Section 26(2) of the Act forthwith.

25. The Secretary is directed to inform all concerned accordingly.

**Sd/-
(Devender Kumar Sikri)
Chairperson**

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

**Sd/-
(Sudhir Mital)
Member**

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

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

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

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

**New Delhi
Date: 31/08/2016**