



COMPETITION COMMISSION OF INDIA

Case No. 39 of 2019

In Re:

**Ms. Prachi Agarwal
LB - 7, Gauri Sadan,
5, Hailey Road,
New Delhi - 110001**

Informant No. 1

**Mr. Tushar Sharma,
Advocate
House No. 86-87,
Sector 6, Rohini,
New Delhi – 110085**

Informant No. 2

And

**M/s. Swiggy
Bundl Technologies Private Limited
Through its M.D. / Director/ CEO
Registered office at No. 17/9B,
4th floor, Maruthi Chambers,
Rupena Agrahara, Hosur Road,
Bangalore - 560068**

Opposite Party

CORAM:

**Mr. Ashok Kumar Gupta
Chairperson**

**Ms. Sangeeta Verma
Member**

**Mr. Bhagwant Singh Bishnoi
Member**



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

1. Ms. Prachi Aggarwal, Advocate and Mr. Tushar Sharma, Advocate (hereinafter, collectively referred to as '**Informants**') have filed the present information under Section 19 (1)(a) of the Competition Act, 2002 (hereinafter, '**the Act**') against M/s. Bundl Technologies Private Limited, known as Swiggy (hereinafter, referred to as '**Swiggy**') alleging contravention of the provisions of Section 4 of the Act.
2. As per the information, Swiggy is a company engaged in the service of app-based food ordering and delivery platform under the brand name "Swiggy". As per the Informants, Swiggy is the leading app-based food delivery company among the few app-based food delivery players viz. Zomato, Uber Eats, Foodpanda, operating in India.
3. The Informants have further stated that in case of app-based food delivery market, a customer has various options to select from nearby restaurants and make online payment or pay on delivery which is not so in the case of a phone dialed delivery system. Thus, the Informants have asserted "*App based food delivery with restaurant search platform*" to be the relevant market. Further, the Informants suggested that the food delivery app can be installed on all the smartphones and can be availed all across the country. Therefore, whole of India is the relevant geographic market as per the Informants. Accordingly, the Informants have carved the relevant market as "*App based food delivery with restaurant search platform across territory of India*".
4. For the purpose of dominance, the Informants relied upon a report of data intelligence and management platform *Kalagato.in* to state that Swiggy tops the relevant market with 48% market share in terms of transaction volume as of end-2018 while Zomato and Food Panda are pegged at 26% and 21%, respectively.
5. The Informants averred that according to Red Seer, another data intelligence firm, Swiggy leads with a 35-38% market share, followed by Zomato at 25-30%. As per Outlook business, Swiggy emerged as India's largest food-delivery platform with over 75,000 restaurant partners spread across 120-plus cities (from mere eight cities in



2017) with a 1,35,000 strong delivery fleet. As per the Informants, the official website of Swiggy claims it to be the leading food ordering and delivery platform in India. Apart from the market share, Swiggy received a total of \$ 1.5 Billion in funding and its most recent acquisition was Kint for an undisclosed amount in February 2019. Based on these assertions, the Informants have asserted Swiggy to be dominant in the relevant market.

6. Further, the Informants have elaborated upon the functioning of the OP and stated that Swiggy provides an online platform to the customers for ordering food from a wide range of neighbourhood partner restaurants listed on its platform. Swiggy has its own fleet of delivery personnel who pick up the orders from the partner restaurants and deliver it to the customers at their doorsteps. The food delivery platform of Swiggy can be accessed by installing its app on the mobile phones or by visiting its website through phone or computer/PC/laptop. The Swiggy app/ website page shows a whole list of restaurants to order from and once the restaurant is selected and order placed, the restaurant which has its own Swiggy application receives the order details and starts preparing the order. A broadcast signal is then sent to all the drivers in the vicinity who have their own driver application and those willing to accept the order can choose to accept and deliver it.
7. As per the Informants, Swiggy typically charges a commission on the total order bill amount (which is inclusive of GST) from the partner restaurant. On the other hand, Swiggy charges delivery fee from the customer which generally ranges from Rs. 20-100. At times, Swiggy also charges more based on a surge in delivery prices in times of high demand, rains, special occasions and midnight delivery.
8. The Informants have alleged that the rates charged by Swiggy through its website/ app are much higher than the rates offered by the respective restaurant/s in their outlets, over and above the delivery charges.
9. The Informants have stated that generally the customers are unaware of the rates charged by of a particular restaurant in offline mode and thus, cannot compare the



same with the rates displayed on OP's platform. The OP intentionally does not declare that it shall levy increased rates for different dishes than the original menu of any particular restaurant. The customers are blinded and made to believe that only delivery charges are applicable and are completely unaware of the inflated prices of the OP which are unreasonable and varyingly apply to various dishes. In support of the allegations, the Informants submitted bills of restaurant and screenshot of Swiggy website to indicate the difference in prices of same dishes being ordered at the restaurant and from the Swiggy platform. Thus, the Informants have alleged that the OP is acting in contravention of Section 4(2)(a) of the Act by imposing unfair price on the customers.

10. The Informants have prayed to the Commission to take up this matter and impose appropriate penalty on Swiggy for charging unreasonable and unfair prices from consumers and direct Swiggy to discontinue such abuse of dominant position.
11. The Commission considered the matter in its ordinary meetings held on 28.11.2019 and 12.12.2019, and decided to seek comments from Swiggy on the information filed by the Informants along with certain further information. Swiggy, submitted its response in public and confidential version on 24.02.2020 and 05.03.2020, after seeking due extension of time from the Commission. Swiggy also moved an application dated 24.02.2020 seeking confidentiality on certain submissions and documents, which is dealt with by a separate order.
12. Swiggy, on its business model, submitted that:
 - i) It operates an online marketplace platform through its website and its mobile application ('**Platform**') which enables transactions between participant restaurants/ merchants ('**Partners**') dealing in food and beverages and buyers who are the end consumers. Buyers can select and place orders for the products offered for sale by various Partners on the Platform and Swiggy enables delivery of such orders at select localities of serviceable cities across India.



- ii) Swiggy provides level playing field to competing Partners as it offers equal opportunity to all of them. This, results in several non-tangible, non-price benefits to consumers thereby enhancing consumer welfare.
 - iii) Platform helps Partners in saving costs in terms of hiring delivery boys and setting up a website/ application so that even the smallest of eatery has the same pool of consumers as any big restaurant. Further, buyers have the option of comparing food prices across Partner restaurants in their vicinity, increasing options and enhancing consumer choice.
13. Swiggy, on the allegations levelled against it, submitted that it only operates as an intermediary and the prices displayed on the platform are directly uploaded by its Partners (restaurants) as the decision on pricing solely rest with the Partners and Swiggy has no role (direct or indirect) to influence the prices on its Platform.
14. Swiggy, further submitted that '*Swiggy Merchant Terms of Use*' require a Partner to ensure that it maintains price parity of its products offered for sale on the Platform as against its other sales channels, including its self-operated retail locations. Swiggy has averred that as and when it receives complaints from buyers who find discrepancies between the prices listed on the Platform and the Partners' menus, the same are escalated to the Partners for action as Swiggy cannot control, alter or affect the prices of items listed on its Platform.
15. With respect to dominance, Swiggy has claimed that it is not dominant in the relevant market and Zomato is its nearest competitor. As per the Informants cited data from 2018, it is Zomato which was the market leader in the online food delivery business with 21 million orders per month as compared to Swiggy's 20 million orders. Besides this, Swiggy claims that since 2018 there have been several changes in the online food delivery market, such as Zomato acquired Uber Eats, Ola acquired Food Panda and also Amazon has plans to enter Indian food retailing sector in the next five years.



16. Thus, given the dynamic and contestable nature of the market, relevant market assessment cannot have a static approach. The customers and restaurants can easily switch between service providers depending on prices charged and schemes offered. Swiggy submitted that a higher market share of Swiggy, that too with a comparable margin to its nearest competitor Zomato, in such a dynamic market does not indicate Swiggy's dominance. Therefore, Swiggy cannot be held to be in a dominant position.
17. The Commission considered the information and submissions made by Swiggy in its ordinary meeting held on 02.06.2020.
18. Based on the perusal of the all the material available on record, the Commission noted that the gravamen of allegations of the Informants appears to be that Swiggy is charging prices higher than the prices (menu prices) charged by the respective restaurants for walk-in customers, without the knowledge of the customers. This means that the customers ordering food online *via* app/website of Swiggy end up paying higher prices than they would have paid by walking-in or ordering directly through phone from that particular restaurant. On this account, the Informants have alleged that Swiggy is abusing its dominance by charging unfair price to its customers, thus, acting in contravention of Section 4(2)(a)(ii) of the Act.
19. Before examining the abuse of dominance by an entity generally the first step is to delineate the relevant market in terms of Section 2(r) of the Act, which in turn requires delineation of Relevant Product Market and Relevant Geographic Market in terms of Section 2(t) and 2(s) of the Act, respectively. The Informant has suggested the relevant product market to be *app-based food delivery with restaurant search platform*, as iterated in earlier paras. Swiggy does not agree with the relevant market identified by the Informants. As per Swiggy, the distinguishing factor of the food delivery business is the service of receiving a restaurant's food without leaving the comfort of one's home and not the ability to search for restaurants. Swiggy asserted that the consumers can use phone based direct ordering from the restaurants or order directly from the restaurant's website, and merely the search function does not put the platform in a



different relevant market as compared to other food delivery options. Thus, the relevant market should be defined as ‘*market for food delivery*’.

20. The Commission notes that the main grievance of the Informants is of charging high prices on the platform by Swiggy. The Commission further notes that Swiggy has denied the said allegation with reference to the contractual arrangement it has entered into with its various Partners (restaurants) seeking them to maintain a uniform price of food items sold by such Partners to customers when dealing with them directly or through the platform of Swiggy. Further, it is evidenced that Swiggy, as and when it has received complaints pertaining to price differentia from its customers, has taken up the matter with the concerned Partner. This indicates, that allegations against Swiggy do not appear to be substantiated in the present case.
21. Further, Swiggy has stated that it only acts as an ‘*intermediary*’ as defined under Section 79 of the Information Technology Act, 2000 and its role is limited to providing access to a communication system over which information made available by third parties is transmitted or temporarily stored/hosted. The Commission also notes the contention of Swiggy that it does not select or modify the information contained in the transmission made through the platform, and thus, any discrepancy in the rates, is solely attributable to Partners and not to it. In this regard, the Commission observes that it would be apposite for Swiggy to give sufficient disclosures on its platform that it is not involved in fixation of price of the products/menus of the restaurants on its platform, so as to allay misgivings, if any, in the minds of any stakeholders including the consumers.
22. The Commission, in the facts and circumstances of the present case observes that it may not be germane to define a precise relevant market and conduct further analysis. Having been satisfied with the averments of Swiggy that it has no role to play in the pricing of the products offered by the Partners on the platform, the Commission finds that no *prima facie* case of contravention of the provisions of Section 4 of the Act is



made out against Swiggy in the instant matter. Accordingly, the matter is closed under the provisions of Section 26(2) of the Act.

23. The Secretary is directed to communicate to the parties, accordingly.

Sd/-
Mr. Ashok Kumar Gupta
Chairperson

Sd/-
Ms. Sangeeta Verma
Member

Sd/-
Mr. Bhagwant Singh Bishnoi
Member

New Delhi
Dated: 19/06/2020