

Meru Travel Solutions (Pvt.) Ltd. vs. ANI Technologies (Pvt.) Ltd.

Through this quarterly publication, CUTS International intends to undertake independent examination of relevant competition cases in India (on-going as well as decided). The objective is to provide a brief factual background of the facts of relevant cases, followed by an analysis of the predominant issues, therein. This publication will expectantly help readers to better comprehend the evolving jurisprudence of competition law in India. The issues have been dealt in a simplistic manner and important principles of competition law have been elucidated in box stories, keeping in mind the broad range of viewership cutting across sectors and domains. The purpose of this publication is to put forward a well-informed and unbiased perspective for the benefit consumers as well as other relevant stakeholders. Additionally, it seeks to encourage further discourse on the underlying pertinent competition issues in India.

Executive Summary

Ever since international giant Uber and homegrown Ola entered the urban transport market, they have drastically changed the face of urban mobility in the country. As the battle for dominance continues in India's otherwise fragment taxi service market, the recent investment in Uber Technologies Inc. by Japanese conglomerate SoftBank, which is already a major investor in ANI Technologies (Ola's parent company), raises novel anti-competitive issues with regard to common institutional ownership. Consequently, taxi service provider Meru Travel Solutions filed four separate complaints with the country's competition watchdog alleging that Uber and Ola are individually and collectively abusing their dominance in four different cities (Hyderabad, Mumbai, Chennai and Kolkata) and planned investments in both by Japan's SoftBank is further facilitating dominance.

Common ownership refers to simultaneous ownership of shares in competing firms by institutional investors.¹ Various recent studies have linked the concept of common ownership with anti-competitive effects to theorise that the investors may be incentivised to dampen competition either by facilitating collusion or engaging in unilateral business decisions to increase their overall profits from the industry. However, the literature remains to be supported by empirical evidence. While the issue of common ownership has gained momentum in debates amongst regulators around the world, it has made its debut in India with this case.

In this regard, the present case assumes significance in the Indian context, whereby the Competition Commission of India (hereinafter referred to as CCI) dismissed allegations of anti-competitive practices made against Ola and Uber with respect to common ownership in them, stating that currently there is no 'discernible effect' of softening of competition.

However, the CCI acknowledged the potential harms associated with common ownership and at the same time, issued a warning to the opposite parties to refrain from anti-competitive conduct owing to common shareholdings. Further, the Commission also indicated that it would monitor whether sufficient safeguards have been put in place to ensure that competition is not compromised by the common investments.

CCI'S Order

Background

Through this common order, the CCI disposed four details filed by Meru Travel Solutions Pvt. Ltd., a radio taxi service provider, under Section 19(1)(a) of the Competition Act, 2002 (hereinafter referred to as the Act) against ANI Technologies Pvt. Ltd., Uber India Systems Pvt. Ltd., Uber BV and Uber Technologies International Inc., collectively referred to as Opposite Parties (OPs) These details involved similar allegations of contraventions of the provisions of Section 3 and 4 of the Act.² Section 3 and 4 of the Act pertained to anti-competitive agreements and abuse of dominant market position, respectively. The underlying contention was that the OPs were independently and collectively dominant in the relevant market. Further, it was alleged that the two firms are dominant as a group owing to common investors. Subsequently, the OPs were abusing their dominance.

Informant's Key Allegations against the Opposite Parties

Lucrative Incentive and Discount Model

The informants alleged that owing to deep pockets of investors, the OPs are able to lock in their drivers and riders into one network by offering unrealistic incentives and discounts, respectively.³ Further, under the guise of promotional activities, the OPs have been engaged in below variable cost pricing to ensure increased bookings through low fares.⁴ Such anti-competitive practices have led to significant losses to the OPs, however, they are able to bear these losses due to huge amounts of funding received at repeated intervals.⁵

Such practices are undertaken to oust competitors from the market, as the other players, including the informant, are unable to match the strong networks of drivers and riders that are created through their lucrative incentive and discount model.⁶ Consequently, it creates entry barriers in the market thus foreclosing competition.⁷

Box 1: Predatory Pricing

Predatory pricing is a deliberate strategy of driving competitors out of the market by setting very low prices or selling below average variable cost (AVC). In simpler terms, firms, in order to gain monopoly power, reduce their prices significantly, so that consumers prefer their product over the product of their competitors. Competing firms with less cash reserve and loss bearing capacity exit the market

and new firms are deterred from entering. Dominant firm in order to compensate for the loss made raises the price of their product after driving the competitors out of the market.

While predatory pricing is illegal under the competition laws of most countries, it is very difficult to prove, as reduction in price of a product can easily be considered as an act under price wars between competitors.

Source: <http://www.oecd.org/competition/abuse/2375661.pdf>

Market Share

Relying on a market study report prepared by a private research company, the informants alleged that based on active fleet and number of trips per day, the market shares of OPs have remained constantly high, particularly during October 2015 to February 2017, while the market shares of other cab operators have reduced significantly.⁸ Further, based on these facts and figures, it can be said that the OPs have accumulated roughly over 90 percent share in the markets of the respective cities.⁹

Table 1: Market Share Statistics Submitted by the Informants

City	2015			2017		
	Ola	Uber	Meru	Ola	Uber	Meru
Hyderabad	41% active fleet	40.1% active fleet	10.07% active fleet	46.24% active fleet	45.47% active fleet	3.1% active fleet
	43.8% trips	42.8% trips	7.6% trips	49.2% trips	48.3% trips	1.4% trips
Mumbai	38.3% active fleet	22.6% active fleet	18.1% active fleet	47.87% active fleet	44.03% active fleet	2.84% active fleet
	42.6% trips	25.2% trips	13.4% trips	50.86% trips	46.79% trips	1.01% trips
Kolkata	33.3% active fleet	54.6% active fleet	2% active fleet	33.2% active fleet	60.7% active fleet	1.34% active fleet
	32.5% trips	58.7% trips	2% trips	34.8% trips	63.8% trips	0.3% trips
Chennai	54.4% active fleet	9.69% active fleet	5.28% active fleet	60.86% active fleet	29.64% active fleet	0.20% active fleet
	68.3% trips	10.1% trips	4.42% trips	72.9% trips	24.86% trips	0.02% trips

Collective Dominance

As per the informants, the definition of dominant enterprise as defined under Section 4 of the Act is wide enough to include dominance by two enterprises, which together have the strength to affect competitors or relevant market in their favour.¹⁰ Further, the Act stipulates that 'no enterprise' shall abuse its dominant position thus implying a prohibition on dominance and not a limitation to a single enterprise.¹¹ Hence, the Act encompasses collective dominance and the OPs are collectively dominant in the relevant market. In support of their contention, the informants relied on the Canadian Competition Tribunal's decision in the case of *Commissioner of Competition vs. Visa Canada Corporation and Master Card International Corporation (2013)* where the tribunal observed that two undertakings (Visa and MasterCard) can have market power in the same relevant market.¹²

Common Institutional Ownership

As per the informants, pursuant to common ownership in the shares of OPs by institutional investors, such as Tiger LLC, Sequoia Capital and Didi Chuxing in their business, the OPs are dominant as part of the same 'group' within the meaning of Section 5 of the Act that envisages regulation of combinations.¹³ Softbank holds more than 25 percent shareholdings in Ola via its affiliate SIMI Pacific Pte. Ltd. and it recently acquired 17.5 percent stake in Uber in January 2018. Thus, the added presence of SoftBank nominee directors on the respective boards of OPs will further translate into control by common investors.¹⁴ They are then liable to be assessed as a 'group' under Section 4 for evaluating Abuse of Dominance.¹⁵

Proposition of the Informant

Based on the above-mentioned allegations, the Informant claimed the OPs to be dominant and proposed two alternative lines of arguments:¹⁶

- Both Ola and Uber are independently as well as collectively dominant in the relevant market and both are abusing their dominant position.

Or

- Ola and Uber are dominant as a 'Group' owing to common investors and they are abusing their dominance.

Response by the Opposite Parties

Agreements with drivers

Contesting the allegation of OPs entering into anti-competitive agreements with their driver-partners, it was submitted that the driver partners are not bound by the platforms of OPs and are free to switch to other platforms by simply downloading and utilizing another app.¹⁷ There is no condition of exclusivity attached with the association of driver partners to the platform of the OPs.¹⁸

Relevant Market

The relevant product market extends beyond the market of 'radio taxi services' and should include other modes of public transport, such as taxis, buses, auto rickshaws, metro, etc. as these are substitutable with one another.¹⁹ Further, it should also include the 'market for driving services for three and four wheelers'.²⁰

Common Ownership and Collective Dominance

The Act does not recognise collective dominance and OPs cannot form part of the same group owing to shareholdings by common investors.²¹ Cross-shareholding in multiple companies in the same sector is a common practice undertaken by investors to mitigate the risk of failure of companies by spreading their investment.²²

The OPs submitted that SoftBank has a 15 percent shareholding in Uber with the right to appoint only two out of 17 Directors on its Board.²³ Thus, it does not meet the control test by a group under Section 5 of the Act.²⁴ Further, allegations against SoftBank for facilitating a consolidation of the OPs in the market are stemming from newspaper reports and cannot be relied upon as concrete evidence.²⁵

Observation and Findings by the CCI

Anti-competitive agreements

In response to Informant's allegations that the strategy/incentive model employed by the OPs amounts to an anti-competitive agreement, the Commission observed that it amounted to a narrow reading of 'agreement' under Section 2(b) of the Act. The said incentives offered by the OPs, which formulate an agreement, according to the informant, have been availed by the drivers out of choice. Further, the Commission agreed with its own observation in Case No. 6 and 74 of 2015 that the drivers and riders are free to engage in multi-homing across different aggregators through apps.

Moreover, there are no supply constraints in the market for drivers to support the contention that these alleged agreements lock the drivers in the network and create

barriers to entry. Hence, the Commission observed that the incentives provided by OPs to their drivers do not amount to an agreement. Since the existence of an agreement is a pre-requisite to attract the provisions of Section 3 of the Act, the Commission rejected the allegation of anti-competitive agreements.

Relevant Market

The Commission adopted the relevant market definition from its earlier orders where the Commission defined the relevant product market as 'Radio taxi Services' for Hyderabad, Mumbai and Chennai²⁶. For Kolkata, the relevant market was held to be 'services offered by radio taxis and yellow taxis.'²⁷ In so defining the relevant market, the CCI took various factors into consideration, such as convenience of time saving, point-to-point pick and drop, pre-booking facility, ease of availability even at obscure places, round the clock availability, predictability in terms of expected waiting/journey time, etc., and the fact that there is a dedicated category of consumers of radio taxis who will not switch to other modes of transport under normal circumstances.²⁸ In considering the relevant geographic market, the Commission agreed with the earlier cases that such market did not extend beyond the local limits of a particular city/state.²⁹

Dominance

In assessing dominance, the Commission took note of the following:

- Market Share

The Commission noted that while market share is theoretically a significant indicator it alone is not a conclusive indicator of dominance. In its earlier decisions³⁰ where the CCI had directed detailed investigation primarily on the basis of market shares, it was revealed that 'market share was neither an indicator of lack of competitive constraints, nor did it depict the real competition that existed in the market'. Since the Act does not provide for a numerical threshold of market share for presumption of dominance, the CCI rejected the informant's contention that market share of more than 50 percent by the OPs led to a presumption of dominance.

- Collective Dominance (Dominance by more than one enterprise)

In rejecting the Informant's contention that OPs are collectively dominant, the Commission quoted its elaborated discussion on the issue in Case No. 6 and 74 of 2015. The Commission emphasised that the scheme of the Act does not allow for more than one dominant player under Section 4. If anything, the presence of two strong players in the market only reflected competition between them unless they

have agreed not to compete which also can be only be looked into under Section 3 of the Act and not Section 4.

The Commission highlighted the following provisions from its previous order³¹ that reflected the intent of the legislature only for one dominant enterprise in the relevant market at a point of time:³²

- *Section 4(2): There shall be an abuse of dominant position, if an enterprise or a group...*
- *Section 4(2) (a): 'dominant position' means a position of strength, enjoyed by an enterprise, in the relevant market, in India, which enables it to:*
 - i. *operate independently of competitive forces prevailing in the relevant market or*
 - ii. *affect competitors or consumers or the relevant market in its favour.*
- *Section 19(4): The Commission shall, while inquiring whether an enterprise enjoys a dominant position or not under Section 4, have due regard to all or any of the following factors, namely...(c) size and importance of competitors, (d) economic power of the enterprise including commercial advantages over competitors...*
- *Section 28: The Commission may, notwithstanding anything contained in any other law for the time being in force, by order in writing, direct division of an enterprise enjoying dominant position to ensure that such enterprise does not abuse its dominant position.*
- *The Competition (Amendment) Bill, 2012 (Bill No. 136 of 2012)*

(Clause) 4. In Section 4 of the principal Act, in Sub-section (1), after the words "or group", the words 'jointly or singly' shall be inserted.

As per the Commission, the usage of articles a/an in Section 4 to denote an enterprise reflects the intention of the legislature to signify a single enterprise unless it forms part of the group under Section 5 of the Act. Further, the Commission interpreted that the underlined words indicate that the essence of Section 4 of the Act lies in proscribing unilateral conduct exercised by a single entity or group, independent of its competitors or consumers. The words used in Section 19 (4) and Section 28 indicate the intention of the Act to limit the scope of application to one

entity only. Further, the proposed amendment elucidates that the present scheme of the Act does not provide for collective dominance.

- *Dominance as a group owing to common investors*

'Common ownership refers to a situation where large institutional shareholders, such as investment funds, foreign wealth funds, pension funds, etc., hold minority stakes in a large number of companies that are active in the same industry and compete with each other'.³³ The CCI observed that overlapping ownership interests in competing firms may give rise to two types of theories of harm:³⁴

- i. Unilateral effects where common ownership may incentivise unilateral price increases (or reductions in quality) that might be unprofitable for a firm, but beneficial for its investors if they also hold shares in its competitor(s).
- ii. Coordinated effects where it may create additional incentives to investors to facilitate collusion and earn collusive profits.

However, in the absence of any compelling evidence of anti-competitive harms being played out in the market the Commission observed that these theories of harm are yet to be tested. There is no definitive prediction that showcases a causal relation between common ownership and softening of competition. Although the theories suggest that common ownership translates into control (control being *de facto*, *de jure* as well as material influence), there is no certainty of anti-competitive effects of common ownership in every market. There should be an enquiry to determine the level at which common ownership may pose anti-competitive risks.

The Commission acknowledged the risks associated with common ownership, such as exchange of sensitive information, which may incentivise price collusion or reduction in quality, which may be unprofitable to the firm but profitable to the investors. However, the trigger point to order investigation under Section 26(1) has to be based on a *prima facie* establishment of a contravention either under Section 3 or Section 4 of the Act and not on 'apprehensions and conjectures'.

Abuse of Dominance

The Commission observed that abuse of dominance is *sine qua non* to ordering an investigation under the Act. Thus, prior to establishing abuse of dominance, the dominance of a firm needs to be established in line with the provisions of the Act. Citing the paradigm shift from 'monopoly being *per-se* bad' to 'abuse of dominant position' being bad in law³⁵, the Commission emphasised on the prerequisite of an

abusive conduct to order an investigation even if dominant position pursuant to common ownership is established.

Analysis by CUTS

Common Ownership and its Impact on Competition

The issue of potential anti-competitive effects of common ownership has gained prominence in international debates over the years. In the global context, recently the issue came under spotlight following the horizontal merger of agrochemical giants, the Dow Chemical Company and E.I. du Pont de Nemours & Company that operated in a highly concentrated crop protection industry.³⁶ In reviewing the merger, the concept of common ownership formed a substantive part of the European Commission's (EC) analysis. The EC observed that common shareholdings may discourage competitors from aggressively competing regarding innovation and held that *common shareholding in the agrochemical industry is to be taken as an element of context in the appreciation of any significant impediment to effective competition.*³⁷

Various studies have attempted to investigate whether common shareholdings have a detrimental effect on competition in concentrated industries.³⁸ Recently, the discourse was triggered by empirical studies conducted by a group of economists that identified a causal connection between common investment and weakened competition, largely in concentrated markets.³⁹ This may be visible in the form of reduction in a firm's incentives to compete and increase in prices thereby harming consumers in the relevant market.

For instance if firm A and B, competing and operating in the same industry, have common shareholders, the shareholders might be willing to reduce the vigor with which firm A competes, thus allowing firm B to increase prices and thereby make more profits which are then pocketed by the firms shareholders through their ownership interest in Firm B.⁴⁰ Thus, the shareholders invested in several firms in the same industry may be willing to sacrifice the profits of a firm for that of its rival as they are concerned with the performance of the industry as whole, rather than individual firms.⁴¹

At the same time, as per another view, while the *potential* anti-competitive effects of common ownership have been outlined, the *actual* harm remains to be delineated.⁴² In order to assess whether common ownership will actually generate substantial anti-

competitive effects in the market, multiple factors may be taken into account including but not limited to the nature and extent of common ownership in the relevant market, the structure of the market, shareholder incentives, and managerial objectives.⁴³ The same may also be assessed differently by adopting a case-by-case approach. Further, common ownership may cause substantial competitive harm only when the firms' products are homogeneous or close substitutes of each other but not if the products are poor substitutes.⁴⁴

In the present case, the CCI rightly observed that global market regulators are yet to come up with definitive theories of harm associated with common ownership and empirical research that seeks to substantiate them. This observation is in line with the view taken by Organisation of Economic Cooperation and Development (OECD) as follows:

*The preceding discussion has made clear that there is substantial disagreement about the harm associated with common ownership, efforts to estimate it empirically, and proposals for addressing competition problems it may cause. Before adapting their approaches and legislation, competition authorities may therefore wish to conduct further analyses of common ownership in their jurisdictions.*⁴⁵

Additionally, recognising the risk of common ownership the Commission also highlighted the danger of conscious parallelism in pricing and trade terms through exchange of sensitive information. Thus, regardless of 'passive' investments, the CCI acknowledged the potential anti-competitive effects of common investments.

Interestingly, the CCI linked the effect of common shareholdings on competition to the composition of Board of the opposite parties and the role of Directors in their decision making thus touching upon the issue of Interlocking Directorates.⁴⁶ In the US, Section 8 of the Clayton Act imposes a prohibition on same person serving as a Director of two competing corporations (with certain exemptions).⁴⁷ The same was implemented in 2009 when an interlock between Apple and Google was resolved by Google's Chief Executive Officer resigning from the Board of Apple and a common member resigning from Google's Board.⁴⁸

Therefore, CCI's order might be a bitter-sweet pill to swallow for the opposite parties as well as other firms operating on common shareholdings in concentrated industries. On one hand, the order suggests that mere existence of common shareholding may not necessarily be indicative of anti-competitive practices. However, at the same time, the order unequivocally laid out that the antitrust watchdog will closely monitor the market and would not be hesitant to take

appropriate action, *suo-moto* or otherwise, if concern arising out of horizontal shareholdings *prima facie* seem to exist at any point of time in future wherein the OPs are found to be competing less vigorously consequent to any interference by the common investors in the management decisions by these that are detrimental to competition.⁴⁹

In the absence of empirical evidence supporting theories of harm arising from common ownership, the CCI's order does not spell out the means of acquiring such empirical evidence should a common ownership concern arise again in the future. It is unclear whether the CCI would launch an investigation to assess the anti-competitive effects of common investments or whether it would be resorting to studies/orders from other jurisdictions. Further, as CCI enters the realm of assessing anti-competitive effects of common ownership in the market, it remains to be decided whether such assessment would require a sector-agnostic approach in deliberating potential as well as actual anti-competitive effects of common ownership.

[Pro Innovation Order in the age of Disruptive Technologies](#)

CCI plays a significant role in the development of innovative and disruptive business models in the country as it carries the authority to impose stringent economic penalties as well as behavioural prohibitions. Innovation not only improves consumer choice but also contributes to economic growth. Policies and regulations that are overly interventionist carry a risk of impairing innovation, particularly in a highly dynamic technology-driven market. As the tech sector in India continues to expand, innovative firms will have a competitive edge over their traditional counterparts in any industry.

Thus, adopting a protectionist approach towards incumbents that are unable to keep up with the market innovations may lead to reduction in benefits to the consumers in terms of choice, quality, convenience and prices. To that end, it will be essential for CCI to strive towards creating an innovation friendly ecosystem in the country by striking a balance between *giving disruptors carte blanche and excessively stifling competition as well as innovation.*⁵⁰

Therefore, the abovementioned order showcases a pro-innovation and pro competition approach adopted by the CCI in dealing with disruptive innovation models. This order is in line with the Austrian Economist, Joseph Schumpeter's view that markets driven by innovation are marked by 'gales of creative destruction' which

translates into competition thus leading to improved performance and lower costs for consumers.⁵¹

Although the order deals with online platforms only, as we transcend into the age of disruptive technologies, the order highlights CCI's intention of balancing regulatory intervention and promoting innovation so long as it does not harm competition. This view is also aligned with European Union's approach where it is believed that *a rigid application of traditional antitrust rules to these markets risks severely restricting competition, innovation, and consumer welfare and competition authorities should only intervene in dynamically competitive markets where the potential for anti-competitive harm is large and the potential benefits from intervention are great.*⁵²

Box 2: The Curious Case of Multisided Platforms

Multisided Platforms have been defined by OECD as *a market in which a firm acts as a platform and sells different products to different groups of consumers, while recognising that the demand from one group of customer depends on the demand from the other group(s).* In simpler words, these digital platforms use technology to connect different groups of customers that benefit from each other, examples being Ola, Uber, AirBnb, Amazon. For instance, taxi aggregators, such as Ola and Uber connect riders and drivers wherein drivers benefit from more riders on the platform and vice-versa.

The rapid emergence of digital economy has led to the exponential growth in the scale and scope of operation of these platforms. They exhibit certain unique characteristics that enable them to translate those unique features into a source of high market power in the industry. This may give rise to potential risks of market dominance that may inadvertently harm consumers. Consequently, these platforms are increasingly inviting the attention of regulators and antitrust enforcement authorities. They are at the heart of international debate on how to analyse their market power and the competitive process. It remains to be assessed whether the traditional antitrust enforcement tools that are used to define markets, and to assess market power, exclusionary conduct, vertical restraints, or efficiencies, be sufficient to address these anti-competitive concerns in the context of multi-sided markets. While there is ample theoretical literature available on the subject, it remains to be supported by empirical evidence. Perhaps, time will tell whether the CCI will conduct evidence-based studies to look

into the grey areas brought about by these unique technologies or whether the CCI will adopt a wait-and-watch approach.

Source: <http://www.oecd.org/daf/competition/Rethinking-antitrust-tools-for-multi-sided-platforms-2018.pdf> (last accessed on 03.08.2018)

Conclusion

The Commission in the present case concluded that in the absence of a *prima facie* case against the OPs, either under Section 3 or under Section 4 of the Act, the case is closed under the provisions of Section 26(2) of the Act. The Commission rightly observed that the empirical literature on market dynamics pursuant to common ownership is at a nascent stage. Further, as pointed out by CCI, it is yet to be determined *whether the common ownership has translated into control and, if yes, whether such an ownership can pose a competitive risk.*⁵³

However, ending on a cautionary note, the Commission stated that while at present there are no discernible effects of softening of competition due to common ownership, it would keep a close watch on the OPs for violation of the provisions of the Act. It will also monitor that the opposite parties have put sufficient safeguards/Chinese walls in place to ensure that competition is not compromised by virtue of common investments.

The case also marks a significant move by the CCI to balance regulation and innovation. With the advent of platforms and disruptive technologies, the CCI will be faced with contemporary competition law challenges. In that regard, it is pertinent that the Commission gives considerable weightage to understanding the functioning of these platforms on a granular level and linking their benefits ultimately with consumer welfare.

Endnotes

- 1 [https://one.oecd.org/document/DAF/COMP\(2017\)10/en/pdf](https://one.oecd.org/document/DAF/COMP(2017)10/en/pdf) (last accessed on 03.08.2018).
- 2 Meru Travel Solutions (P) Ltd. v. ANI Technologies (P) Ltd., Case No. 25 of 2017, order dated 20.06.2018 available at: <https://www.cci.gov.in/sites/default/files/25%20-%2028%20of%202017.pdf> (last accessed on 03.08.2018).
- 3 Ibid at Page 4 of 28; Drivers are offered monetary incentives for completing a certain number of rides. Similarly, riders are offered heavily discounted rides to encourage them to use these platforms.
- 4 Supra Note 2 at Page 11 of 28.
- 5 Supra Note 2 at Page 11 of 28, it was averred that in 2015-16 Ola ran into losses amounting to Rs. 2311 crores while Uber reported a worldwide loss of USD 3.8 billion.
- 6 Supra Note 2 at Page 12 of 28.
- 7 Supra Note 2 at Page 4 of 28.
- 8 Supra Note 2 at Pages 5-9 of 28.
- 9 Supra Note 2 at Page 11 of 28.
- 10 Supra Note 2 at Page 10 of 28.
- 11 Ibid.
- 12 Ibid.
- 13 Supra Note 2 at Pages 6-9 of 28.
- 14 Supra Note 2 at Page 11 of 28.
- 15 Supra Note 2 at Page 10 of 28.
- 16 Supra Note 2 at Page 17 of 28.
- 17 Supra Note 2 at Page 13 of 28.
- 18 Ibid.
- 19 Supra Note 2 at Page 13-14 of 28.
- 20 Ibid.
- 21 Supra Note 2 at Page 14 of 28.
- 22 Ibid.
- 23 Ibid.
- 24 Ibid; Explanation b (i) to section 5 of the Act provides that "group" means two or more enterprises which, directly or indirectly, are in a position to exercise twenty-six per cent or more of the voting rights in the [other] enterprise.
- 25 Ibid.
- 26 Case No. 6&74 of 2015, <https://www.cci.gov.in/sites/default/files/6%20%26%2074%20of%202015.pdf>; Case No. 82 of 2015, https://www.cci.gov.in/sites/default/files/26%282%29_82%20of%202015_0.pdf; and Case No. 21 of 2016, <https://www.cci.gov.in/sites/default/files/212016.pdf>.
- 27 Case No. 81 of 2015, <https://www.cci.gov.in/sites/default/files/812015.pdf>.
- 28 Supra Note 2 at Page 16 of 28.
- 29 Supra Note 2 at Page 17 of 28.
- 30 Case No. 6 and & 74 of 2015.
- 31 Ibid.
- 32 Section 4(2), Section 4(2)(a), Section 19 and Section 28 of the Competition Act of India, 2002.
- 33 Supra Note 2 at Page 22 of 28.
- 34 Supra Note 2 at Page 23 of 28.
- 35 The Monopolies and Restrictive Trade Practices Act, 1969 to Competition Act, 2002.
- 36 http://ec.europa.eu/competition/mergers/cases/decisions/m7932_13668_3.pdf (last accessed on 03.08.2018).
- 37 Ibid.

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- 38 https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2427345;
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2710252;
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2941031;
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3046829.
- 39 https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2427345;
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2710252 (last accessed on 03.08.2018).
- 40 <http://clsbluesky.law.columbia.edu/2017/04/10/common-ownership-institutional-investors-and-antitrust/> (last accessed on 03.08.2018).
- 41 <https://www.law.ox.ac.uk/business-law-blog/blog/2016/11/common-ownership%E2%80%9D-new-competition-law-issues-respect-minority> (last accessed on 03.08.2018).
- 42 https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2941031 (last accessed on 03.08.2018).
- 43 Ibid.
- 44 Ibid.
- 45 In December 2017, the OECD hosted a hearing to explore the topic of Common ownership of institutional investors and its impact on competition, available at: [https://one.oecd.org/document/DAF/COMP\(2017\)10/en/pdf](https://one.oecd.org/document/DAF/COMP(2017)10/en/pdf) (last accessed on 03.08.2018).
- 46 It refers to membership on the boards of directors of two or more firms by the same individual, retrieved from <http://www.businessdictionary.com/definition/interlocking-directorate.html> (last accessed on 03.08.2018)
- 47 <https://www.lexology.com/library/detail.aspx?g=0a122efb-7e60-4560-a416-39ed51c3867b> (last accessed on 03.08.2018).
- 48 Ibid.
- 49 Supra Note 2 at Page 28 of 28.
- 50 <https://www.competitionpolicyinternational.com/disruptive-innovations-ccis-progressive-outlook/> (last accessed on 03.08.2018).
- 51 Rafael Alves de Almeida, Market Dominance in the New Economy, *Revista Direito V. 2 N. 2*, 67 – 98 (2007), available at: http://direitosp.fgv.br/sites/direitosp.fgv.br/files/rdgv_04_pp067-098.pdf (last accessed on 03.08.2018).
- 52 White Paper on Competition, Competitors, and Consumer Welfare: Observations on DG Competition's Discussion Paper on Article 82, 9 (2006).
- 53 Supra Note 2 at Page 27 of 28.

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