

# ANALYSIS OF COMPETITION CASES IN INDIA

## **Fast Track Call Cab Pvt. Ltd. and Meru Travels Solutions Pvt. Ltd. vs. ANI Technologies Pvt. Ltd.**

Through this monthly 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. The purpose of this publication is to put forward a well-informed and unbiased perspective for the benefit of the consumers as well as other relevant stakeholders. Additionally, it seeks to encourage further discourse on the underlying pertinent competition issues in India.

## Executive Summary

Over the last decade, the online economy has grown exponentially and has increasingly attracted vast investments, especially in countries, such as India which hold massive untapped market potential. Numerous innovative online businesses have emerged across sectors which are constantly challenging traditional ways of doing business and have resultantly overtaken the incumbents.

Inherent efficiency improvements, cost-effectiveness and the ability to cater to two sides of a market have practically empowered contemporary online businesses to lay down the foundations of the 'new economy'.<sup>1</sup> One such emerging business model which has transformed urban mobility and revolutionised the transportation sector is that of taxi aggregation.<sup>2</sup>

Taxi aggregator models cater to two-sides of the market, i.e. drivers and the users and seek to achieve network effects through an online interface. Network effects are necessary for long-run sustainability of the taxi aggregation business as the number of consumers directly determine the scale and profitability of the services that are being offered. Hence, taxi aggregators, such as Ola and Uber had offered increasingly competitive prices and discounts in order to generate network effects and gain market share.

Notably, pricing models adopted by taxi aggregators have resulted in corresponding losses for incumbents, which have subsequently questioned the legality of the pricing strategies and raised anti-competitive concerns against aggregators globally. Notably, taxi aggregator businesses have been pitched against incumbents in legal battles across jurisdictions, including India.

In one such recent dispute, incumbent taxi service providers were pitched against their Indian aggregator counterpart i.e. Ola. The chief issue raised by the informants in this case was that of predatory pricing and abuse of dominance. Upon detailed investigation into the allegations of the informants, the Commission was of the view that Ola being a non-dominant player in the relevant market of *market for services of radio taxis in Bengaluru*, did not indulge in predatory pricing behaviour. This decision of the Commission marks a significant milestone in competition law jurisprudence in India as it lays down the foundations for a 'pro-innovation' and 'pro-competition' approach towards technology-driven new-age business models.

## Competition Commission of India's - Order

### Background

The present case relates to the dispute between two radio taxi service providers (namely Fast Track Call Cab Pvt. Ltd. and Meru Travel Solutions Pvt. Ltd.) and Ola (ANI Technologies Pvt. Ltd.), which is an app based taxi aggregator. The informants essentially alleged *inter alia* contravention of Section 4 of the Competition Act, 2002, i.e. abuse of dominant position.

Earlier, both informants had filed separate complaints with the Commission wherein the basic contention was that by offering heavy discounts to passengers and heavy incentives to cab drivers, Ola had abused its dominant position in the relevant market, which allegedly amounted to predatory pricing.<sup>3</sup> The Commission in its *prima facie* order stated that Ola held a dominant position in the market for 'Radio Taxi services in the city of Bengaluru' and that it was abusing its dominant position. In furtherance of this, the Commission clubbed the information in both cases together and ordered the Director General (DG) to investigate.

### Findings of the Director General

There were basically two key issues which needed detailed investigation:

1. Whether Ola held a dominant position in the relevant market or not? and
2. If it held a dominant position, whether its conduct amounted to abuse (predatory pricing) within the meaning of Section 4(2) (a)(ii) of the Act?<sup>4</sup>

#### Box 1: What is Predatory Pricing?

'Predatory pricing' means the sale of goods or provision of services, at a price which is below the cost of production of the goods or provision of services, with a view to reduce competition or eliminate the competitors. The theoretical construct of predatory pricing states that an existing dominant firm, with the intention to oust equally efficient competitors or to deter new entrants, sets its prices below costs with the expectation that present losses (or foregone profits) like any investment, will be made up by future gains (recoupment).<sup>5</sup> It is important to note that 'predatory pricing' is a form of 'abuse' of dominance and to prove that a firm is engaging in predatory pricing behaviour, proving dominance becomes a necessary prerequisite.

## ***Relevant Market***

In the present case, the DG analysed the Indian taxi industry in general and that of Bengaluru in particular. In order to define the relevant product market, the DG considered Ola's contention that the company was merely a technology company and an 'aggregator of taxis', and was not in the business of radio taxis, unlike Meru, Mega, Easy Cabs, etc. Due to the inherent difference in business models, Ola indicated that it merely connected drivers with prospective consumers and did not own the cabs itself.<sup>6</sup>

The DG analysed various models of the radio taxi service industry including the Asset owned model (like Fast Track and Easy Cabs), the Aggregator model (for example, Ola and Uber) and the Hybrid model (like Mega and Meru Cabs).<sup>7</sup> Despite Ola's argument of being a technology service provider, the DG stated that taxis operating under the three business models were substitutable in nature, making them a part of the same relevant market. Hence, Ola was held to be a part of the same relevant product market, i.e. *market for radio taxi services*.<sup>8</sup>

The DG also considered whether other commercial modes of transport would act as substitutes to taxis and whether they would pose an effective competitive constraint on Ola's taxis.<sup>9</sup> In order to ascertain this, the DG distinguished the radio taxi services providers from other transport modes on the basis of the following characteristics which were distinct to the former:

- Point to point pick and drop facility
- Round the clock availability even at obscure locations
- Ease of booking and pre-booking facility
- Quality vehicles and professional drivers
- Feedback facility, etc.<sup>10</sup>

Hence, the DG delineated the relevant product market as *market for radio taxi services*.<sup>11</sup> Furthermore, the DG restricted the relevant geographic market to the city of Bengaluru.<sup>12</sup> The rationale was that transport being a state subject, taxi regulations and schemes differed from state to state and city to city.<sup>13</sup> Following this logic, the DG stated that regulatory conditions of competition were homogenous and peculiar to a particular city or district and radio taxis operated in highly localised areas.<sup>14</sup> Combining the

product and geographic market, the relevant market was determined to be – *market for services of radio taxis in Bengaluru.*

### ***Dominance***

To ascertain whether Ola was dominant in the relevant market, the DG assessed market dominance of Ola from June 2012 to September 2015. The market share analysis was based on number of trips (monthly and annually) and total fleet size and active fleet size (though this was not found to be reliable due to one radio taxi being registered at multiple platforms).

#### **Box 2: Market Share Analysis**

Upon detailed investigation, the following analysis on market shares was put forward by the DG:

- Market share of Meru and other operators declined from 2012-13 to 2015-16
- Ola entering in early 2011 with 5-6 percent share in 2012-13, which increased to 61-62 percent by 2015-16
- Uber entered in August 2013 with 1-2 percent share in 2013-14, which increased to 9-10 percent by 2014-15
- Meru was the leader till August 2014, Ola took lead since September 2014, with Uber at second since March 2015
- Between January to September 2015, Uber's trip size grew at 1200 percent, whereas Ola's trip size grew at 63 percent.

Based on the aforementioned analysis, the DG concluded that Ola was not able to hold its market share for a reasonable period of time, hence indicating that it could not be a dominant player in the market.<sup>15</sup> The DG also considered the limitations of relying solely on the market share analysis and thus, took into account various other factors to determine dominance.<sup>16</sup>

Considering Ola's financial resources, the DG observed that Ola had managed to attract substantial investment and was able to raise its total resources to ₹5504.81 crore (approximately US\$827mn).<sup>17</sup> Other competitors were lagging in this regard but Uber,

which was backed by its marketing technology and logistics and financial support, was able to successfully counter Ola's pricing strategy.<sup>18</sup>

This restrained Ola from exercising its market power in the relevant market. Moreover, the lock-in effect faced by the demand as well as supply side was held to be negligible as nothing was stopping the drivers from moving to other platforms and the consumers could exercise countervailing buyer power and easily avail services of other platforms, such as Uber.<sup>19</sup> In addition to this, barriers to entry were held to be quite low as the aggregators did not have to invest in buying cabs.<sup>20</sup> Based on this analysis (*inter alia* other arguments), the DG concluded that Ola was not dominant in the relevant market as it could not act independently of its competitors or consumers.

### ***Abuse of Dominance***

The chief allegation against Ola was with respect to its predatory pricing strategy. As the precursor to predatory pricing, i.e. dominance was not proved and thus, the DG concluded that the question of abuse would not arise.<sup>21</sup>

Regardless, the DG looked into the pricing strategy of Ola *vis-à-vis* its competitors and found that Uber was a more aggressive player and both Ola and Uber had adopted 'below cost pricing' strategies'.<sup>22</sup> Be that as it may, the DG opined that Ola had not violated Section 4, because the Act stipulated that until and unless an incumbent is proved to be a dominant entity, it cannot be said to have entered into predatory pricing behaviour.<sup>23</sup>

### **Responses to the DG Report**

Box 3 briefly elucidates the key responses by both parties to the DG's report and analysis.

### Box 3: Key Responses by the Informants and Ola

Response by the Informants	Response by Ola
<ul style="list-style-type: none"><li>• Informants claimed that there lies a possibility to have two entities exercising dominance collectively<sup>24</sup>, and DG's report agreed that growth of Ola and Uber is not due to technology innovation, but due to charging below average variable cost<sup>25</sup></li><li>• The informants stated that the radio taxi market is characterised by network effects, which can cause entry barriers because it would take considerable time for a new entrant to capture a good position and compete against an incumbent.<sup>26</sup></li><li>• High capital requirement was stated to be another entry barrier for new entrants and a barrier for expansion for existing players for the radio taxi market.</li><li>• Informants alleged that providing services at below average variable cost was only with the intention of eliminating competition. Thus, it is an anti-competitive practice.</li></ul>	<ul style="list-style-type: none"><li>• Ola challenged the delineation of the relevant product market and reiterated that it was only a technology service provider and not a radio taxi service provider. By facilitating the connection between two ends of a supply chain, it merely acted as an aggregator of taxis and thus, it should be considered as a technology platform and not a transportation company.</li><li>• Ola also challenged DG's finding of its pricing below average variable cost. It claimed that due to a two-sided market, the pricing structure had to be balanced to attract both sides, otherwise the utility of the intermediary is nullified. Also, the fact that Ola charged the Commission from drivers for its revenue, which was more than the average variable cost. Moreover, customer discounts, bonuses and driver incentives were alleged to be budgeted fixed costs, pointing towards the lack of predatory pricing behaviour.</li></ul>

## Order of the Commission

While determining the relevant market, the Commission acknowledged that although Ola acted as a platform operating in the radio taxi service market, it would still be considered to be a part of the same relevant market as other players operating under the asset-owned model. The rationale being that irrespective of the business model, the services offered and rendered were that of radio taxis.<sup>27</sup> The relevant product market was thus held to be *market for radio taxi services*.<sup>28</sup> The Commission also agreed with the DGs analysis of the relevant geographic market and resultantly held that the relevant market would be *market for radio taxi services in Bengaluru*.<sup>29</sup>

Assessing the issue of dominance, the Commission laid down the reasoning by stating that though the operators under the platform-based model provided the same product/service (taxi services), the technology enabled them to expand the market at both ends (*i.e.* the consumer and driver base) immensely.<sup>30</sup> Considering the informants' argument that Ola had more than 50 percent market share, the Commission held that in case of new economy/hi-tech markets, high market shares, in the early years of introduction of a new technology, might turn out to be short-lived as was visible from the fluctuating trends in market shares across different months in the relevant market throughout the period of investigation.<sup>31</sup>

The Commission further agreed with the informants that network effects had a role to play in determining the competition dynamics and relative position of strength held by market players in a two-sided market, but they were not strong enough to deter the entry and rapid expansion of other competitors, such as Uber.<sup>32</sup>

Furthermore, the Commission stated that there were no significant costs preventing consumers and drivers from switching between different radio taxi apps.<sup>33</sup> The financial barriers to entry were also considered to be low as a level-playing field in access to finance was prevalent which was evidenced by the experience of technology start-ups across sectors in the country which could access funding from various sources like venture capital, angel networks, private equity funds etc.<sup>34</sup>

Hence, considering the facts: (1) the competitive process in the relevant market was unfolding; (2) the market was growing rapidly; (3) effective entry had taken place thereby leading to gradual decline in Ola's market share; (4) entry barriers were not



insurmountable; (5) countervailing market forces that constrained the behaviour of Ola existed; and (6) the nature of competition was dynamic, the Commission held that Ola's dominance in the relevant market was unsubstantiated.<sup>35</sup>

The arguments of collective dominance of Uber and Ola were also refuted by the Commission on the ground that it went against the essence of Section 4 of the Act, which essentially prohibited unilateral abusive conduct exercised by a single dominant entity or group.<sup>36</sup>

Hence, the Commission felt that there was a statutory compulsion of non-intervention in the present case *vis-à-vis* pricing strategy of Ola as it was held to be a non-dominant player. Thus, the Commission was hesitant to interfere as the market had not yet fully developed.<sup>37</sup> The Commission feared that interference at this stage would disturb the market dynamics and also pose a risk of prescribing sub-optimal solution to a nascent market situation.<sup>38</sup>

## Analysis by CUTS

### A Landmark 'Pro-innovation' Order

In the opinion of well-known economist Joseph Schumpeter, markets are often marked and led by 'gales of creative destruction' and competition is a process of constant and destructive innovation.<sup>39</sup> Thus, innovation incentives play a natural role in the competitive growth of the markets and determine the intensity and form of competition in markets.

Currently, this natural process of creative destruction has led to the emergence of the 'new economy' which is predominated by disruptive technologies and online platforms. In addition to this, emergence of complex technologies and business models have led to the advent of new types of anti-competitive practices, which have consequently challenged competition regimes across the globe.

This decision of the Commission marks a significant milestone in modern Indian competition law jurisprudence. It establishes the foundations of a 'pro-innovation' and pro-competition approach to competition enforcement, especially *vis-à-vis* new-age

businesses and technologies. Although the order deals with only one such online platform, it nonetheless has elucidated an enforcement strategy which is cautious of the distortionary impact of imperious and uninformed regulatory intervention in new-age businesses. This is evident from the Commission's observation "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".<sup>40</sup>

However, at this crucial stage, it is also important to discuss some underlying issues with regard to technology platforms, such as Ola which might be relevant to the general application of Indian competition law principles in the near future.

### **Pricing Structures of two-sided Markets & Delineation of Relevant Product Market**

Two-sided platforms, which cater to two or more groups of customers, generally have distinct characteristics and methods of generating revenue.<sup>41</sup> These platforms have revolutionised the modes of interaction between two sides of the value chain and have innovatively adopted diverse pricing strategies to incentivise uptake on both sides, thereby, enabling ease of access and infusing substantial cost efficiencies.

One primary prerequisite which determines the success of a two-sided market platform is generating and sustaining the indirect network effect. This demands unique pricing strategies which often require pricing the two sides in a different manner in order to maximise profits. Notably, optimal pricing strategies depend on a complex interaction between price elasticities of demand on two sides of the platform, the nature and intensity of indirect effects between both sides and marginal costs *vis-à-vis* outputs on both sides.<sup>42</sup>

This complexity in pricing structures can have two significant implications *vis-à-vis* competition enforcement. Firstly, it can challenge the traditional economic analysis of predatory pricing. It complicates the relationship between price and cost and tests the simple formulas which are often used in single-sided markets.<sup>43</sup> In two-sided platforms, prices on one side of the market may well lie below cost without the pricing structure having either anticompetitive intent or effect.<sup>44</sup>

Therefore, it is important to view the multi-sided platform holistically and not analyse costs of either side in isolation. Ola intended to put this rationale forward and thereby contended that it did not indulge in below-cost pricing.<sup>45</sup> In the present case, the Commission rightly did not go into the detailed analysis of pricing structure of Ola as its dominance was not established. Nevertheless, when the market matures and network effects have been established, this factor might complicate the assessment of predation.

Secondly, online platforms bring in substantial cost efficiencies, which enable them to generate revenue in unconventional ways. This allows them to price goods and services at unique price points which invigorates dormant demand and blurs the outmoded understanding of 'substitutability' of products and services. Moreover, contemporary models disrupt the established functionality of products and enables businesses to offer prices which are competitive from the perspective of an otherwise completely different product segment altogether.

For instance, take the facts of the present case. The DGs investigation report noticed that with the advent of Ola and Uber, the market grew by approximately 1900 percent in terms of number of trips between June 2012 and September 2015.<sup>46</sup> Moreover, the Commission also recognised that the erosion in the market share of incumbent taxi providers is attributable to the expansion of consumer base in the market rather than them being deprived of the demand which they were serving before.<sup>47</sup>

This indicates that the pricing models of Ola and Uber invigorated demand which was previously being served by alternative modes of transport apart from taxis, or even generated new demand. This further indicates that the pricing strategy and business models of taxi aggregators are not just making taxis substitutable with other taxis, but have also enabled platform providers to meddle in with the demand of other modes of transport, thereby diluting the typical differentiation between different product segments (such as between auto rickshaws, metro and radio taxis). This leads us to consider implications of pricing strategies on the relevant product market itself and not just limit its scope to determine predation and possible abuse.

## **Transparency in Algorithmic Price Determination**

The prices offered to users of platforms, such as Ola and Uber are set through computer algorithms. Although taxi aggregators in India are competing vigorously against each other in a price war to generate network effects, they are collectively incurring losses in the process. In their quest towards creation of network effects, they might incur huge losses which could be offset by future gains.

Although the Commission has opined in the present case that this strategy of below-cost pricing<sup>48</sup> does not amount to predatory behaviour (as Ola was held to be a non-dominant competitor), the Commission also has to be wary of other anti-competitive effects, such as algorithmic collusion, as these platform providers might look to tacitly agree on raising prices to recover their losses.

Reportedly, taxi aggregators have shown parallel behaviour in cutting incentives for drivers and also hiking fares by approximately 50-70 percent.<sup>49</sup> Although parallel pricing in itself is not conclusive proof of collusion, but with the advent of algorithmic price setting mechanisms, it has been recognised by competition experts that competition agencies need to be mindful of tacit collusion.<sup>50</sup>

Moreover, as taxi aggregators would expectantly raise prices in the future, it should also be recognised that the same would impact demand side substitutability of taxis and consumers would start to consider other modes of transport as substitutable products (for example autos and buses). This calls for transparency and objectivity in price fixing mechanisms (especially the ones set by algorithms) wherein the consumer is given an opportunity to rationally deduce the amount that is being demanded by aggregators or platforms.

## **Regulatory Approach to Tackle Collective Dominance and Attempts to Monopolise**

One key aspect of this order was that it directly addressed and rightly refuted the application of a possible anti-competitive practice which has not been provided for in the Indian Competition Act i.e. abuse of collective dominance. Furthermore, it correctly analysed that predatory pricing cannot be held as Section 4 violation unless dominance of an entity is proved. This leads us to a discussion on two possible issues which

currently lie out of the scope of the Competition Act, i.e. collective dominance and predation without being dominant (or attempts to monopolise by low-cost pricing).

As discussed by the Commission in the present case, the Indian competition Act does not provide for the concept of collective dominance nor does it provide for abusive conduct without proof of dominance.<sup>51</sup> Be that as it may, vacuum *vis-à-vis* substantive legal provisions ought not to stop the relevant regulatory authorities to find an *ex-ante* optimal regulatory response to possible abusive conduct in the future. What then could an optimal regulatory response look like in the present scenario?

In order to find an appropriate answer, it is essential for regulators to define the underlying nature of taxi aggregator businesses. Are they mere internet platforms or are they a species of the same genus i.e. taxi service providers. As per the Commission's analysis, it seems that from the perspective of the consumer, aggregator models provide the same services as radio taxi services, hence, they were considered to be part of the same relevant market.

However, as taxi aggregators act as middlemen between drivers and users of taxis, they can alternatively be seen as a completely different marketplace where buyers meet sellers to trade.<sup>52</sup> Such an approach would fundamentally mean that taxi aggregation will be treated by regulators as a common marketplace which enables ride sharing irrespective of the brand of taxi (be it Ola, Uber etc.).

This would tackle possible anti-competitive effects, such as collective dominance and attempts to monopolise and would not require *ex-post* enforcement. It would substantially increase fair competition in the market by empowering riders and drivers with improved choice and quality and would concurrently remove existing barriers to entry for new entrants. It would also enhance price transparency and consumer empowerment.

## Conclusion

As online platforms and disruptive technologies lay down the foundations of the new economy, regulatory regimes will constantly be tested in the future. With exponential innovation and technology led destructive creation becoming the new norm, competition regimes would need to re-imagine the scope of their enforcement tools and policymakers would need to readjust the ethos of competition law provisions in order to keep up with market advancements.

As we have pointed out in this edition, there can be a unique correlation between pricing models and the manner in which competition agencies view the relevant product/geographic market and also ascertain predatory pricing behaviour. While adhering to a pro-innovation and non-intrusive regulatory approach is beneficial, competition agencies also need to be cautious about new age anti-competitive practices, such as algorithmic price setting and tacit collusion.

The Commission through this order has notably put the right step forward in protecting the incentives to invest and upholding free market principles. However, the way ahead is a complicated one, which calls for a balanced approach of competition enforcement that protects innovation in the market and simultaneously enhances competition and consumer welfare through optimal regulation.

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<sup>1</sup> Smriti Parsheera, Ajay Shah and Avirup Bose, *Competition issues in India's online economy*, NIPFP Working Paper Series No. 194, (2017) [http://www.nipfp.org.in/media/medialibrary/2017/04/WP\\_2017\\_194.pdf](http://www.nipfp.org.in/media/medialibrary/2017/04/WP_2017_194.pdf)

<sup>2</sup> Taxi aggregators do not own the cabs that provide services to consumers. They are merely service provider platforms which allow drivers and users to connect through a common web based platform and avail the services. Notably, they bring together two sides of the market (drivers and users) through a common platform.

<sup>3</sup> Fast Track Call Cab Pvt Ltd vs. ANI Technologies Pvt Ltd CCI Case No. 6 of 2015 and Meru Travels Solutions Pvt. Ltd. vs. ANI Technologies Pvt.. Ltd. 74 of 2015

<sup>4</sup> Fast Track Call Cab Pvt.. Ltd. and Meru Travels Solutions Pvt. Ltd... vs. ANI Technologies Pvt Ltd, CCI Case No. 6 & 74 of 2015, at 4

<sup>5</sup> OECD, *The Economics of Predation*, at p.7, available at: <https://www.oecd.org/competition/abuse/2375661.pdf>

<sup>6</sup> Supra 4, at p.5

<sup>7</sup> Ibid.

<sup>8</sup> Supra 4, at p.5

<sup>9</sup> Ibid.

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- <sup>10</sup> Ibid.
- <sup>11</sup> Ibid.
- <sup>12</sup> Ibid., at p.6
- <sup>13</sup> Ibid.
- <sup>14</sup> Ibid.
- <sup>15</sup> Supra 4, at p.7
- <sup>16</sup> Mentioned under Section 19(4) of the Act
- <sup>17</sup> Supra 4, at p.8
- <sup>18</sup> Ibid.
- <sup>19</sup> Ibid., at p.9
- <sup>20</sup> Ibid.
- <sup>21</sup> Ibid., at p.10
- <sup>22</sup> Ibid.
- <sup>23</sup> Ibid.
- <sup>24</sup> Collective dominance describes a market situation where more firms, by acting together as if they were a single entity, jointly exert market power. The Competition Act of India does not provide for the concept of collective dominance. For more details, see <http://e-theses.imtlucca.it/39/>
- <sup>25</sup> Supra 4., at p.16
- <sup>26</sup> Ibid.
- <sup>27</sup> Ibid., at p.24
- <sup>28</sup> This was the primary rationale among other arguments. See para 64 for more details.
- <sup>29</sup> Supra 4, at p.26
- <sup>30</sup> Ibid., at p.28
- <sup>31</sup> Supra 4, at p.32
- <sup>32</sup> Ibid., at p.36
- <sup>33</sup> Ibid.
- <sup>34</sup> Ibid., at p.37
- <sup>35</sup> Ibid., at p.42
- <sup>36</sup> Ibid.
- <sup>37</sup> Ibid., at p.47
- <sup>38</sup> Ibid., at p.48
- <sup>39</sup> 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](http://direitosp.fgv.br/sites/direitosp.fgv.br/files/rdgv_04_pp067-098.pdf)
- <sup>40</sup> Supra 4, at 48
- <sup>41</sup> David S Evans and Michael Noel, *Defining Antitrust Markets When Firms Operate Two-sided Platforms*, 2005 Colum. Bus. L. Rev. 667
- <sup>42</sup> Ibid., at p.680
- <sup>43</sup> Ibid.
- <sup>44</sup> Amelia Fletcher, *Predatory Pricing in Two-Sided Markets: A Brief Comment Competition Policy International*, Vol. 3, No. 1, Spring (2007)
- <sup>45</sup> Supra 4, at p.21
- <sup>46</sup> Ibid., at p.28

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<sup>47</sup> Ibid., at p.31

<sup>48</sup> Below-cost pricing is a strategy which can be entered into by dominant or non-dominant entities. As the Commission states "Most firms, dominant or not, can engage in practices, such as exclusive dealing, below cost pricing, loyalty discounts etc. New entrants commonly engage in such practices to gain a toehold in the market and holding them dominant based on simple observation of conduct may have the undesirable result of chilling competition".

<sup>49</sup> See *Ola, Uber Slash Driver Incentives Up To 40% In Q1 2017- Report*, available at: <https://inc42.com/buzz/ola-uber-driver-incentives/#.WZWaVewjGM8> and *Cab rides get more expensive as Ola, Uber hike fares by 50-70%*, available at: <http://www.thehindubusinessline.com/economy/logistics/cab-rides-get-more-expensive-as-ola-uber-hike-fares-by-5070/article9578079.ece>

<sup>50</sup> Ariel Ezrachi & Maurice E. Stucke, *Algorithmic Collusion: Problems and Counter-Measures*, (2017), available at: <http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DAF/COMP/WD%282017%2925&docLanguage=En>

<sup>51</sup> Supra 4, at p.45

<sup>52</sup> Robin Harding, *Treat Uber like a stock exchange to ensure fairness*, The Financial Times (August 01 2017) available at: <https://www.ft.com/content/cad1f740-75e0-11e7-90c0-90a9d1bc9691>

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