

Competition & Antitrust - India

Recent Competition Commission activity

Contributed by [Vaish Associates Advocates](#)

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E-commerce portals exonerated from alleged anti-competitive practices Competition Commission launches investigation into OLA Cabs

E-commerce portals exonerated from alleged anti-competitive practices

By an order dated April 23 2015 the Competition Commission exonerated India's five leading online retailers (ie, M/s Flipkart India Private Limited, M/s Jasper InfoTech Private Limited (Snapdeal), M/s Xerion Retail Private Limited (Jabong), M/s Amazon Seller Services Private Limited and M/s Vector E-commerce Private Limited (Myntra)) for alleged anti-competitive activities.⁽¹⁾

Mohit Manglani filed information with the commission, alleging that the aforementioned e-portals had entered into exclusive agreements with product manufacturers in order to sell certain products exclusively on the selected portal to the exclusion of other e-portals and physical channels. The portal operator determined:

- the resale terms;
- the sale prices;
- the payment terms;
- the delivery periods; and
- the quality and service standards.

These conditions were non-negotiable for consumers that intended to buy the products. The e-portal controlled supply, thereby creating an impression of scarcity.

The commission closed the case at the *prima facie* examination stage, observing that even a basic review of the agreements entered into between the manufacturers and the e-portals/online retailers showed that they had no appreciable adverse effects on competition. The commission held that the exclusive arrangements created no entry barriers for new entrants; nor did they affect existing players in the retail market. Rather, the new e-portals appeared to expand competition.

Moreover, the online distribution channels provided consumers with an opportunity to compare prices and the pros and cons of different products. Further, by offering delivery options, consumers did not have to set aside time to make purchases in a physical shop. Therefore, at this stage, the commission held that the exclusive arrangements between the manufacturers and the e-portals had no appreciable adverse effect on competition in the market.

Insofar as any abuse of dominance was concerned, since several players in the online retail market offered similar amenities to customers, none of the e-portals was individually dominant. Therefore, the commission was of the *prima facie* view that the e-portals had not contravened Section 3 or Section 4 of the Competition Act.

Competition Commission launches investigation into OLA Cabs

By an order dated April 24 2015 the Competition Commission launched an investigation into M/s ANI Technologies Pvt Ltd (OLA Cabs) for alleged abuse of its dominant position by indulging in predatory pricing in the relevant market (ie, radio taxi services in Bengaluru).⁽²⁾

The commission has *prima facie* opined that OLA Cabs appears to be dominant in the relevant market. Further, OLA Cabs recently acquired another taxi service provider (ie, Taxi For Sure by OLA Cabs) in the same relevant market, pursuant to which its market share increased to 69%. While a high market share is not the only factor considered when assessing dominance in the relevant market, OLA Cabs has achieved such a high market share in approximately four years that its market position is a clear indication of its dominant position. Further, OLA Cabs has been spending more money on discounts and incentives (apart from its variable costs) for customers and drivers than it is earning via revenue. This *prima facie* indicates predatory pricing aimed at removing other players from the relevant market.

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Endnotes

- (1) Competition Commission order dated April 23 2015, available at www.cci.gov.in.
- (2) Competition Commission order dated April 24 2015, available at www.cci.gov.in.

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