



COMPETITION ISSUES IN THE ICT SECTOR

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Salient features of ICT Sector

- ❑ **Newer business models dislodging the traditional ones**
- ❑ **Growth of the market is premised on the widespread use of internet and technology**
- ❑ **Reduced Transaction and Search Costs**
 - ❑ **App- based transactions facilitated by way of interactive platforms;**
 - ❑ **Different options are just a click away;**
 - ❑ **Network effects bring in efficiency.**



Key Competition Concerns



❑ Anti-Competitive Agreements

- Anti-competitive practices such as exclusive agreements, restricting the consumers or service providers from using alternative platforms—locked-in effects because of disallowing multi-homing.

❑ Abuse of Dominant Position

- Abysmally low pricing strategies—e.g. Radio Taxi Service Industry in India saw emergence of online cab aggregators (OLA and UBER) offering taxi services at unimaginable low prices
- Penetrative pricing for building network *v.* Predatory pricing aimed at excluding competitors from the market;
- Decisive factor: Is there a plausible theory of harm? Has the market tipped in favour of a single player? Are consumers losing or benefitting in the short run as well as long run? Is competition in the market getting affected?—CCI applied these factors in its recent decision concerning allegation of predatory pricing by a domestic online cab aggregator.



सत्यमेव जयते



CCI's assessment approach in ICT Sector

- ❑ **Does CCI apply conventional competitive assessment tools?**
 - ❑ No, rather CCI has evolved a nuanced approach suitable to new market economy sectors;
 - ❑ Though CCI has not evolved any formal guidelines to assess such cases, through decisional practice we are evolving a nuanced approach;
 - ❑ In recent cases, CCI observed that traditional antitrust tools may not fully justify assessment in new economy sectors;
 - ❑ Relevance of SSNIP Test in relevant market determination, relevance of market shares in assessing market power, traditional entry barrier factors (high capital requirement) *etc.* have been suitably modified.



सत्यमेव जयते

CCI Case: Online Cab Aggregator (OLA)



❑ How relevant market was defined—

- ❑ CCI didn't apply the SSNIP test as the allegation was that of predatory pricing, in which case SSNIP test has limited use.
- ❑ CCI adopted a functional approach and based on the end-use functionality and substitutability, online cab aggregators were held to be part of the same relevant product market at the traditional radio taxi service providers.
- ❑ While arriving at the relevant product market definition, CCI took into account the consumer perception about the product substitutability, despite the online aggregator claiming that it is only an information technology company and not a radio taxi service provider.



सत्यमेव जयते

CCI Case: Online Cab Aggregator (OLA)



□ How Dominance was assessed

- CCI observed that high market shares are not indicative of dominance per se, especially in case of hi-tech markets where leadership positions are generally not durable. Rather the Commission devised a holistic framework for assessing dominance.
- Based on collective consideration of the facts, including that the competitive process in the relevant market is unfolding, market is growing rapidly, effective entry has taken place thereby leading to gradual decline in Ola's market share, entry barriers are not insurmountable, there exist countervailing market forces that constrain the behavior of Ola and the nature of competition in dynamic, innovation-driven markets, CCI held that Ola was not dominant.



CCI Case: Online Cab Aggregator (OLA)



❑ Conclusive observation in the Commission's order

“At this stage, it is difficult to determine with certainty the long-term impact of this pricing strategy as the market is yet to mature. Without going into the legitimacy of Ola’s pricing strategy, suffice to say that besides statutory compulsion of non-intervention in the present case, as Ola is not dominant in the relevant market, the Commission is hesitant to interfere in a market, which is yet to fully evolve. 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.”



THANK YOU