UBER - OLA
THE COMPETITION KILLER
OR
THE COMPETITION TRIGGER ?
India Case Study
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India witnessed entry of app-based taxi services through aggregators such as **Uber** and **OLA** somewhere in 2013. Uber group entered Indian Radio Taxi Services Market in 2013 and started its operations in Delhi in December 2013 and offered services under three band names namely, Uber Black, Uber X and Uber Go. ANI Technologies Pvt Ltd. an Indian Aggregator, introduced OLA app-based Taxi and auto services around same time.

PRE-UBER/OLA SCENARIO :

Before the entry of Ola and Uber, intra-city taxi services in major metropolitan cities in India were ordinary non-a/c black & yellow taxis, cool cabs, few a/c radio taxis and large number of 3-wheeler autorickshaws. In Mumbai there were about 45,000 black & yellow non a/c taxis and about 100,000 three-wheeler auto-rickshaws operating. There were about 8,000 air-conditioned taxis operational. The fares of all these taxis and autorickshaws were regulated by the state transport regulator in each state and all these taxis and autos were required to display these fares on the Meters. The mechanical meters meant to display fare payable were not re-calibrated since 1978 and after every revision in the taxi/auto fares, the Tariff Card used to be issued by the Transport Authority to indicate the revised fare by reading it in conjunction with the mechanical meter for the distance travelled. Somewhere in and around 2013, the typical mechanical Meters installed on taxis and autos - which were prone for manipulation, rigging and thereby excess charging - were replaced by Electronic Meters at the insistence of Mumbai Grahak Panchayat, the leading consumer body from Mumbai. The Government's decision to replace the mechanical meters with installation of Electronic meters on taxis & autos was also challenged by the drivers' Unions right upto Supreme Court, but in vain.

The owners/drivers of black & yellow taxis / autos were unionized and used to often dictate the terms on the transport regulators in the matter of fixation of taxi/auto fares on the strength of their organized unit. Negotiations for revision in fares were often preceded by strikes of taxis/autos with a view to pressurize the government and the transport regulator for more favourable and beneficial fare revision. Seldom the government or the regulatory authority found it appropriate to hear the views of the passengers / consumers, with exception of Mumbai where Mumbai Grahak Panchayat used to represent the passenger interest before the transport regulator. As such, the general scenario before the entry of Uber & Ola can be summed up as follows:

➢ Taxi/auto fares used to be unreasonably high.

➢ The services offered by taxi/auto drivers were far from satisfactory.

➢ Rampant Cherry-picking of the long-distance passengers & blatant refusals of passengers for short distances,

➢ Poor maintenance of the vehicles,

➢ Rigging / Manipulation of the Meters to overcharge the passengers,

➢ Rude and arrogant behavior of the drivers,

➢ Abusing the collective bargaining strength of drivers to go on strikes to force Transport Regulator to succumb to their unreasonable demands for fare hike and other concessions in traffic offences.

Thus, with the above scenario, the passengers were on a lookout for a better and more economical option for their transport needs.

ENTRY OF UBER / OLA & THE CHANGED SCENARIO :
Uber and OLA entered the taxi services as aggregators to provide app-based taxi services to passengers in major metropolitan cities in India. Both Ola and Uber offered passengers air-conditioned taxi services at comparatively cheaper fares. Assured taxi service at a door step to be summoned on the mobile app gave the passengers the much needed comfort coupled with reasonable fares. In many cases the fares offered by Uber and OLA were found to be less than the fares charged by 3-wheeler autorickshaws. No wonder, in less than a year's time there was a major shift of passengers from traditional black & yellow taxis and autos to the newly introduced air-conditioned app-based taxis offered by Uber and OLA.

This major migration of passengers from traditional taxi/auto services to app-based taxi services obviously created panic amongst the taxi/auto owners/drivers as they witnessed losses in their daily revenues and their very survival threatened. On the other hand, the passengers - hitherto harassed and exploited by the taxi/auto drivers - had a smile on their face as they got comfortable journey ride at a most affordable price.

This changing scenario in taxi services brought to the fore the issue of much-needed competition in the field of taxi services. Uber/Ola app-based taxi services with use of modern technology and smart phones triggered the competition and offered the consumers an attractive option to choose.

Although Uber/Ola taxi fares were largely found to be attractive and affordable to the passengers, there was also some irritant which the passengers did not like and that was the Surge Pricing by Uber and Ola. The algorithmic pricing by Uber and Ola at peak hours showed huge spurt in the fares which the passengers often found unpalatable. In fact, the very algorithmic fare structure lacked transparency and became the point of debate.

Thus, on one hand Uber/Ola fares were found to be quite attractive, so much so as to appear like **Predatory pricing aimed at killing the competition and also the competitors** and on the other hand the **Surge Pricing,** resorted to by Uber/ Ola at peak hours when the demand out-weighed the supply, attracted the charge of **undue profiteering**.

MGP's ON-LINE PERCEPTION SURVEY: It is in this cross-fire of allegations of Predatory pricing to kill the competition and competitors and Surge Pricing to exploit consumers, Mumbai Grahak Panchayat (M.G.P.) decided to have an on-line perception survey of passengers about their experience of app-based taxi services offered by Uber/Ola vis-à-vis traditional taxi/auto services. There was an unprecedented response to this on-line survey which was responded by no less than 76,169 passengers from different cities in India with predominant response from Mumbai.

The findings of this online perception survey conducted by M.G.P. are quite revealing.

- Overwhelming **94%** of the respondents **felt harassed by refusals by traditional taxi/auto drivers**.

- **47%** of the respondents found **Uber/Ola fares cheaper than taxis as well as autos,** whereas **22% of them found them cheaper than all taxis but bit expensive compared to autorickshaw fares.**

- **67%** of respondents found behavior of Uber/Ola drivers as **good**, **14%** found it as **average** and **19 %** found it as **bad**

- Only **8%** of respondents found the behavior of black & yellow taxi drivers as **good** whereas **55%** of respondents found their behavior as **average** and **37%** as **bad**.

- Only **9%** of respondents found the behavior of autorickshaw drivers as **good** whereas **44%** of respondents found their behavior as **average** and **37%** found it as **bad**.

- **65%** of the respondents felt **Surge Pricing as irritant and expensive proposition**.

- **80%** of respondents **opined that Uber/ Ola are offering better option of travel**.

From the above on-line Perception Survey it can be observed that on the whole, the passengers in India and particularly from Mumbai were quite satisfied with Uber /Ola fares, the behavior of their drivers and the quality of service. No doubt, 65% of the passengers have also protested against the Surge Pricing. It needs to be noted that this is a Perception Survey of the passengers regardless of what is legally right or wrong and economically viable or not.

The entry of Uber and Ola in Indian Taxi Services has thrown open a question whether Uber / Ola are killing the competition or have they triggered the competition?

In India the Competition Act, 2003 governs the competition issues. Any anti-competitive practices of stifling the competition or adoption of predatory pricing to kill the competition and the competitors is being looked after by **Competition Commission of India (CCI)**.

It is interesting to note that both Ola and Uber have been dragged before Competition Commission of India (CCI) by the affected competitors. The competitors have alleged :

- that both Ola and Uber, backed by huge funding from abroad has indulged in a series of abusive practices including predatory pricing with a view to establishing its monopoly and eliminate other competitors from the radio taxi services market.

- that Ola and Uber are holding a dominant market position and abusing such dominance through unrealistic incentivization of drivers leading to exclusion of existing competitors and creating entry barriers.

- that Ola/Uber restricted its driver fleet operators from using any other competing platform for providing their services.

- that Ola/Uber's direct cost for providing taxi services was way above their revenue from customers.

- that Ola/Uber have been offering discounts and loyalty rebates to their customers which led to discriminatory pricing.

UBER DISCHARGED OF PREDATORY PRICING: The CCI has, however, dismissed the complaint against Uber, holding that in Delhi region Uber is not having a dominant position and as such there is no need to investigate allegations of predatory pricing or abusing the dominant position to kill the competition.

PRIMA FACI CASE OF PREDATORY PRICING AGAINST OLA: On the other hand, CCI has, prima facie held that Ola is having a dominant position in Chennai and therefore, ordered investigation into the allegations of predatory pricing and market abuse. However, the application for restraining Ola from carrying out such predatory pricing pending the investigation has been dismissed by the majority judgement of CCI. It is interesting to note that one member, out of the beach of five, has given a dissenting judgement and held that Ola is liable to restrain by way of interim order from continuing with its existing pricing and has directed Ola to organize its pricing system in such a way to ensure that their variable cost do not exceed the revenue collected from the passengers. The dissenting Member has also directed the Director General of CCI to complete the investigation against Ola within 60 days. However, this being a minority judgement, will not be operative and as such presently Ola, by virtue of majority judgement, is at liberty to operate with their present pricing system.

This is how India will Regulate Ola / Uber :

TRANSPORT REGULATOR TO REGULATE OLA / UBER : Notwithstanding the legal battle being fiercely fought before the Competition Commission (CCI), the Indian transport regulators in different states of India have taken initiative to regulate the operations of Ola and Uber in India.

Following the legal battle and public debate about predatory pricing & surge pricing, the Ministry of Road Transport & Highways (MoRTH), Government of India had appointed a 6 - Member Expert Committee to propose Taxi policy guidelines to promote urban mobility. The committee has now submitted its report and the report has been accepted by MoRTH. The Committee has proposed guidelines for various areas in the taxi segment. The report also proposed guidelines for aggregators like Ola & Uber.

The recommendations state that the aggregators can aggregate all types of vehicles, provided the vehicles comply with all the existing regulations. Aggregators can provide services for both intra-city and inter-city services. The committee also recommended that three-wheeler auto-rickshaws can also be brought under aggregation. It is also recommended that the state transport departments allow a service charge to be charged by the aggregators.

Aggregators have to comply with the following rules:

The committee recommended that all taxi-aggregators obtain an appropriate license from the State Transport Department under Section 93 of the Motor Vehicles Act, 1988 before they start operations. All the aggregators should comply with the following rules.

- They should have a physical presence/ premise in the concerned state.

- They should have a functional grievance redressal system which should be duly publicized.

- They should make available an emergency response centre to handle SOS alerts by passengers as prescribed by the States.

- Aggregators should preserve and provide on demand the data regarding taxi trips and customers for a period specified by the State Transport, Police or any other enforcement authorities as per law.

- Clear display of a photograph of the driver or description of the vehicle (including license plate number) should be provided to the rider on the web or mobile application as well as inside the car, so as to enable verification of the same once the Vehicle arrives with the said driver, details of which has been received via the Aggregator

- They should develop and include a feature in the mobile application that provides riders the ability to share their location with a minimum 2 persons within their safety network.

- They should develop and include a feature in the mobile application that gives riders the ability to contact local police in case of an emergency.

- They should follow the directions / guidelines of the State in terms of maximum duty hours of drivers to promote road safety and to comply with the labour laws.

- Violation of the stipulated rules by the taxi operators/ drivers should be strictly dealt in accordance with law.

- In the event of an incident of a criminal nature involving a trip booked through the aggregator, the aggregator should immediately inform and cooperate with relevant authorities upon lawful request.

- Aggregator Platforms must establish a policy of zero tolerance for discrimination or discriminatory conduct while a driver is working on such platforms. Discriminatory conduct may include:

  - refusal of service

  - using derogatory or harassing language directed at passenger;

  - rating a passenger on the basis of sex, race, caste, creed, religion, or nationality.

- Aggregator Platforms upon receiving a complaint from a passenger containing an allegation that the driver violated the zero-tolerance policy for discrimination immediately suspend the services of such driver, for the duration of the investigation by the Licensee.

Aggregator's Software & Fare Calculation Algorithms will need validation by MEITY:

The Committee has also recommended that the algorithms used for distance and fare calculation etc. should be checked and validated for accuracy. Quality of these software applications should be audited by from Standardisation Testing and Quality Certification(STQC) or any other agency authorised by Ministry of Electronic and Information Technology (MEITY), on a one-time basis.

STQC or other nominated agency of MEITY should validate the attributes used by cab aggregators to calculate the shortest path for any inaccuracy and this validation should be maintained. This is to ensure that the customers are not overcharged.

The committee also recommended that in the interest of security of personal data, the Aggregators should provide options to the consumers whether they want to share the data on their mobiles with the aggregators or not. Express consent of the consumers should be obtained to share the personal data and it should be ensured that all the data is protected by a firewall. However, if any such data is requisitioned by any enforcement agency then the aggregators would be bound to provide the same.

Maximum & Maximum Tariff for Aggregator based taxis:

The committee recommended that the taxis under aggregators should be categorized into the following two segments:

- Economy
- Deluxe

The committee recommended that the tariffs of deluxe taxi segment should not be controlled and market dynamics should be allowed to determine the tariffs. But the State Transport Departments may regulate the fares of the taxis in the economy segment. The following rules may be used for fixing the tariff in the economy segment.

- States may fix **minimum** as well as **maximum fares** charged by the aggregators. The committee recommended that the **maximum tariff may be permitted up to three times** the minimum tariff.

- To increase the availability of taxis during night time, Committee recommended that maximum tariff may be allowed up to **four times that of minimum tariff from 12 midnight to 5 am in morning.**

Alternatively, the committee also recommended that aggregators may be asked to provide the minimum fare that would be charged from the customers and the State Transport Department may fix a multiplier to cap the maximum fare. While fixing the tariffs, the states may engage the services of transport economists and related experts who would be able to provide a scientific approach to determination of tariffs and permit charges.

Acting on the above recommendations, in the state of Maharashtra - the capital of which is Mumbai - the state government has issued what is known as "Maharashtra City Taxi Rules, 2017" under Motor Vehicles Act and which has come into effect from 4th March, 2017. By virtue of these rules the operations of Ola and Uber and any other app-based taxi service providers will be regulated by the state transport regulator. Although, Ola and Uber will have the freedom of fixing their own fares for the passengers, the fares will have minimum and maximum limit thereby preventing the possibility of predatory pricing by Ola and Uber and thereby either killing or distorting the competition. The said rules also put certain restrictions on conduct of the drivers as well as ensure security & safety aspects of the passengers.

Most of the other states in India are soon expected to follow the suit. As such the unregulated and unbridled taxi operations by Ola and Uber taxi aggregators will now be regulated in India in order to ensure that the passengers get a fair deal without hurting the competition in the transport sector.