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Shubhalakshmi Bhattacharya & Ganesh BhaskarLata

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A comparative perspective of Competition Law cases in the ride-sharing industry: reflections from Singapore, EU, and India

Shubhalakshmi Bhattacharya and Ganesh Bhaskar Lata

Jindal Global Law School, Centre for New Economics Studies (CNES), O.P. Jindal Global University, Sonipat, India

ABSTRACT
This study studies the effect and the content of competition law engaged in the app-based ride-sharing industry. This has been done primarily with the help of critically analysing case law across three jurisdictions adjudicated by competition regulatory authorities with respect to the ride sharing industry. The three jurisdictions chosen for the study are India, Singapore, and the European Union in order to analyze a variety of the perspectives of the competition regulatory authorities. The primary objective of the study is to understand the meaning of the term market definition and how competition regulatory authorities have delineated the relevant market with respect to this industry since it is a part of the digital economy and is relatively new. Through this study, hurdles to delineating a relevant market were analyzed through the case law as well as understanding why a common market definition has not been framed across jurisdictions as well as within the same jurisdiction, as seen in the case of India.

KEYWORDS
Competition Law; ride sharing; market share

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A. Introduction

With the onset of the paxtechnologica era, the spheres of a relevant market have become ambiguous, and have also witnessed a transformation across jurisdictions. Digitally driven
and e-commerce enterprises have been the greatest beneficiaries of this transformation as most e-commerce giants operate in several vertically and horizontally integrated markets, thereby making the ability to delineate the relevant market for their operations onerous and inconclusive.

An industry that has particularly witnessed a spatial modification in this regard is the traditional ride-sharing industry, wherein app-based ride-sharing companies such as Uber, Grab and Lyft provide consumers the ability to reserve a taxi through smartphones. The app-based ride-sharing industry is one which is extremely dynamic and has had a significant impact on the traditional transportation industry. By virtue of this digital transformation, app-based ride-sharing companies have witnessed an economic boom in the past decade. In Singapore, for example, approximately 80% of the ride-sharing industry is occupied and owned by ride sharing companies such as Uber and Grab (Aravindan 2018). Similarly, in the European Union, about 68% of the ride-sharing industry is owned by Uber (Iqbal 2021). In India, Uber and Ola, together, occupy 65% of the ride-sharing industry market share (Bhattacharya 2019). This economic boom has also furthered the market concentration within the ride-sharing industry, wherein several app-based ride-sharing companies are either facing allegations of anti-trust/competition violations or facing regulatory disapprovals for prospective mergers and acquisitions across different jurisdictions (Pistos 2020).

The primary legal dilemma that has arisen in various jurisdictions is the inability to identify the relevant market for app-based ride-sharing companies, given that ride-sharing enterprises such as Uber, Grab or Lyft essentially operate on platform markets, thereby acting as mere intermediaries between drivers and passengers (Pistos 2020). The ambiguity that arises with platform markets, such as those of app-based ride-sharing companies, is that for a robust market analysis, two markets will have to be defined, one for the passenger and one for the driver (Pistos 2020). The importance of with this backdrop, this paper delves into demystifying the ambiguities and complexities in identifying the relevant market for app-based ride-sharing companies.

Through this paper, it was realized a uniform definition for the market has not been adopted by competition regulators, both within the same jurisdiction and as well as across jurisdictions. Authorities across jurisdictions have rather, defined the relevant market in a contradictory manner. In India for example, traditional taxis were included in the definition (Case No. 25-28-2017), but in the European Court of Justice (Case C-434/15-2017), Uber was seen to be part of the transportation, and not the ride-sharing industry.

The aim of this paper is hence to understand the effect (and content) of competition law on the app-based ride-sharing industry, which is a rapidly evolving industry, as part of a growing digital economic landscape. This has been done by using a comparative approach where judicial decisions relating to the industry have been looked at across three jurisdictions. The three jurisdictions that have been critically analyzed in this paper are the European Union, Singapore, and India. The rationale behind the selection of these three jurisdictions is because they have been structured in a manner that is similar to the EU competition regime making them congruent to one another.

This paper has been divided into four sections. The first section analyses the decision of the Competition and Consumer Commission of Singapore (hereinafter ‘CCCS’) on the Grab-Uber merger and the consequent appeal of the decision at the Singapore
Competition Appeal Board (‘CAB’). The second section analyses cases that have been decided within the EU, and the third discusses the Indian competition authorities’ decisions in cases dealing with the ride sharing industry.

The last section consists of an analysis of all three jurisdictions and the common principles adopted across the jurisdictions as well as the conclusion which focuses on how the definition of the relevant market has certain problems at present and how this definition can be improved for India.

Relevant market and the ride-sharing industry

Prior to assessing anti-competitive harm across the three jurisdictions, the regulator has to assess the relevant market within which the parties operate in. The relevant market consists of the relevant product market and the relevant geographic market (Graham and Child 1996). Some of the factors used to determine product market are the substitutability of the product, and the homogeneity of the market.

In the market for taxis and private hire vehicles there have been several changes in the past few years with the introduction of ride-sharing applications such as Ola and Uber. As opposed to physically transporting people from one place to another, ride-sharing applications act as intermediaries or aggregators, and they use their technology in order to facilitate transportation services and matching the demand from the riders’ side with the supply from the drivers’ side.

However, because of the various methods in which one can use an intermediary to hail a taxi or a private hire vehicle, it is difficult to determine which market these intermediaries and private vehicle services belong to, as seen in various judgements discussed throughout this paper. This is also because a lot of the traditional taxi drivers are tying up with these intermediaries while also providing their traditional services.

The issue around which product market should these intermediaries belong to has been given some thought by competition regulatory authorities all over the world, but no consistent observation has been formed. In certain decisions such as in the case of Uber and Yandex Taxi in Russia, the Federal Antimonopoly Service (‘FAS’) delineated the relevant market to be that of the organization of information interaction between taxi drivers and passengers, whereas in other cases such as that of My Taxi and Hailo, the regulatory authority has given a much narrow definition for the relevant market (Kyriakos 2020). A broad definition would mean increasing the ambit of the market and thereby including more competitors or products. On the other hand, in a narrow definition, products and competitors are excluded from the ambit of the market (Kyriakos 2020).

For this paper, we have looked at the different ways jurisdictions have interpreted what the relevant market is with respect to the ride-sharing application-based intermediaries. This has been done in order to understand how these jurisdictions view the intermediaries and whether there has now been a move towards a common definition of what the relevant market is.

B. Singapore

The CCCS in 2018, issued directions to Uber (500/001/18 2018) in light of the company’s merger with Grab (‘Merger Parties’), a Singapore based Transportation company. The
CCCS had provisionally found that the transaction had led to a substantial lessening of competition. The CCCS arrived at its decision by relying upon Section 34 of the Competition Act of Singapore, 2006 which prohibits mergers or anticipated mergers that have resulted, or are expected to result, in a substantial lessening of competition within any market in Singapore for goods and services. The decision was also affirmed by the CAB on appeal ([2020] SGCAB 2).

The Competition Act of Singapore, 2006, does not provide a definition for a relevant market. In order to determine a relevant market, the CCCS issued its guidelines on market definition in 2007 (CCCS 2007) (‘Guidelines’) which primarily focused on the ex-ante market definition of an enterprise while investigating a possible anti-competitive violation or deciding upon a mergers or amalgamation. The task of defining a market as per the Guidelines is to define

all the products on the demand side that buyers regard as reasonable substitutes for the product under investigation (‘Focal Product’), and then to identify all the sellers who supply the focal and substitute products, or who could potentially supply them – this is the relevant market. (CCCS 2007)

The CCCS in its decision delineated ‘chauffeured point to point transport (“CPPT”) platform services in Singapore’, as the relevant market within which the Merger Parties operated. The CCCS arrived at this conclusion by relying on two tests. First, the hypothetical monopolist test (500/001/18 2018), which aims to categorize all the commodities that consumers regard as reasonably substitutable for the Focal Product. Once, the products that are reasonably substitutable are identified, the essential question to analyze as per the CCCS is – whether the switching between substitutable products by customers, is sufficient to constrain a profitable increase in the price of the Focal Product. If the products constrain market power, or the profitable increase in the price of the focal product, they are part of the same product market. The relevant market is in this manner, is a microcosm of a product group (and geographical area) with the end goal being that a fictional monopolist controlling that product (in that area) could profitably sustain supra competitive prices, if no market players supplying substitutable products exist (500/001/18 2018). The second factor which the CCCS relied on was the SSNIP (small but significant non transitory increase in price) test, which essentially analyses whether consumers would switch from using the focal product in response to a small but significant non transitory increase in price of that product. If the price increase makes consumers switch to a substitutable product, then the substitutable product is included in the relevant market as well. The CCCS opined that if there is a small but significant non transitory increase in the amount drivers have to pay the Merger Parties as a commission, such price increase would still allow taxi drivers to offer both their services to riders as part of the Merger Parties applications and even as a traditional street-hail taxi service. Since it is not a complete shift of services, street-hail taxis would not be considered as a part of the same market.

CPPT platform services, as per the CCCS, excluded street-hail taxis given that they do not operate upon a platform such as app-based ride-sharing companies. On appeal to the CAB, it was reiterated that even the terms of use of the Merger Parties, evidently indicate the kind of services provided, which is to match riders and drivers, and not strictly the provision of transportation services. The Merger Parties in this light were only operating at the platform
level and did not physically operate taxis. The drivers who were part of the Merger Parties were viewed as ‘customers’ and not ‘agents.’ Therefore, street-hail taxis were not observed as close substitutes to CPPT platform service products. Accordingly, the CCCS and the CAB opined that minimal evidence was highlighted to depict that street-hail taxis constrain the market power of the Merger Parties, or that consumers would switch to using street-hail taxis when there is a price increase for the services of the Merger Parties.

While the CCCS and CAB did invoke the hypothetical monopolist test, as well as the SSNIP test for delineating the relevant market, it applied both tests in distinction, and not in parlance with one another. The Guidelines issued by the CCCS stipulated that both tests must be applied together and in parlance but, not in distinction. The rationale behind such a utilization is that the measure of competitive restraints on a hypothetical monopolist within a market is based on the possibility of consumers switching products when there is SSNIP of the product. However, rather than adopting the SSNIP test to identify a hypothetical monopolist, the CCCS has resorted to a vague standard of – profitable increase in the price, which has no previous jurisprudence associated with it. Relying on the same standard to determine whether an entity is a hypothetical monopolist seems to be an erroneous interpretation of the law.

Furthermore, the hypothetical monopolist test has with its invocation brought certain presumptions, which were followed by the CCCS. It assumes that first, entities are profitable. Various digital corporations in fact rely on a loss-based system (Willhelm 2021), wherein, the purpose of an enterprise is not profit oriented but rather, to concentrate market, as put forth by Lina Khan in the ‘Anti-trust Paradox’ (Khan 2007). Hence, to assume that a hypothetical monopolist can profitably increase its services is fallacious. Secondly, the test is only applied with regard to single sided markets and not platform markets, given that the test fails to consider the constrain of market power of the other side and only considers the market power of a single side. Therefore, the test cannot be applied mechanically to the relevant market analysis for any factual matrix, as the test has to be modified to suit qualitative and qualitative characteristics of each specific Focal Product and market. Rather than simply relying on the market share of the product (which has been resorted to by the CCCS), the test must also consider the qualitative substitutes of the product, such as end use, interoperability, etc.

**Decision on the uber-Grab merger**

While arriving at its decision the CCCS made certain observations (500/001/18 2018). First, Uber would either have continued its operations or merged its Southeast Asian business with other interested companies who were not its current competitors in Singapore, as prior to the merger with Grab, Uber had entered into an agreement to collaborate with ComfortDelGro (a multi-national land transport company engaged in the business of providing road transportation) for the introduction of UberFlash to compete with Grab. While, this collaboration was later withdrawn, the transaction would have reduced competition between the two closest prevailing competitors in the CPPT market in Singapore.

Second, the merger would pose high entry barriers to other competitors in the CPPT platform services market due to strong network effects, given that Grab had imposed exclusivity obligations (Grab had entered into contracts with its driver, taxi companies and car rental partners which stipulate that the contracting parties would not conduct
its business with any other competitor in the market) on taxi companies, car rental partners, and some of its drivers. Without any intervention from CCCS, it could continue to hamper the ability of potential competitors to access drivers and vehicles.

Lastly, was that with the exclusivity-reinforced network effects, any new entrant was likely to incur significant amount of upfront capital to attract drivers and riders. Since such expenditure would include driver incentive schemes and rider promotions, in addition to acquiring a sufficient fleet of vehicles and pool of drivers, as well as partnerships with taxi operators, there were significant barriers to entry in the market. Uber had gained high network effects by virtue of the large pool of drivers and consumers which would be hard to replicate for new entrants. With regards to the previous observation, the potential new entrants had also provided feedback to CCCS that without any intervention from CCCS, it would be difficult to attain a sufficient network of drivers and riders to provide a satisfactory product and experience to both drivers and riders so as to compete effectively against Grab, thus furthering the fact that they could not possibly be able to enter the market due to the high barriers to entry.

C. European Union

The European Commission (‘Commission’) in 1997 issued a notice with guidelines in order to help identify relevant markets. This notice has been the guiding basis for the EU to determine how a relevant market should be delineated (97/C 372 /03 2003).

It is the regulation based on Articles 85 and 86 of the Treaty Establishing the European Economic Community (‘EEC Treaty’) which has laid down the definitions of relevant product market and relevant geographic market. Relevant product market is defined as products and/or services which are regarded as interchangeable or substitutable by the consumer, by reason of the products’ characteristics, their prices and their intended use (97/C 372 /03 2003).

Further, relevant geographic market is defined as the area in which the undertakings concerned are involved in the supply and demand of products or services, in which the conditions of competition are sufficiently homogeneous, and which can be distinguished from neighbouring areas because the conditions of competition are appreciably different in those area (97/C 372 /03 2003).

The first step to determine the product market is an analysis of the product which is based on its characteristics and intended use, by virtue of which the Commission is able to limit the field of investigation of possible substitutes. In order to determine whether two products are substitutes, the Commission considers evidence such as evidence of substitution, price discrimination, and the barriers and costs associated with switching demand with substitutes (97/ C372/ 03 2003).

However, in the recent times, the Commission first undergoes a preliminary analysis where it attempts to define the product market by investigating whether a particular product and its possible substitutes belong to the same market (97/C 372 /03 2003). Further, it tries to determine the geographic market by producing an overview of the breakdown of the market shares held by the parties in question, and by their competitors, the prices charged, and any price differentials (97/C 372 /03 2003). It is after this process, that the detailed analysis based on substitutability of the products is carried out.
A study was also conducted by the Commission, where it analyzed three modes of transport – the first one being taxi, the second one was hire car with driver and the third was ride-sharing (Simona and Garriele 2016). The study defines ridesharing as the concept of offering a ride on a vehicle where seats are available (Simona and Garriele 2016). Ride-sharing, according to the study, covers various options, where the most common option is when the owner of a vehicle has a predetermined journey and offers a seat to passengers going in the same direction in exchange for sharing the costs of the journey (Simona and Garriele 2016). However, this model has evolved to include sharing of transport for employees of the same company or workers of the same area as well professional transport (Simona and Garriele 2016).

The study points to the fact that, while these apps call themselves as a ride or car sharing service, the ride or the car is not truly shared and essentially what characterizes them compared to regular taxi services is that they are a marketplace where independent drivers are connected to passengers through an online platform (Simona and Garriele 2016). Therefore, by simply viewing this classification of the ride-sharing industry to be a restrictive one which does not include application- based platforms for ridesharing, it could lead to the possible conclusion that the two operate in different markets.

The European Commission study, also states that the stark distinction which existed between intermediaries and transport service providers, is blurred due to the entrance of services and companies like Uber (Simona and Garriele 2016). Due to this blurred distinction, it becomes rather difficult to establish a separate market, as the services that this market would govern needs to be delineated first.

The study of the Commission also says that rules adopted by Member States, both at national and/or local level should make a distinction between the provider of the service (self-employed taxi drivers, companies employing taxi drivers directly, self-employed hire car drivers and operators employing hire car drivers) and intermediaries matching supply and demand (e.g. companies owning cars using self-employed drivers, companies not owning any cars using self-employed drivers, or providing platforms/apps for self-employed drivers), and in the rules applicable to each of them (Simona and Garriele 2016).

However, it is interesting to note that other intermediaries did exist in other member states before the entrance of Uber, but they were not met with the same kind of criticism and outright banning of its services. Therefore, the behaviour towards Uber as well as the different approaches taken in order to identify a relevant market in other cases within the European Union, is one that can be seen through various case law. Competition authorities across Europe have had differing opinions in defining what market ride-sharing companies operate in. This becomes an issue because the absence of a uniform definition leads to conflicting decisions, thus leading to a lack of predictability for future cases.

An example of this is the decision that Competition and Markets Authority (‘CMA’) took in the acquisition of Mercury Taxis by Sheffield City Taxis – where it concluded that private hire and hackney operators were a part of the same market when delineating the relevant market. An interesting observation is that in the City Taxi case, while the CMA did not put Uber and Gett in the same market, as the two did not offer similar products in terms of substitutability on the demand side, they were still said to be able to constrain City Taxis post the merger. Therefore, CMA, in order to define the relevant market, also discussed the competition that companies such as Uber and Gett provided to Mercury Taxis and Sheffield Taxis. This leads to the implication that the two types of companies
could be compared, and the former would be constraining the latter. Thus, this results in a situation where even though the explicit definition of relevant market would not include Uber and Gett, they were implicitly read into it (ME/6548-15 2015).

On the other hand, with regard to the 60% acquisition of Hailo by Daimler, the Comisión Nacional de los Mercados y la Competencia ('CNMC') defined the relevant market in an extremely narrow manner, by first creating a distinction between taxi intermediary services and taxi hail operators, and then creating a distinction between intermediary services which were phone-based and those which were app based. Therefore, in this regard, the CNMC's analysis to create a narrow market, to state that app-based intermediaries had not created competition for general taxis, and to exclude app-based intermediaries is a stark distinction from CMA (M/16/037-2016). Further, it becomes interesting to note that while in both cases the authorities took into account the additional and different services that app-based intermediaries provided, they also took into account the market share of these companies, in order to conclude whether the final deal could be allowed to go through. This leads to further ambiguity, because a major reason for the authorities to approve the deal, was the impact that the second market had in terms of competition on the relevant market that they delineated.

The blurring, therefore, has allowed the regulatory authorities to delineate two separate markets, and simultaneously, analyze the market share and market power that companies in the second market exhibit, in order to determine whether an acquisition should be approved among companies in the first market. This leads to a confusion as in the same instance, and for different aspects, you have both, one market, and two or more markets being considered.

It is important to note that both the previous cases dealt with competition authorities within their jurisdiction, and therefore, their relevant geographic market differs, which could also have an impact on their relevant product market. This is seen through the difference between the CMA analysis and the CNMC, wherein the CMA took into account the brand reputation of Uber as well as their presence in the area, and on the other hand, CNMC after framing a narrow definition, decided that the presence of app-based intermediaries was not a threat to general taxis, based on the evidence provided at the time. Therefore, the geographical location also does play an important role in determining what the relevant market would be which leads to an issue in framing a uniform definition.

Moreover, in contrast to the earlier cases, the European Court of Justice ('ECJ') in its decision regarding Uber, decided that Uber was a part of the transportation business, despite it being an intermediary. This is also an interesting case to note, not just due to the fact that it was decided by the ECJ, and therefore, the decision could impact the decision of other competition authorities at the national level, but also due to the fact that this case arose after it was sent as a reference by the Barcelona Commercial Court, for a case that was looking into certain anti-competitive practices of Uber. Therefore, while the CNMC decided that within the cities of Madrid and Barcelona, that app-based intermediaries were a market of their own and were not proven to give any competition to the general taxis, the ECJ concluded that Uber would fall within the definition of transportation services, and not intermediary services. This means that two different authorities, looking at least one of the same cities, have different conclusions regarding the relevant market that Uber would fall within, thus leading to an issue with predictability and uniformity of the relevant market definition for companies such as Uber.
The ECJ in this case, observed that Uber’s services were more than what an intermediary service was defined to be. The ECJ based this off the information given and came to the conclusion that intermediate service provided by Uber is based on the selection of nonprofessional drivers using their own vehicle, to whom the company provides an application without which (i) those drivers would not be led to provide transport services and (ii) persons who wish to make an urban journey would not use the services provided by those drivers. In addition, Uber exercises decisive influence over the conditions under which that service is provided by those drivers (Case C-434/15 2017).

This case is another example which showcases the blurring of lines when it comes to companies such as Uber where one market is insufficient to determine what the relevant market should be. Further, it also showcases that different factors used by the competition authorities could have different consequences, since CNMC used the method in which the services were provided to distinguish the app-based intermediaries as a different market, but still considered them to be intermediaries, and on the other hand, the ECJ used the kind of services provided to conclude that the business of Uber was more than an intermediary, and therefore, could not fall within a separate market of its own.

Another aspect of this, as aforementioned, could also be that it depends upon the authority that the case is brought to, as well as the context within which the case was brought to the authority. In the cases before the CMA and CNMC, they were both acquisitions, and therefore a commercial transaction between courts of local jurisdiction. On the other hand, the case was referred to the ECJ was one based on complaints against Uber’s anti-competitive practices by an association of taxis.

However, what these cases do highlight is that extremely varying conclusions have been arrived at while delineating the relevant market, and therefore, also leading to no uniform definition being created. Further, due to the disruptive tendencies of companies which are a part of the digital economy, it becomes pertinent to understand whether the definition of relevant market should be adapted to include these companies and what the definition should include in order to understand how these companies would fit into the definition.

**D. India**

Section 2(r) of the Indian Competition Act, 2002 defines a relevant market as follows – relevant market means the market which may be determined by the commission with reference to the relevant product market or the relevant geographic market or with reference to both the markets (Competition Act 2002).

Moreover, both relevant product market and relevant geographic market have also been defined by the Act. Relevant product market as given under Section 2(t) refers to the market comprising all those products or services which are regarded as interchangeable or substitutable by the consumer, by reason of characteristics of the products or services, their prices and intended use (Competition Act 2002). Relevant geographic market as given under Section 2(s) of the Act refers to a market comprising the area in which the conditions of competition for supply of goods or provision of services or demand of goods or services are distinctly homogenous and can be
distinguished from the conditions prevailing in the neighboring areas. (Competition Act-2002)

In the Indian market, both Uber and ANI Technologies are not in the intermediary business and do not claim to be so either. Rather, Uber has contented that the relevant product market definition should be broadened in order to include other modes of public transportation as well, instead of it being limited to the radio taxi service market (Case No. 25–28 of 2017). However, this has been disregarded, based on the fact that the market definition would become too broad, and that the services provided by companies such as Uber, cannot be compared to those provided by other means of transport, and that the target consumers were different (Case No. 25–28 of 2017).

However, despite the ambiguity that arises from not having a uniform definition, the Competition Commission of India (CCI) has been able to delineate the relevant product market to be that of radio taxis. The rationale for doing so has been explained to an extent in the case of Fast Track Call Cab Pvt. Ltd & Meru Travel Solutions Pvt. Ltd. v ANI Technologies Pvt. Ltd. (Case No. 6 & 74 2015). In this case, the CCI concluded that the relevant product market would be that of radio taxis, because, while companies such as Uber and Ola use a novel business model, which involves the new use of technology, they do not create a distinct relevant product market. The rationale for the CCI for suggesting this was that substitutability needed to be accounted for, and if a customer believed that the two products could be interchangeable and used them interchangeably based on either the characteristics of the products or services, the price of their use, they would need to be included within the definition for relevant product market. While this does lead us to have a general basis for creating a definition for the relevant product market, it still does not result in a uniform definition, as this would then depend on the perception of what could be substitutable for the services that companies such as Uber and Ola provide. Further, this also leads to the question on whether there could be a possible blurring of markets, if depending on substitutability, services which would otherwise belong within other markets, would be included within this definition for a few cases.

The aspect of substitutability was also used to arrive at a decision in the case of Mega Cabs vs. ANI Technologies (Case No. 82 2015). Here, the CCI held that because there was a dedicated group of consumers who would not switch to using other modes of transport such as autorickshaws, even though the alternative would be more expensive, the market definition would need to be broad enough to include what could be substitutable and based on this they believed that the definition of the product market should be radio taxi.

In the Indian context, the geographic area also becomes extremely important when the CCI is defining the relevant market, and as a result of this, even within the same country, there is no uniform definition for the relevant market dealing with ride-sharing companies. An example of this is the case of Meru Travel Solutions v. ANI Technologies & Uber, which was the culmination of four separate cases, alleging anti-competitive practices carried out by Uber and Ola (Case No. 25–28 2017). The four cases arose from different cities – Hyderabad, Kolkata, Mumbai, and Chennai. In this case, while for three cities, the relevant product market was delineated as the market for radio taxis, for the fourth city – Kolkata, it was defined as the market for radio taxis and yellow taxis.

This also goes to show that in situations where everything aside from the geographical location is constant, since it was seen that the same parties are involved, and the same
allegations were levelled, before the same authority, different relevant markets were delineated. This, therefore, leads to issues in creating a uniform definition even within the same country. Further, in the case of Kolkata, it also leads to a blurring of two markets, since they also included the market for yellow taxis, based on the fact that customers would substitute the two types of services.

On the other hand, as aforementioned, substitutability in terms of the product market also becomes important, as seen in the case of Vilakshan (Case No. 6 & 74 2015). While the CCI stated that services such as those provided by Uber cannot be compared to autorickshaws or other modes of transport, it also stated that the relevant product market would be that of providing auto rickshaws as well as the services of radio taxis. However, at the same time, the CCI also mentioned that radio taxis would be different from traditional taxis, and therefore would not be considered to be within the same market.

Another issue that arises when trying to formulate the relevant market definition, are the legal issues with respect to the jurisdiction that could arise. The CCI raised concerns in the cases of Mega Cabs vs. ANI Technologies, and that of Vilakshan Kumar Yadav & Ors. v. ANI Technologies (Case No. 6 & 74 2015), about homogeneity since the radio taxi services market is regulated by State Transport Authorities. In the case of Vilakshan Jumar Yadav, it was even contended that the relevant geographic market should be extended to the entire NCR, which was not accepted by the CCI. Therefore, it is these views of the CCI become important in understanding the view they take with respect to delineating a market for companies such as Uber.

The CCI has, as seen in the cases above, been able to contain the market definition for Uber to the transportation industry and in most cases, to the radio taxi services, thereby even excluding other modes of transport. However, there are arguments to be made for the manner in which services are provided within the radio taxi services market as well, which would lead to a differentiation between the services provided by companies such as Uber and Ola, and those provided by Meru. This could then possibly lead to a narrower definition which could change the status of Uber or Ola within the respective market and show them to be dominant. However, the CCI also looks at if the actions undertaken by these companies are an abuse of their dominance and therefore, just by simply establishing their dominance, the companies would not be held to be undertaking practices which are anti-competitive in nature. This also follows true for the analysis carried out by the CCI to understand whether a merger should be allowed.

E. Inter-jurisdictional analysis

Throughout the jurisdictions chosen for this study, there has not been a uniform definition for the relevant market of ride-sharing applications. While on certain the occasions, the regulatory authority has chosen to delineate a much narrow definition for the relevant market such as the case of MyTaxi and Hailo, they still looked at the effect on traditional taxi drivers in order to determine anti-competitive behaviour. In the CCI’s decision regarding the operation of Uber, the geographic market of Kolkata played a huge role in determining the product market since they broadened the market to include the yellow taxis as well.

In the case of the Grab and Uber merger in Singapore, while the CCCS delineated the relevant market to be that of CPPT services, they did take into consideration the fact that
taxi booking services would not provide enough constraints in case the merger was to take place and that there were other markets which could be affected by the merger such as that of the rental of chauffeured private hire cars. These decisions taken by regulatory authorities all over the world also show that it is not simply the delineated market identified by the regulatory authority which forms the basis for a decision but also the post-merger effect on other markets.

In the recent past however, a common outcome across the jurisdictions is that application-based intermediaries such as Uber would be included in the transportation sector and not a part of the information society service as Uber had contended in its case in the ECJ. This makes the task of regulatory authorities slightly simpler in terms of having precedence now which puts intermediaries in the transportation industry. However, within the transportation sector, it is still not possible to have a common definition since each regulatory authority looks at several factors before delineating a market.

This is an area where the Competition Act of India actually allows for the dynamic change brought about by the introduction of these intermediaries since the definition for relevant product market is an inclusive one and only gives certain illustrations. This allows the CCI to actually include any other characteristic or factor which it deems to be important in delineate a product market. This helps in embracing new products such as those provided by intermediaries. However, this provision also has the possibility of not leading to a uniform decision on the definition of a relevant market based on the fact that the CCI might choose to base its decision on one characteristic over another.

**Network effects**

In the case of digital platforms, such as Uber, network effects play an important role in understanding the status of Uber within the relevant market as well as defining what the relevant market ought to be (HauCap and Stühmeier 2015). Here, app-based ride-sharing companies are two-sided platforms and exhibit both direct and indirect network effects, which could lead to gaining a large market share in a short period of time. In the case of digital platforms, it is the indirect network effects which play an important role in the growth of the platform, as well as in helping understand what market the platform operates in. While assessing the market definition for a two-sided platform, both sides of the platform need to be addressed, since each side has an indirect effect on the other (HauCap and Stühmeier 2015). An illustration of this would be, the number of drivers willing to sign up with Uber would increase if there was more demand from the rider side, and if more people saw that drivers were easily available on Uber, they would sign up to ride with Uber.

This two-sided network effect can be compared to a positive feedback loop if the demand and supply are sufficient enough to provide positive incentives and outcomes to both the users and drivers (Hardie 2019). This becomes important, as it allows the company to generate revenues at a quicker rate, and with this revenue, the companies are able to enter into other markets or develop new services, as was seen in the case of Uber, when they introduced UberEats (Hardie 2019). This then leverages the network effects, and their position in one market to enter into another one, and therefore also poses as an issue to those companies already existing within that market.
Further, from a competition policy perspective, these network effects make the platforms indispensable to efficient working, due to their large sizes (Hauca and Stühmeier 2015). Therefore, the impact of network effects becomes important while trying to delineate the relevant market and analyzing whether the company has been anti-competitive or if a merger should be approved. It is because of these reasons, that it becomes imperative to take into account network effects, before concluding what the relevant market is, as well as, whether the company is dominant in the relevant market.

It is interesting to note that network effects have not been explicitly mentioned as a factor which is to be taken into consideration, throughout the selected jurisdictions. While some of the judgements did look at the non-substitutability of Uber with either the local taxis or hired cars, they did not analyze the network effects of such the platform vis-à-vis the relevant market they operate in. Moreover, due to the omission of considering network effects by the authorities for delineating the relevant market, a more nuanced understanding of the market could not be arrived at. One of the possible issues that would have led to more deliberation, and perhaps a change in the relevant market definitions in certain judgements, is that even if the prices are changed in order to garner greater profits from one side of the platform, this change will depend on the user reactions from the other side and the feedback that they provide, thus in a manner, constraining the platform from being able to take advantage of the consumers.

In comparison, one of the arguments posed against Uber’s network effects is that there ought to be a breakdown of it at a point. This is due to the operation of network effects of app-based ride-sharing companies. When consumers observe that they have to wait for a lesser time and that there are drivers readily available, more customers would sign up, and by watching the number of customers using Uber grow, more drivers would also sign up, thus leading to a reduced wait time. However, after a certain extent, Uber would need the supply of drivers to grow by multifold in order to further reduce the wait time and this, would lead to diminishing returns (Currier 2019).

In addition to this, because of the low switching costs between ride-sharing companies, and the drivers being able to work for two companies at the same time, without incurring high costs, it leads to a situation where, even with network effects, app-based ride-sharing companies may not be able to gain much market share or be able to exhibit market power over other companies in the space (Currier 2019).

Further, the cost of adding a new user is negligible for digital companies in general, and therefore, it makes the business easier to scale up, and at the same time, the economic barriers to entry for such companies is low, thereby allowing several competitors to enter the space (Zhu and Iansiti 2019). In such a situation, users of app-based ride-sharing companies, could have multiple apps to compare prices and the wait times, as these would benefit both the customer, as well as the driver (Zhu and Iansiti 2019). Doing so, results in a situation where the companies are constantly competing with each other so as to attract more customers and drivers to their platforms by giving them promotional deals and lower prices, which in turn reduces the gravity of network effects as a tool of market power (Zhu and Iansiti 2019).

It is also important to understand that network effects are dynamic, and therefore, may change over time (Hadjia 2019). Since as aforementioned, the companies cannot continue to function, by utilizing the network effects in an unconstrained manner, as it leads to a
situation where at a point, network effects will no longer be useful or help the company exhibit market power.

In terms of defining the relevant market as just app-based ride-sharing companies, it leads to a situation where the existing, few companies, act as constraints on each other, and therefore, curb market power. However, due to the substitutability of the services of these app-based ride-sharing companies, with either other types of taxis or traditional means of transport, the price discounts, and other promotional activities of the former, can also impact the latter, thus leading to a situation where they could be indulging in anti-competitive practices. Moreover, if the two are to be said to be within the same market, as has been done in a few of the aforementioned cases, then the network effects that impact the market power that these app-based ride-sharing companies exhibit, do need to be taken into account.

Therefore, the dilemma that arises is that even though companies such as Uber do exhibit network effects, the same may not translate to having market power. These issues also stem from the ambiguity that arises in defining the relevant market, which is why it becomes important to have a uniform definition, so as to then be able to discuss and analyze if a merger should be approved, or to be able to ascertain whether these companies are indulging in anti-competitive practices.

### F. Conclusion

The aim of this study was to determine how relevant markets have been delineated with respect to the ride-sharing industry. While there is consensus across the three chosen jurisdictions that the app-based ride sharing companies are not a part of the traditional transportation industry, there is still no consensus as to what the relevant market should be.

This does depend on the factors each adjudicatory authority takes into account while delineating the market, and therefore, defining a common market across jurisdictions is indeed difficult, given the socio political and economic differences that exist.

Moreover, the definition also depends upon the factual matrix of each dispute. However, as adduced by a plethora of regulatory authorities, several factors ought to be considered while delineating the relevant market. Some of these include the operative mode of transport in a particular area, and the profits made by the industry itself. This approach of relying primarily on the economic backdrop of only a singular jurisdiction is beneficial to formulate a comprehensive policy in regulating competition within that jurisdiction. It also allows the regulators to analyze the level of competition at the grassroot level in order to implement an expansive policy. This was observed in the CCI’s decision to include yellow taxis, as a party affected by the predatory pricing of Uber (Case No. 25–28 of 2017).

However, the aspect of not having a uniform tool for identification of a relevant market may be detrimental in making effective policy decisions in the interests of society and stakeholders. As observed in various decisions of the CCI, there is an evident contrast in the true definition and factors adopted to define a relevant market. This contrast will facilitate an increased judicial and administrative discretion on regulatory bodies such as the CCI. The judicial direction is excessive as the CCI is allowed to determine its own relevant market.
In conclusion, as aforementioned, it is difficult to establish a common definition, especially across jurisdictions. However, it must also be realized that the relevant market within the same jurisdiction cannot be extremely dynamic and there must be some uniformity. Ergo, further research must be conducted on digital enterprises and platform markets in order to curb current as well as future competition violations.

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