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CASE COMMENTARY: ROHIT ARORA **V ZOMATO PVT LTD**

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FACTS:

The Complainant has been a Zomato user since 2018. OP (Opposite Party) is a corporation that operates a two-sided platform. OP (previously known as Foodiebay.com) began providing restaurant search services in Delhi/NCR in 2008. Foodiebay was rebranded Zomato in 2010, signalling a shift in its business model. Zomato had become a prominent player in the restaurant and food portal sector in India by 2011, and it had expanded abroad in 2012. The Complainant claims that when Zomato entered the food ordering business, it had a competitive advantage. This advantage resulted from Zomato's collection of user data from its restaurant discovery platform, which resulted in a zero-cost customer acquisition. Zomato was able to swiftly build a strong presence in the online meal ordering business by leveraging this data and insights into consumer behaviour. As per the complainant ordering the food online and delivering the food are different markets and are not relevant one. Zomato is said to have a dominant position in the online meal ordering sector, which it expanded after owning UberEats in January 2020. Zomato got into principal-to- principal agreements with eateries to provide online meal ordering services. Zomato tried to show its dominance in food delivery market also, since the delivery was initially done by the restaurants. However, Zomato's 2017 acquisition of Runnr resulted in a quick expansion of its meal delivery services through data-driven initiatives.

ISSUES:

1. Whether the provision of buying food online along with the condition of delivery service amounts to Tie-in-arrangements ?
2. Whether the Zomato Pvt Ltd is Abusing the Dominant Position as per Competition Act, 2002?

PROVISIONS:

1. Section 19(1)(a) in the Competition Act, 2002

(a) receipt of a complaint, accompanied by such fee as may be determined by regulations, from any person, consumer or their association or trade association; or¹

2. Section 3(4) in the Competition Act, 2002²

(4) Any agreement amongst enterprises or persons at different stages or levels of the production chain in different markets, in respect of production, supply, distribution, storage, sale or price of, or trade in goods or provision of services, including—

(a) tie-in arrangement;

(b) exclusive supply agreement;

(c) exclusive distribution agreement;

(d) refusal to deal;

(e) resale price maintenance, shall be an agreement in contravention of sub- section

(1) if such agreement causes or is likely to cause an appreciable adverse effect on competition in India. Explanation.—

(2) For the purposes of this sub- section,—

(a) “tie-in arrangements” includes any agreement requiring a purchaser of goods, as a condition of such purchase, to purchase some other goods;

(b) “exclusive supply agreement” includes any agreement restricting in any manner the purchaser in the course of his trade from acquiring or otherwise dealing in any goods other

¹ Section 19(1)(a) in the Competition Act, 2002

² Section 3(4) in the Competition Act, 2002

than those of the seller or any other person;

(c) “exclusive distribution agreement” includes any agreement to limit, restrict or withhold the output or supply of any goods or allocate any area or market for the disposal or sale of the goods;

(d) “refusal to deal” includes any agreement which restricts, or is likely to restrict, by any method the persons or classes of persons to whom goods are sold or from whom goods are bought;

3. Section 4 in the Competition Act, 2002

4. Abuse of dominant position.—

(1) No enterprise shall abuse its dominant position.

(2) There shall be an abuse of dominant position under sub-section (1), if an enterprise,—

(a) directly or indirectly, imposes unfair or discriminatory—

(i) condition in purchase or sale of goods or services; or

(ii) price in purchase or sale (including predatory price) of goods or service; or

Explanation.—For the purposes of this clause, the unfair or discriminatory condition in purchase or sale of goods or services referred to in sub-clause (i) and unfair or discriminatory price in purchase or sale of goods (including predatory price) or service referred to in sub-clause (ii) shall not include such discriminatory conditions or prices which may be adopted to meet the competition; or

(b) limits or restricts—

(i) production of goods or provision of services or market therefor; or

(ii) technical or scientific development relating to goods or services to the prejudice of consumers; or

(c) indulges in practice or practices resulting in denial of market access;

(d) makes conclusion of contracts subject to acceptance by other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts; or

(e) Uses its dominant position in one relevant market to get into or safeguard a different relevant market.

Explanation .—For the purposes of this section, the expression—

(a) “dominant position” means a position of strength, enjoyed by an enterprise, in the relevant market, in India, which enables it to—

(i) operate independently of competitive forces prevailing in the relevant market;

or

(ii) affect its competitors or consumers or the relevant market in its favour;

(b) “predatory price” means the sale of goods or provision of services, at a price which is below the cost, as may be determined by regulations, of production of the goods or provision of services, with a view to reduce competition or eliminate the competitors.³

COMPLAINANT’S CONTENTION:

The complainant stated that initially the food was delivered by the restaurants itself, now the delivery service provided by the Zomato is seen as a tie-in arrangement.

The Complainant's charges against Zomato include a variety of practises that are viewed as abusive behaviour, which could be attributed to Zomato's dominant position in the online food ordering and delivery business. Here's a rundown of the allegations:

- **Allegations Regarding Food Delivery Fees and Terms:**

Raising Food Delivery Fees: According to the Complainant, Zomato has raised food delivery fees or delivery rates above competitive levels. This could result in higher consumer costs and anti-competitive behaviour.

Charging Unfair and Discriminatory Delivery Fees: According to the Complainant, Zomato charges unfair and discriminatory delivery fees by changing algorithms. This implies that Zomato's pricing policies may be discriminatory and controlled.

³ Section 4 in the Competition Act, 2002

Imposing Unfair Conditions on Customers: According to the text, Zomato imposes a variety of unfair conditions on customers. The nature of these situations is not specified, but they are suggested to be harmful to users.

- **Accusations Against Food Delivery Services:**

Vertical Restriction of businesses: According to the Complainant, Zomato is vertically restricting businesses from delivering meals itself. This may limit the independence and competitive options of restaurants.

Restricting Food Delivery from Unfavourable Restaurants: It is said that Zomato prohibits food delivery from undesirable restaurants by failing to assign delivery executives. This practise has the potential to stifle competition and customer choice.

- **Zomato's Market Entry Strategy Allegations:**

Using Dominance to Gain Access to the Food Delivery Market: As per the Complainant, Zomato used its strong position in the online food ordering sector to obtain the online delivery business also. This means that Zomato's dominance enabled it to force establishments to use its delivery services.

Supporting occurrences: The Complainant cites three specific occurrences to back up these claims. Order cancellation procedures, food spills upon delivery, and non-refund of money upon order cancellation are all examples of these situations. According to the Complainant, these occurrences demonstrate Zomato's abusive behaviour.

RESPONDENT'S CONTENTION:

Zomato responded to the Complainant's charges by presenting its perspective and reasoning for its actions in response to the three individual instances. The following is a summary of Zomato's response:

- **The first incident was an unauthorised cancellation.**

The Complainant, according to Zomato, placed an order on the platform and then called the delivery partner directly, giving specific directions about reaching him on a landline number rather than the reported mobile number when delivering the food.

When such instructions are given through Zomato's platform, customer support personnel guarantee that they reach the delivery partner. However, in this case, the Complainant immediately communicated instructions to the delivery partner, creating a one-of-a-kind circumstance. According to Zomato, providing the Complainant a full refund would have been unjust because the delivery partner had already invested time, energy, and fuel in picking up and transporting the food.

- **Second incident - Food Spillage:**

Zomato's answer to the second event includes a claim that its customer care executive instructed the Complainant to choose the spilled item, but the Complainant did not file a complaint.

In accordance with Zomato, the Complainant's activities reflect a desire for a speedy reimbursement. When it became clear that a reimbursement would not be granted, the Complainant dropped the complaint. According to Zomato, this indicates a lack of genuine care for the tragedy.

According to Zomato, if the spill was genuine, the Complainant should have raised the issue with the customer service staff and provided photographic confirmation of the leak.

- **Third Incident - No Money Refund:** Zomato denies the Complainant's assertion that the order was cancelled "within 30-40 seconds." According to Zomato, the Complainant placed the order at 11:09 a.m. and requested cancellation two minutes later, at 11:11 a.m. Zomato claims that, despite the time difference, the Complainant received a complete reimbursement for the order. According to Zomato, the Complainant purposefully and fraudulently failed to divulge this fact.

In summary, Zomato's response to these situations seeks to present a different viewpoint on the actions and decisions taken in each case. Zomato believes that its actions were justified and appropriate under the circumstances, and it refutes the Complainant's assertions by providing more data and timings. These comments are most likely part of Zomato's defence against the Complainant's charges of abusive and anticompetitive behaviour.

COMPETITION COMMISSION OF INDIA'S DECISION:

CCI ruled that, in relation to the three specific instances of abuse described by the Complainant, Zomato attempted to disprove all three with evidence on record, which was not substantively contested by the Complainant, and thus the Commission discovered no evidence of abuse made out against Zomato.

The Commission noted that the Complainant had determined two distinct relevant markets, which Zomato had challenged: online meal ordering services provided by food aggregator applications in India and food delivery services in India. Based on the available evidence and the facts of the case, the Commission concluded there is no prima facie case of Act violation against the OP, and the evidence filed is directed to be closed immediately.

ANALYSIS:

The claims presented by the Complainant against Zomato, specifically focused on occurrences relating to food delivery, food spills, and order cancellations. The CCI determined that the Complainant's complaints were principally based on these specific occurrences, but observed that Zomato's evidence contradicted the assertions, and the Complainant did not substantively rebut these facts in their rejoinder.

The possibilities of Abuse of Dominant position is characterised as: Sets unjust or discriminating conditions, either directly or indirectly: condition in the purchase or sale of goods or services or price in the purchase or sale of goods or services (including predatory pricing)limits or restricts: production of goods, provision of services, or market access as a result; or technical or scientific development relating to goods or services to the detriment of consumers; or engages in practise or practises resulting in denial of market access in any way; or makes contract conclusion subject to acceptance by other parties of supplementary obligations that, by their nature or nature of their obligations, have no link with the subject of such contracts or utilises its dominating position in one relevant market to enter or protect another relevant market, according to commercial usage.⁴

As a result, there is found no instances of abuse of power in accordance with Section 4 of the Competition Act. Food spilling, delivery allegations does not amounts to abuse of dominant

⁴ Position of dominance - the abuses and recourses ,2023, Lawrbit. <https://www.lawrbit.com/article/position-of-dominance-the-abuses-and-recourses/>

power.

Concerning the charge of a tie-in arrangement including meal delivery, the CCI referenced prior observations in a similar case against Zomato and Swiggy, emphasising that bundling delivery with food ordering was consistent with consumer expectations and provided a composite service. A tie-in arrangement, as defined by competition law, is a circumstance in which a seller of a good or a provider of a service sells his good or provides his service on the condition that another good or service be acquired in conjunction with the purchase of the first mentioned commodity or service.

The integrated service catered to consumer needs by allowing for simple ordering and delivery. The CCI observed that the competition between these online food platforms was primarily focused on packages, with delivery time and quality being critical factors, and that bundling did not pose competition concerns. The Complainant failed to provide evidence to support their contention that such bundling was anticompetitive. The allegations passed by the Respondents seems to be fair and reasonable, and also food spilling, delivery and cancellation was done in a reasonable situation it doesn't amounts to an abuse of dominant position under my opinion.

CONCLUSION:

The Competition Commission of India decided that the claims of misuse against Zomato were unsubstantiated. The specific occurrences raised by the Complainant were properly handled by Zomato's answers, and the Commission concluded that there was no prima facie allegation of a violation of the Competition Act. As a result, the matter was closed, and Zomato was not prosecuted.