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COMPROMIS



UNION OF NATATA, TERU, LIO NAMMA TIGE RAMAMMA & ML SHARMA

VERSUS

SUPER & WOILA!

1. Merger control was regulated in the Union of Natata under its competition law and regulations. The Union is a sovereign federation of states with several union territories. People of Natata are very religious and also very concerned about environment. It has recently been noted that due to increased awareness, the carbon emissions and overall carbon footprint is better now than it ever was, since the dawn of industrialization and use of fossil fuels in Natata.
2. Hardsank is a big investment company, with its major shareholding held by the Jajj-ing Trust based in People's Republic of Clay (PRC). Jajj-ing trust is a privately held family trust, where Mr. Papabhai, his wife Ms. Pampaw Ati and his other family members have the controlling say. All of them are citizens of PRC.
3. Apart from Hardsank, the Jajj-ing Trust also has controlling stake in Jiji Chuking Technologies (Jiji), which runs the largest app based cab hailing service. Apart from pioneering in the cab hailing technology, Jiji is also a frontrunner in developing Artificial Intelligence based software.
4. A graduate from Natata's premier technology institute, Mr. Betan Chagat is the promoter of country's first app based cab hailing company called Centen Technologies which launched Woila! in 2017. It was an instant hit in the metro cities of Natata. Realizing the market for app based cabs to be a monopoly, Woila! was priced much lower than Teru, Weezycabs etc.
5. Before the launch of Woila!, the radio-cabs like Teru, Weezycabs etc. were the only players in the market. They used to operate on a system of daily minimum fixed payment from their drivers. Whatever the driver used to earn over and above the



daily minimum fixed payment, was shared equally. A lot of drivers complained regarding exacting money even on days when the drivers may have a genuine difficulty or exigency.

6. Woila! was a game-changer. More and more drivers moved from radio- cabs to Woila!, took loans and funded multiple cars. This was possible due to the incentive system introduced by Woila! where for every set of incremental trips (like 3-5-7-11-13-15-20), the cab-owners used to get extra incentives over and above their per-km mileage. The market expanded so much that cabs became easily available, and were usually more economical than driving one's own car. In mid-2017, the foreign investment norms were liberalized, permitting non-Natata entities to invest up to 49% in app based cab aggregator services.
7. Super Inc., one of the largest app based cab aggregator service in the world, saw a great business opportunity in PRC and Natata. It created local subsidiaries in conformity with applicable FDI norms and floated Super in these markets. Super brought on its platform more high-end cars and more suave drivers. It was an instant hit amongst the higher income strata consumers, who preferred Super over Woila! due to the former's perceived premium category services.
8. There was an instant competition in a market where Woila! was once a (short lived) dominant player, as shortly after its launch, Super introduced micro and mini services with hatchbacks aimed at students and office-goers, which formed the two biggest clusters of consumers for Woila!.
9. During one of her visits, Ms. Pampaw Ati happened to use Woila! and was very impressed by its services. Shortly after, in Nov 2017, she offered to pump in huge amount of capital in Centen and Mr. Betan Chagat could not have been happier.
10. This enabled Woila! to take the next step in its business. Woila! reduced its pricing so much, that the micro and mini sections of Super were out of business. This led to



a price war between Woila! and Super, and while prices went tumbling on a downward spiral, the incentives were increased to retain and prevent cab owners from switching to the other company. This led to the cab owners and consumers both benefitting; however the previous players like Teru, Weezycabs etc. lost most of their consumers to either of the two companies, and were largely left with airport based licensed radio taxi services.

11. It was a matter of speculation, as to how long this cut-throat competition would last between Woila! and Super. However, waiting for the other to give up, these two kept subsidizing their prices, and at the same time grew their consumer base. Consumers, wise as they are, kept switching between the two services, depending on who was giving more discounts or promo coupons.
12. Demonetisation of currency took place in Natata on the directions of the Supreme Leader in November- December 2017. It was directed by the Federal Reserve Bank that no cash transactions will be permitted, and all transactions must take place through banking channels. It was the end result of the rapid biometric based account opening throughout the country which began in early 2017, wherein all citizens above the age of 18 were provided with biometric banking accounts, which could be operated by usual means like cards etc. and also by biometric methods. It was backed by a widespread campaign by the government where it demonized those holding cash, calling them hoarders of black-money and asking all citizens to deposit all money into their bank accounts, so that the black money holders can be caught and brought to justice. The effort was successful, and it left the country very happy as there was no need to move around with cash, and everyone was able to access banking channels, irrespective of their social or economic status or literacy level. The only unhappy lot was the kids who were below 18, many of them too old



not to make a grudge about having to depend entirely on their parents for all their transactions, but too young to have their own bank account under the law.

- 13.** A wise kid, named Attamas Ala petitioned the Supreme Constitutional Court (SCC) claiming that the scheme was a violation of her right to privacy and was also contrary to the banking statute. The Chief Justice found merit in the petition, and issued notice to the government. However, it was reluctant to stay the Demonetisation process, as the Attorney General was ably persuasive in convincing the court against stalling the process, based on the principle of greatest-good-of-greatest-number. Attamas Ala filed several early hearing applications, however as the Court was preoccupied with hearing other important matters, the Demonetisation matter could not be finally heard till date.
- 14.** In Jan-2018, the Competition Commission of Natata was approached by Teru, against Super and Woila!.¹ While the matter was pending investigation, a group of consumers led by one Ms. Lio Namma petitioned the National Consumer Forum claiming discrepancy in pricing and billing by Super and Woila!. Their claim was regarding rampant malpractices, and unfair actions by Super and Woila! like the promo discounts were not given, the pricing was not shown upfront in the format of per-km, per-minute, and only an aggregate fare was shown upfront when one would enter a destination. However, such upfront fare was not honored, and without any reasons, a much higher amount was charged. Both the services used to directly debit the connected accounts, and customer's complaints were restricted to be lodged by apps only, which were not responded to, in a timely manner and sometimes there was no response at all. Also, the upfront fare would vary in a

¹ Teru is supposed to have taken all arguments, possible under the law against its competitors.



random and myriad fashion, and consumers showed proof of various variations, like two phones with different battery levels being offered different fares, *ceteris-paribus*. The National Commission found the case worthy of admission, and decided to proceed by taking this matter as being filed in representative capacity. This made headlines across all major newspapers the next day.

15. Around the middle of Jan-2018, Tige Rammama a known crusader in the field of environmental rights, petitioned the National Green Tribunal against the use of diesel cabs by cab hailing services. The Tribunal issued notice to Woila! and Super and sought their replies on affidavit.
16. Finding the spurt of litigation, all at once before various fora, a little too coinciding to be natural, the CEOs of the two companies met and decided to hire the services of Ajjambhoy and Co. - the leading name in private investigation. They gave a joint mandate to find out, inter-alia, if the litigation before various fora was sponsored or motivated. The following is an extract of the confidential mandate given to Ajjambhoy and Co.:

“We are concerned with the high incidence of potentially damaging litigation launched in recent times. We believe this could be sponsored by some of our competitors who are going out of business due to our predatory pricing strategy. This may also be an effort to preempt the possible merger between the owners of Super and Woila! as proposed by the Jajj-ing Trust which idea is at a very nascent stage presently but may happen if the other stakeholders consent to it.

We are also concerned with the negative publicity that has resulted from the sustained campaigns on various social media platforms against app based cab aggregators with snapshots of upfront pricing, consumer complaints etc. being circulated very frequently and uploaded and shared.



We are further worried about the future of polluting fossil fuels, and would like you to deploy your sources in the North and South blocks, to find out if the Union Government is considering a ban on the use of diesel by city-transport vehicles like cabs.

We would like you to also check the relevant records of calls and messages originating from any of the applicants/petitioners numbers to see if they are acting in concert in any manner.”

17. In Feb 2018, Ms. Smith Aah, promoter of Liyo Inc. and the richest citizen of Natata announced her plans to buy out the loss making enterprises in the radio-taxi business. Liyo Inc. had hold in energy, infrastructure, telecom and internet, retail, and defence. Liyo-net, its internet service, was country’s biggest ISP.
18. Ms. Smith Aah went on record to state that Natata cannot be won over by foreign capitalists, and ‘*Swadeshi*’ is the mantra inspiring her to protect the market from going into the clutches of PRC companies. Her company Liyo Inc. bought out Teru, Weezycabs, Egacabs and Mesycabs in all cash-deals, and aggregated them under their brand name. Liyo started offering brand new luxury cars at the rates of Woila! and Super, thus giving a serious threat to the duopoly.
19. Events in March 2018 unfolded with a lot of surprises for the people of Natata. There was a series of leaks done by a group which identified itself as ‘PRClever’, which revealed that Liyo had been in talks with Jajj-ing Trust to buy Super and/or Woila! and there was a joint meeting between Ms. Pampaw-ati, Mr. Betan Chagat and Ms. Smith Aah in a country side resort in PRC, in Dec. 2017. Minutes of this meeting were selectively leaked, which revealed that Ms. Smith Aah desperately wanted to get into the cab business and was ready to spend whatever required, to buy either Super or Woila!. However, they could not agree on the pricing and there were



disputes with regard to the possible risks ensuing from monopolization. While Mr. Betan Chagat and Ms. Pampaw-ati were averse to monopolizing at the cost of being price-regulated, Ms. Smith Aah kept claiming that she keeps the bureaucracy in her pocket and all the political leaders are on her roll and she will be able to manage things in a desirable way. There were also emails showing internal correspondence of Liyo Inc. where Liyo executives were discussing the levies to be imposed for airport entry by Super and Woila! and lobbying efforts which resulted in this levy being made effective on all cab aggregator services, while excepting the airport licensed radio taxi services. Some further emails revealed Liyo asking its retained law firm to give a hike and bonus higher than peers, to two lawyers who were related to post holders in Competition Commission and National Consumer Forum.

- 20.** The very next day of the above leaks being published on web portals, some internal emails of Centen and Super were leaked in a similar fashion by another group called 'PRCSlayer'. One crucial email reflected the discussion which led to the final mandate given to Ajjambhoy and Co. containing the excerpt, as noted above. There were other emails containing attachments like call records of the applicants/petitioners showing them to be constantly in touch with each other and with officials of radio taxi service companies like Teru and Weezycabs, certain payments made by Teru to a PR firm which was found to have employed Ms. Lio Namma as well as Tige Rammama as consultants from Aug-2017 to Jan-2018 at unusually high payments. There were further emails querying the educational qualifications of the applicant/petitioners, which were found to be not beyond graduation in either case.
- 21.** The next day, this made headlines and the news-reports were full of speculations. One Mr. L.M. Sharma relying on the newspaper reports and annexing them in his quickly drafted petition, moved the Supreme Constitutional Court, claiming that the



leaks revealed a systemic regulatory capture and sought for court monitored probe and also that the proceedings before different fora must be supervised by the Court. Immediately after filing his petition in the registry, he called for a press conference and addressed the media informing them that his petition will come up for hearing after a week's time as per rules and he will nail all the illegal money-making capitalists and their cronies in the government and judicial circles.

22. Immediately upon such leaks happening, Teru filed an application before the Competition Commission praying for no cognizance to be taken of any of such leaks as it violates confidentiality and such leaks are in breach of the law, and hence cannot be looked into.
23. Super filed an application before the Green Tribunal seeking action against the Applicant, calling it a sponsored litigation. Teru responded to the application by claiming that the cause of action does not get discounted due to any questions being raised regarding antecedents of the Applicant (while also denying that it is sponsored litigation).
24. Centen filed an application before the National Consumer Forum seeking action against the Applicant there, on the ground of conflict of interest. Teru filed a response claiming that the application is misconceived, and Centen and Super violate privacy of customers by peeping into their phones without authorization and these facts are too glaring to be not taken in judicial notice. It further averred that the claim of giving any benefits to any relation of the member of Forum was misconceived as that member was not hearing the matter, and such allegations are in bad taste and unfortunate, only to brow beat.
25. All of these were widely reported in the media, leading to various comments being made nationally and internationally on the business ethics as well as credibility of judicial institutions and government officials in the country.



26. Realizing the bad publicity such events brought for the government, the Attorney General was asked to move transfer petitions before the Supreme Constitutional Court seeking transfer of the proceedings from the Competition Commission, National Consumer Forum, and the National Green Tribunal.

27. After admission hearing, the Supreme Court released the following order:

“Heard.

The Writ Petition seeking court monitored probe is found fit for admission. Rule nisi be issued.

The transfer petitions will be decided based on the submissions of respective parties.

For the sake of convenience, Original Petitioners/Applicants will be identified as Petitioner side (including Union of Natata for Transfer) and other contesting respondents to be identified as Respondent side.”

28. Some of the submissions advanced by the Petitioner are:

a. It is the duty of the SCC as the supreme constitutional authority, to ensure judicial discipline. There is a definite requirement of court monitored probe and court supervision of proceedings, as some of the entities involved have very high influence and petitioners/applicants before tribunals have dubious antecedents.

b. The market for cabs is a vital market, affecting day to day needs of common populace and hence the matter is of urgent and peremptory importance. The possibility of merger cannot be ruled out at this stage also, and if that happens, the ill effects will be immediate, and the remedy will take time (as



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- any authority will take time to investigate and public at large will start suffering immediately), therefore some preemptory action is required;
- c. The affairs of cab companies reveal gross illegalities, where they are acting high handed, not caring for consumers' rights, and there is manifest unfairness in their business practices.
 - d. Charging consumers without a pre-disclosed rate (per -km, per-min) is illegal under the law, as it takes away the vital parameter of 'consideration' and makes the contract uncertain. Over charging from pre-authorized monetary instruments is nothing less than criminal breach of trust, and fraud.
 - e. Use of diesel for commercial vehicles cannot be permitted as it amounts to profit-making at the cost of environment;
 - f. Court has wide powers under Art. 142 and therefore it must hear all petitions and decide finally.
 - g. Other submissions as urged.

29. Some of the arguments advanced by the Respondents are as follows:

- a. The Supreme Constitutional Court has a lot of other important matters to hear and decide, and must not devote time to these matters which require highly specialized and expert inputs.
- b. As a constitutional court, the Court must not decide matters which have such contested facts.
- c. Remedy of appeal is an important and vital right, which would be lost in case the Court decides all these matters itself.
- d. The petition seeking probe is based only on newspaper reports and does not meet the threshold requirements.



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- e. The Petitioner seeking probe has given a prior interview on the petition, which reveals his intent and it is nothing but Publicity Interest Litigation.
 - f. The supervision by Court on judicial or quasi-judicial proceedings is unheard of, and cannot be accepted as a valid exercise of judicial power.
 - g. *Ubi jus ibi remedium* is the guiding factor in all judicial decision making, and Court cannot exercise jurisdiction on preemptory basis, however much be the public interest claimed to be at stake; also, *arguendo* even if there is a merger, it will be regulated under law, and it may not necessarily affect public interest adversely but may only further it.
 - h. Algorithm based pricing is accepted worldwide, and there is no law which prohibits its use in Natata.
 - i. Until diesel is permitted for trucks and tractors, it ought not to be prohibited. The Court does not have powers to legislate and cannot stop the use of a particular fuel, which is the sole domain of the other wings of the government.
 - j. While there may be precedents on the use of Art. 142, however the present case does not warrant any such exercise.
 - k. Other submissions as urged.

30. All laws of Natata (including subordinate legislation) are *pari-materia* with laws of India (unless the facts above reveal a clear and specific variation). The Courts in Natata are greatly persuaded by the jurisprudence from India, but also hold high respect for cases from the EU and other jurisdictions. Courts usually make efforts to base their judgments on comparative research, and freely refer to prevailing situation in other countries and markets.



Nota Bene:

- a. All references, actual, deeming or fictional; are fictional.
- b. The given arguments are tentative. These arguments are not comprehensive. There are other legal issues in the facts which need to be considered.
- c. Citations should not be without actual para/page references. Unnecessary citations and *passim* references are to be avoided. No extracts are necessary in the judgment, especially quotes from other judgments. An annexure may be prepared and appended with the judgment which contains the relevant quotes. Primary reference for all materials being referred **is mandatory**.
- d. Please read note 'c' again.

-Drafted by
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