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Zomato, Swiggy, and the Competition Commission of India

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Food is fuel for the human body, and profit is the fuel for the artificial person, i.e., the company. As the food industry has seen a tremendous change in recent times, it is now going through a 'tech-food marriage' phase, which has started a new family of online food delivery platforms, but as with everything new, it has some positive and negative points. The online food delivery industry has been through good times when the food is delivered to your location within a few minutes, but everything has a cost attached to it. The cost here is the delivery charges and mark-up prices that the customer has to bear if he/she wants food to be delivered by Zomato or Swiggy. To give some relief to the other players and the customers, the regulatory body CCI has to take certain action against the activities detected and suspected as anti-competitive in order to neutralize the monopoly.

Keywords: *zomato, swiggy, deep discounting, business model, cloud kitchen.*

INTRODUCTION

The National Restaurant Association of India (NRAI) filed a complaint against the 'online food delivery' market giants, Zomato and Swiggy. As per the current figures, around 95 % of the food delivery market is dominated by both these players. Seeing a huge majority, the two players started charging high commissions from the restaurant partners and cloud kitchens listed on their applications, respectively. Zomato is accused of charging around 20–27% and

30–37% of commissions from their restaurants and cloud kitchens, respectively. According to the NRAI, both players abused their market share majority (power) and indirectly prohibited the entry of any other new 3rd party food delivery application(s) by setting a price cap for their listed restaurants, i.e., they cannot sell the product at a lower price than what is offered at Zomato or Swiggy, even if the restaurant wants to sell the product at their own application they are prohibited to do so. They both also used the 'deep discount technique', i.e., selling the product at a lower price than its own cost price or below par value, and still continued charging high commissions from the restaurants. Both the players were also alleged to have used a 'data masking technique', i.e., modifying the sensitive data to replace it with an unreal one. When you see the prices on the restaurant's menu card offline and the same product of the same restaurant at Zomato and Swiggy, you will see a huge difference in their selling prices. Swiggy acknowledged that they used 'price parity' to offer a competitive price, but Zomato denied any such allegations.

COMPETITION LAWS

The Competition Commission of India (CCI) on a prima facie note finds that the probes are indicating the breach of the 'anti-competitive laws' where Zomato and Swiggy unfairly masked data, charged high commissions, delayed the payment cycle, and favored the cloud kitchens where they (Zomato and Swiggy) have equity or investments. The Competition Commission of India (CCI) directed NRAI officials, under the guidance of their D.G. to submit the complete investigation report in 60 days.

The Competition Commission of India (CCI), being the statutory body regulated under the Ministry of Corporate Affairs (MCA), was established in the year 2003 when the then union government of India passed the Competition Act, 2002, in order to promote good competition and protect the customer from the negative effects of competition. The Securities and Exchange Board of India (SEBI) is to regulate the securities market with the primary aim of safeguarding its investors, the same aim of safeguarding normal customers from the adverse effects of competition, such as monopolies, artificial shortages of supply, price discrimination, and car telling between or among the manufacturers. The Competition Commission of India

(CCI) was established in 2003 under the Competition Commission of India (CCI) Act, 2002 to achieve the following objectives, which are stated below:-

- Make the markets work for the benefit and welfare of consumers.
- Ensure fair and healthy competition in all economic activities in the country.
- Implement competition policies with the aim of putting into force the most efficient utilization of economic resources.
- Develop and nurture effective relations and interactions with sectoral regulators to ensure smooth alignment of sectoral regulatory laws in tandem with competition law.
- Effectively carry out competition advocacy and spread information on the benefits of competition among all stakeholders to establish and nurture a competition culture in the Indian economy.

Before the Competition Commission of India (CCI), it was the Monopolies and Restrictive Trade Practices Commission (MRTPC) which was established as a result of the 1991 Liberization, Privatization, and Globalization (LPG) policies. The Competition Commission of India (CCI), on the other hand, was established as a result of the Competition Commission of India (CCI) Act, 2002, which empowered the CCI to take a proactive approach in dealing with a wide range of offenses, and the crucial power was that it was given punitive power against violators.

In this case, on prima facie, it seems that 'Section - 3 and its sub-clauses of the Competition Commission of India, 2002' are uprooted. Section-3 of the CCI Act of 2002 discusses "Anti-Competition Agreements," which hamper competition in the industry/market and product by indirectly making a cartel and fixing the price of the product, be it the maximum price or minimum price within, between, or among themselves. There also seems to be price discrimination and indirect cartels by these two giants by creating an invisible price barrier.

BRAND ANALYSIS

As Zomato and Swiggy are giving 'deep discounts' by using the 'pre-datary pricing technique', they are killing competition in the market. A 'pre-datary pricing technique' is used to sell the products at a lower price where the company using it is not even reaching the break-even point (normal profits where cost price and sell price are equal, no loss-no profit case) just to kill the existing company to increase their customer base, thus, later creating a monopoly. Also, they had a "no 3rd player" approach mindset, i.e., Zomato or Swiggy would be number one or number two in the market, with no other players dominating the market. If the case went against the food giants and the CCI ordered some hard penalties, then Zomato being listed on the stock exchange in India could have a negative effect. Zomato's shareholders would have to face a trust deficit in that case from the management for not running it as per the norms and guidelines. Zometa and Swiggy are both incurring huge losses, i.e., Zomato's losses in 2021 were 81% and Swiggy's was 59%. Because of this, they are somewhat charging the commissions from the restaurants high and, adding to that, the prices reflected on their applications are also marked-up (a marked-up price is when the actual selling price of the product is set higher than the original price rate) when compared with the actual menu of the dining restaurant. Zomato being a loss-making company is still listed in the stock market because of the policies and norms governing the listing process, a loss-making company can still list itself in the stock market and introduce an Initial Public Offering (IPO) by following the rules where 70% is allotted to qualified institutional investors, 15% too high net-worth individuals (HNIs), and 15% to retail investors, whereas on the other hand, in the case of profit-making companies, the ratios are 50% to qualified institutional investors, 15% too high net-worth individuals (HNIs), and 35% to retail investors. So, the pressure on Zomato to honour the investments of qualified institutional investors would be on the higher side. If we look at the revenue model of Zomato, then we can observe that 72% of Zomato's income comes from restaurant advertising, followed by their application subscription revenue, etc. and, on the other hand, the lowest revenue is coming from their core business, which is around 2% from online food delivery. After analyzing the figures, you can see that the restaurants listed on Zomato need to have a heavy pocket to fund their registration due to the double-edged swords of advertising charges plus the commission charges. For any new business, especially for a cloud kitchen, it is very difficult to survive in this business by listing itself on Zomato. Moreover, the cloud kitchens that have to invest in their business to actually start the production of their meal services for their target customers can invest in their business with high equity and lower valuation amounts, which comes out to be a win-win situation for Zomato. Zomato will then promote the cloud kitchens where they have high stakes and investments. Zomato is promoting other restaurants' businesses as well as building their own assets in the food industry, which also hints at a potential monopoly in the near future in the domain of online meal services. Zomato in the early days of their business also had to face a very slight legal hiccup, i.e., when they started their business in 2008, the name was FoodieBay, and was renamed Zomato on January 18, 2010, as ‘Zomato Media Pvt. Ltd.’.

Since then, Zomato has gone from being a national company to an international company in the ‘food tech’ and online food delivery industry. Zomato also has some subsidiaries under its belt, like Urbanspoon, Uber Eats, and some more. As ‘Uber Eats’, one of the prime competitors, took over Zomato, their presence became more prominent in the industry and their reach as well. Zomato not only kept itself from taking over the business houses in the same industry but also introduced a non-government organization (NGO) by the name of ‘Feeding India’, which also charges Rs. 1 on any other item you place on Zomato but the amount to pay Rs. 1 is optional. If the customer wants, he or she can remove it as well. Starting an NGO helps to improve three things in the market. That is, the first one is the Corporate Social Responsibility (CSR) to give society something in return and also fulfill the Security & Exchange Board of India (SEBI) guidelines. The second one is image enhancement. Customers generally are proud to associate with brands that have social awareness and also have the inclination to become their loyal customers or repeat customers. Third, taxes are also saved if you contribute a certain amount of income from the revenue. Zomato has also recently acquired Grofers (a quick online grocery delivery platform) and renamed it Blinkit, lending them a $150 million loan as well, which fulfills two things. Firstly, the loan amount will act as a tax shield, and secondly, Zomato is acquiring a similar close-line company, which will fulfill their expansion aspiration and parallelly improve their sales and profit margins. Swiggy also raised $1.25 billion from Soft Bank and other investors in early 2022, which also adds to investors' return expectations. Apart from this, the acquisition and takeover of other companies and operating expenses like those for the service of maps, the concerned server company needs to be paid a fee along with the concerned telecom company for the calling, etc. services, and the delivery people also have to be maintained properly by giving appropriate wages and overtime or night expenses on days of peak demand. Swiggy, apart from their core business, i.e., online food delivery and restaurant advertisements, also added new forward integration to their business by also entering into the domain of general supply chain, i.e., delivering groceries and deliverable products as well as introducing a no-minimum order quantity to support the small one-time sales volumes, although an item costing Rs. 10 if ordered via Swiggy will cost Rs. 30-40 due to their delivery charges, so, for a customer it would be a delight in taste and heavy on pocket kind of deal. Swiggy is on its way to being a food-tech company, as they termed themselves in 2014 when this artificial person named Swiggy was born.

In terms of valuation, Swiggy is the king, but in volume sales, Zomato is the person in charge (as a company is also an artificial entity/person). In short, investors of any class, worth, or category are investing in these companies because they see the 'synergy' (long-term profits) associated with them. Furthermore, having a tech band also adds to the bright future possibilities of these companies. If the Competition Commission of India (CCI) makes some tough decisions against Zomato and Swiggy, they will need to tweak or rethink their long-term growth-oriented business plans in order to gain the trust of investors and have a bright, competitive, and profitable future.

CONCLUSION

As per the above-mentioned facts and figures, the situation is a bit tight for Zomato and Swiggy. It is an open secret that they use these mark-up price practices to earn revenue. As both companies are in their growing phase, the brand image of the company would have a stain on their white image, but as this industry is a growing and future-oriented industry, there is a possibility that the investors could see it as a tiny hiccup because the industry solves the problem of the customers. Basically, the customers are forming a habit of online food ordering, especially for those who are relocated, going on some trip, where the majority of their family members are working and people do not like to cook after long working hours, etc. As food is our fuel, so for a working-class person, / would continue to buy it as they have a regular income source. The delivery cost would not be a huge thing for them. Moreover, while ordering food online, the customer is saving two things: firstly, his/her precious time by not having to go out physically and, secondly, the labor that they had to put into preparing a meal, so, the delivery cost is compensating for the time which a customer has to invest. As there is also a general rule of life, you can commit and rectify mistakes when you are at your growing stage, (i.e., in your 20's) to have a stable future in your maturity, so, Zomato and Swiggy, being in their teens, have time to rectify their mistakes as they have a potential stable future because of that 'tech' element added to their characteristics. If CCI levies some fine, then it would also be manageable because the business model of the company has alternate revenue sources and the investors are investing in the companies, so, it would help them run the business in a more lawful way by enforcing the norms and rules of the industry. For unfair price practices, the companies could generally be fined by the CCI as in India Maximum Retail Price (MRP) concept is applicable, so, price discrimination is not allowed.