



COMPETITION COMMISSION OF INDIA

Case No. 14 of 2019

In Re:

**Federation of Hotel & Restaurant Associations of India
(FHRAI)**

B-82, 8th Floor, Himalaya House,
23 Kasturba Gandhi Marg,
New Delhi-110001

Informant

And

MakeMyTrip India Pvt. Ltd. (MMT)

DLF Building No. 5, Tower B,
DLF Cyber City, DLF Phase-2,
Sector-25, Gurugram,
Haryana-122002

Opposite Party No. 1

Ibibo Group Private Limited (Ibibo)

5th Floor, Good Earth City Centre,
Sector-50, Gurugram,
Haryana-122002

Opposite Party No. 2

Oravel Stays Private Limited (OYO)

5th Floor, Spaze Palazo,
Sector-69, Gurugram,
Haryana-122001

Opposite Party No. 3

CORAM:

**Mr. Ashok Kumar Gupta
Chairperson**

**Ms. Sangeeta Verma
Member**

**Mr. Bhagwant Singh Bishnoi
Member**



Appearances

For Informant

Mr. Nidhesh Gupta, Sr. Advocate
Ms. Rukhmani Bobde, Advocate
Ms. Sonal Gupta, Advocate
Mr. Ishan Nagar, Advocate
Ms. Malvika Bhanot, Advocate
Mr. Sunil Gandhi, Company Secretary
Ms. Preeti Bhardwaj, Legal Executive

For MakeMyTrip (OP-1) and GoIbibo (OP-2)

Mr. Ramji Srinivasan, Sr. Advocate
Mr. Dhruv Agarwal, Advocate
Ms. Ishika Rout, Advocate
Mr. Abhishek Tiwari, Advocate
Ms. Simran Dhir, Advocate
Ms. Sylona Mohapatra, Advocate
Mr. Kamal Avutapalli, Director & General Counsel
Mr. Saurabh Taneja, Sr. Manager Legal

For Oravel Stays Pvt. Ltd. (OP-3)

Mr. Rajshekhar Rao, Advocate
Mr. Harman Singh Sandhu, Advocate
Mr. Aman Singh Sethi, Advocate
Ms. Neetu Ahlawat, Advocate
Mr. Rohan Arora, Associate
Mr. Yogesh Vishnoi, Assistant Manager, Legal
Mr. Kapil Malik, AVP Legal

Directions for investigation under Section 26(1) of the Competition Act, 2002

1. The present information has been filed under Section 19(1)(a) of the Competition Act, 2002 (hereinafter the 'Act') by Federation of Hotel & Restaurant Associations of India (hereinafter, the '**Informant**') against MakeMyTrip India Pvt. Ltd. (hereinafter, '**MMT**'), Ibibo Group Private Limited (hereinafter, '**GoIbibo**'), collectively referred to as '**MMT-Go**' and Oravel Stays Private Limited (hereinafter, '**OYO**') alleging contravention of the provisions of Sections 3 and 4 of the Act. MMT, Goibibo and OYO are collectively referred to as the 'Opposite Parties'.



Facts, as stated in the information

2. The Informant is a company registered under the Companies Act and is the apex representative body of the Hospitality Industry in India. It is stated to be the voice of the Hospitality Industry and provides an interface between the Hospitality Industry, Political Leadership, Academics, International Associations and other Stakeholders. It claims to be the third largest hotel and restaurant association in the world. As per its website, 1,68,565 rooms, 2503 hotels, 1173 restaurants, 78 associates and 4 regional associations are attached to the Informant as its members.
3. MMT is an Online Travel Agency ('OTA') engaged in the business of providing travel and tourism related services in India. It is a part of MakeMyTrip group of companies (MMT Group). GoIbibo is also an OTA engaged in the business of providing travel and tourism related services in India. OYO is an unlisted private company incorporated on 21.02.2012 and is also stated to be an OTA engaged in the business of providing travel and tourism related services to customers through online booking under the mark 'OYO Rooms'.
4. Aggrieved by the practices of MMT, the Informant sent separate letters to MMT & Goibibo on 04.12.2018 highlighting the grievances of their members against the alleged malpractices of MMT, *inter alia*, including predatory pricing, charging of exorbitant commissions from hotels, registering and providing on its platform illegal and unlicensed bed & breakfast and misrepresentation. On 07.12.2018, the office bearers and members of the Informant, met representatives of MMT-Go to discuss various issues highlighted by the Informant *vide* their earlier letter. On 10.12.2018, MMT sent an email to the Informant stating that they are keen on understanding the issues faced by the hotel industry and wanted to explore the possible ways of resolving those issues through regular interactions and meetings between the Informant and MMT.



5. Further, the Informant, *vide* a letter and an email dated 10.12.2018, pointed out to OYO the issues pertaining to its operations, to which, OYO replied stating that the claims and allegations made by the Informant were misguided and misplaced and that they were willing to discuss the issues to find an amicable solution.
6. On 12.12.2018, Kolhapur Hotel Malak Sangh (a member of the Informant) sent a letter to MMT highlighting certain points for consideration, to ensure fair business relationship with all the partner hotels of the Informant. The points *inter-alia* related to fixation of commission rate for all partner hotels; elimination of Performance Linked Bonus (PLB) or other additional promotional incentives which indirectly add to fixed commission; prohibition of discrimination and offering of heavy discounting on hotel room tariffs over & above fixed commission; remittance of advance payments *etc.*
7. Further, the Informant issued various press releases between 13.12.2018 to 17.12.2018, mentioning names of many associations across the country that stood firm with the Informant against the alleged practices of OTAs. On 17.12.2018, the Informant sent an email to MMT, informing that they had been receiving many complaints and grievances from their member hotels and other hotels in relation to the grievances highlighted by the Informant earlier. The Informant stated that it has failed to receive any response from MMT with regard to such grievances. During this period, though MMT and OYO reduced the commission for some hotels, these reduced commission rates were still exorbitant.
8. In this backdrop, the Informant has alleged that the actions of the Opposite Parties are contrary to the provisions of the Act. The Informant has alleged that the Opposite Parties have abused their respective dominant positions, they have cartelized and further, they have entered into anti-competitive arrangements/agreements. The crux of the allegations are succinctly captured in the ensuing paragraphs.



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9. The Informant submitted that MMT-Go, OYO, booking.com, yatra.com, cleartrip.com, expedia.com *etc.* are operating as OTAs in India, alternatively known as the domestic OTAs. While referring to the order dated 18.01.2017 of the Commission with respect to approval of merger/combination of MMT and GoIbibo, it has been submitted that the said merger has led to their dominance in the relevant market of OTA(s), which has empowered MMT-Go to operate independently of the competitive forces prevailing in the relevant market.
10. Further, it is submitted that OYO facilitates and markets budget accommodation on its platform. It has approximately 18,752 hotels registered on its platform across all major cities in India and its market share for supply of rooms priced below Rs. 2000 is 28% and for rooms priced below Rs.1000 is 67% which clearly shows that it has gained a competitive advantage and has secured a position of dominance in the relevant market.
11. It has been alleged that the Opposite Parties charge excessive commissions from the hotel partners and provide deep discounts which have led to the destruction of competitive pricing in the market. MMT-Go have also been alleged to be charging a Performance Linked Bonus (PLB) from hotels *i.e.* for every ten rooms of a particular hotel booked through their platform, they pay the hotel only for 9 rooms. Thus, the price of the tenth room is in effect part of the commission/brokerage which MMT-Go is otherwise charging from such hotels. Such commission turns out to be around 22-40% (from standalone hotels) which is grossly disproportionate to the commission charged by other OTAs like booking.com and yatra.com which charge a standard 15% commission. This is alleged to be in violation of Section 4 of the Act.
12. It has been further alleged that MMT-Go have imposed a price parity in their agreement/contract with hotel partners whereby the hotel partners are not allowed to sell their rooms at any other platform or on its own online portal at a price below the price at which it is being offered on MMT-Go's platform. However, MMT-Go



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in its own discretion can fluctuate the prices of such hotel rooms. Further, the hotel partners are mandated to observe room parity whereby they cannot refuse to provide rooms on MMT-Go at any given point of time if the rooms are being provided on any other platform. These restrictions are alleged to be in violation of Section 4 of the Act.

13. The Opposite Parties have also been alleged to be indulging in predatory pricing in contravention of Section 4 of the Act. It has been alleged that the “*average room rate*” is the industry practice for calculating unit basis cost of rooms. However, the Opposite Parties have been offering the hotel rooms at less than the “*average room rate*”. It is alleged that MMT-Go have taken over many small OTAs to eliminate competition which has led to tipping of the market in their favor and also resulted in rapid erosion of the revenue of the members of the Informant. Further, MMT-Go have been offering deep discounts to the customers which has further led to expansion of their network and retention of customers. Due to such conduct, the smaller players in the OTA market are being forced to exit. It has been further alleged that MMT-Go is competing on discounts, rather than prices, and thus their market performance is not based on efficiency, but on deep-pockets. With regard to OYO also, it has been stated that it resorts to predatory pricing wherein budget hotels in micro (small) markets are targeted. These budgets hotels are promised a minimum guaranteed sale and then low prices are fixed to achieve that minimum assurance. Such prices fixed by OYO are approximately 30% lower than the price of the hotels rooms that are not listed on its platform, due to which OYO hotels command higher occupancy. For this reason, the non-OYO Hotels are compelled to join OYO’s platform as they are unable to withstand OYO’s anti-competitive strategies in the market.
14. Further, it has been alleged that chain hotels/ hotel aggregators namely Treebo and Fab Hotels have been denied market access. They have been allegedly removed from the platform of MMT-Go as they did not agree to pay the exorbitant



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commission brokerage charged by the latter. Further, it has also been alleged that MMT and OYO have entered into confidential commercial agreements wherein MMT has agreed to give preferential treatment to OYO on its platform, further leading to a denial of market access to Treebo and Fab Hotels in contravention of Section 3 as well as Section 4 of the Act.

15. Besides, the Informant has also made some miscellaneous allegations of abuse. It has been stated that MMT charges a service fee from the customers at the time of booking the rooms in the name of the Hotels, which is pocketed by it and never passed on to hotels. Further, such service fee is discriminatory as it is levied on certain hotels. It has been alleged that the hotel partners, who are once registered with the Opposite Parties, have no option to exit the relationship. Even when a hotel makes a request to be removed from their platform/portal, the hotel, instead of being removed from the platform, is shown as “*no rooms available*” or “*sold out*”, which severely affects the business of the hotels. It has been further alleged that the Opposite Parties artificially creates demand-supply gap on its platform by resorting to tactics like fake bookings wherein rooms of some hotels are shown as pre-booked on their website. These bookings are later cancelled just a day or two before the actual date of occupancy and the prices are manipulated accordingly. All these practices have been alleged to be abuse of dominant position by the Opposite Parties within the meaning of Section 4 of the Act.
16. Apart from the allegations under Section 4 of the Act, the Opposite Parties are alleged to have cartelized for charging a commission higher as compared to the usual commissions charged by other OTAs. The rate of the commissions levied by MMT and OYO on the hotels are similar which ranges between 40-45%. Further, these platforms are stated to be giving discounts simultaneously which, as per the Informant, shows some meeting of minds between them with respect to charging exorbitant commission and providing deep discounts.



17. Based on the aforesaid allegations, the Informant has *inter-alia* prayed for an inquiry under the Act against the Opposite Parties and has asked the Commission to direct them to discontinue their abusive/anti-competitive practices.
18. The Commission considered the information in its ordinary meeting held on 22.05.2019 and decided to call the parties for a preliminary conference on 17.07.2019. However, pursuant to a request made by MMT-Go through their common application dated 12.07.2019, the Commission decided to reschedule the preliminary conference on 06.08.2019.
19. On 06.08.2019, the Commission heard the Informant as well as the Opposite Parties through their respective learned counsel. The parties were given liberty to file their respective written submissions/synopsis. Subsequently, the parties filed their written submissions which were considered by the Commission on 27.08.2019.
20. While reiterating the allegations mentioned in the information, the Informant annexed various documents through its additional submissions filed on 19.08.2019.
21. MMT and GoIbibo filed common written submissions on 16.08.2019. *Vide* the said submission, they contested the allegations made by the Informant and described them as contractual disputes. MMT-Go objected to the allegation of collective dominance stating that the same is not enshrined under the Act. They further submitted that OYO deals with limited number of hotels and follows a standardised mode of operation while MMT & Goibibo operate as travel agents which offer listing services. As they have been following different business models, as recognised by the Commission in Case No. 03 of 2019, they cannot be alleged to have entered into any horizontal arrangement.
22. MMT-Go also contested the determination of relevant market by the Informant stating that it is inconsistent throughout the information. Further, they relied upon



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Commission's delineation of the relevant market in combination Case No. C-2016/10/451, wherein the Commission held market for travel and travel related services as the relevant market. It was alleged that Go-MMT's market share in such market is miniscule (*i.e.* less than 5%), based on reports made by India Brand Equity Foundation (IBEF) and written submissions in the aforementioned combination. Further, even in a narrower segment for sale of hotel rooms in India, their combined share is less than 5%. It was further submitted that the Informant's reliance on market share specified in Go-MMT's investor presentation (wherein their combined market share has been stated to be 63%) is misleading as the calculation does not take into account the sales by all travel agents such as PayTM, HappyEasyGo, Thomas Cook *etc.* and offline sales. Based on such averments, MMT-Go contended that it does not hold a dominant position in the market.

23. Further, MMT-Go objected to the allegations pertaining to charging of exorbitant commission is incorrect as they are currently charging commission of less than 25% to majority of its hotel partners. It was further averred that each agreement with the hotel partners is individually negotiated by MMT-Go, and the Informant is attempting to discourage individual commercial negotiation through false allegations and coercion through boycott.
24. With regard to the allegation on predatory pricing, MMT-Go submitted that they depend on its direct suppliers for provisions of travel services and it is absurd to impute intent to eliminate hotels. Further, it was stated that all players in travel market compete intensely on prices.
25. On the allegation of price and room parity arrangement, it was contended that the agreement between Hotels and Go-MMT stipulate that hotel will provide Best Available Rate (BAR) and Go-MMT is permitted to offer discounts on this price except where otherwise requested by a hotel. When a room is sold on platform, the hotel receives an amount equal to BAR less commission, irrespective of any discount provided by Go-MMT to customers. MMT-Go also claimed and



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explained, with the help of an illustration, that discount given to customer has no bearing on the amount paid to hotel.

26. OYO also denied each of the allegations made by the Informant. OYO submitted that it is not an OTA, rather it provides hospitality services itself and competes with other hotels in the market. Further, OYO contested the market share data relied on by the Informant. OYO relied on Redseer- report filed by MMT-Go, as per which OYO's market share is below 10%. OYO also relied upon the Commission's order in Case No. 03 of 2019, wherein relevant market was delineated as market for franchising services for budget hotels in India, and OYO was found not to be dominant and its conduct in relation to its agreements with hotel partners was found to be justified. Based on the said order, OYO submitted that it continues to be not dominant in any relevant market.
27. OYO stated that all the allegations raised by the Informant are contractual disputes which do not require any intervention by the Commission. Even if the hotel partners have any grievance, they have an option to terminate their respective agreements which are short term contracts terminable at will. Further, OYO alleged that the Informant being a platform for its member hotels has called for boycotts and raised collective demands, which goes beyond representation and amounts to anti-competitive conduct under Section 3 of the Act. Such anti-competitive actions on the part of the Informant and its members are against consumer interest and are liable to be reprimanded. Rather the Informant, as per OYO, is opposing OYO's efficient business strategies whereby standardized quality services have been made available at affordable prices. OYO further argued that the Informant has adopted different market definitions to suit its inconsistent arguments.
28. OYO contested all the allegations raised by the Informant. With regard to charging of exorbitant commission, OYO submitted that the commission charged by it from hotel partners is commensurate with the economic value of its services. Its net take rate, amount received after costs, is approximately 15-20% (not more than 25%,



unless large amount of capital expenditure is invested). On the contrary, OYO alleged that the demand for fixed commission by the Informant is an attempt to use its bargaining position to ensure hotels do not compete with each other.

29. As regards the allegations pertaining to fake bookings and check-ins, OYO submitted that such allegations are baseless because on any cancelled booking, OYO does not earn any money and has to additionally make up the difference to hotel on the minimum guarantee amount. On the contrary, OYO alleged that upon digital audits of its hotel partners, it has been found that customers have logged in to OYO app from hotel premises or used hotel wi-fi without being checked-in, demonstrating concealment of bookings by hotel partners from OYO. With regard to the allegation regarding delisting, OYO stated that once such request is received, an attempt is made to resolve the grievance to continue the relationship. On an average, it takes around 150 hours (approximately 6 days) for closing requests for delisting. OYO also contested the allegation regarding listing of illegal properties stating that the same cannot be said to raise any competition concern.
30. With regard to the allegations under Section 3 of the Act *i.e.* anti-competitive agreement or cartelisation, OYO submitted that there cannot be any cartel, as MMT-Go and OYO operate at different levels in the market and are not competitors. Further, OYO stated that the theories of harm raised by the Informant can at best be scrutinized either under Section 4 or under Section 3(4) of the Act. As regards the vertical arrangement between MMT-Go and OYO, it was submitted that the Informant has not provided any evidence to show that these parties were engaged in a vertical anti-competitive agreement.
31. Based on the aforesaid averments, MMT-Go and OYO prayed that the information be closed under Section 26(2) of the Act.



Analysis of the Commission

32. On perusal of the facts and allegations, the Commission observes that the Informant has alleged abuse of dominant position by the Opposite Parties collectively as well as individually. With regard to the allegation of collective abuse of dominant position by these Opposite Parties, it is noted that Section 4 of the Act currently envisages prohibiting only unilateral abusive conduct by a dominant player. The Act does not provide for the concept of collective dominance *i.e.* the Opposite Parties cannot be considered to hold a dominant position collectively. This issue has been dealt with in detail by the Commission in Cases No. 6 and 74 of 2015 (*M/s Fast Track Call Cabs and Another v. ANI Technologies Pvt. Ltd.*) wherein the allegation was that of two cab aggregators holding a dominant position collectively in the market. Based on a comprehensive assessment of extant provisions of the Act, the Commission concluded that the Act does not envisage abuse by more than one entity holding dominant position within the meaning of Section 4 of the Act. Thus, based on the decision of the Commission in the *Fast Track Call Cabs* matter, the contention of the Informant regarding abuse of dominant position by the Opposite Parties collectively is liable to be rejected, as being beyond the legal framework of Section 4 of the Act.
33. With respect to alleged unilateral abusive conduct of MMT-Go and OYO, relevant market(s) needs to be delineated, before assessing their respective dominance and eventually, the abuse of such dominance.

Relevant market

34. Relevant market under the provisions of the Act constitutes a ‘product/service’ dimension as well as a ‘geographic’ dimension. Relevant product market comprises all those products or services which are regarded as interchangeable or substitutable by the consumer, by reason of their characteristics, price and intended use. Thus, identification of consumers and their perception with regard to



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interchangeability among products or services is the most important parameter for defining relevant product market. All the Opposite parties, *i.e.* MMT, GoIbibo and also OYO, essentially operate as platforms catering to two sides or two sets of consumers— one that consists of consumers searching for hotels for booking/occupancy and the other that comprises hoteliers or hotel partners who use the services of these platforms to sell their hotel rooms.

35. In case of platform markets, where the platforms may be serving many sets of consumers and may be having multitude of relationships with these consumers, the consumer-side for which the relevant market is being defined needs to be identified. Since the allegations in the present case are primarily with regard to the hoteliers, the relevant market analysis needs to be carried out from the perspective of hoteliers *i.e.* the relevant product market should include all alternatives available with such hotels and the competitive constraints faced by the focal product *i.e.* the service provided by the Opposite Parties in the present matter.
36. The Informant has alleged that all the Opposite Parties are part of the same relevant market as they are all OTAs.
37. The Commission has had the occasion to examine the hospitality industry in general and allegations against OYO in particular in a recent case, *i.e.* in Case No. 03 of 2019 (*RKG Hospitalities Pvt. Ltd. vs. Oravel Stays Pvt. Ltd.*) wherein the relevant market aspect to assess the position of OYO in the said relevant market was discussed in detail. The following observations made in the said case are relevant in context of the present case:

35. To commence a meaningful discussion for delineation of relevant product market and for further assessment, it is imperative to understand the sector under scrutiny. The hospitality industry has witnessed a tremendous change in the last decade. The change initiated with the emergence of OTAs like MMT, Goibibo, Yatra.com,



Booking.com etc. which primarily operate as pure aggregators that inter-alia connect the hotels/properties with the end consumer by facilitating bookings. As an aggregator of hotel booking services, these aggregators provide a platform to various hotel owners to 'list' their hotels on these aggregators' apps which was accessible to the potential consumers. The consumers can use the platform/app to search, compare and book the hotels from the vast choices available as per their liking and willingness/ability to pay for their travel requirement. These apps also provide value added services such as use of filters to make search more effective and targeted, incorporating customer reviews to help potential customers, online payment options etc. Thus, by reducing the transaction and search costs and introducing varied choices with price comparisons, these apps offered an important breakthrough to the traditional mode of booking. In return, these aggregators charge a commission from the hotel/property owners which may comprise a listing fee and/or a transaction fee based on certain completed transactions using the services.

36. The second wave of transformation in the hospitality industry was marked by the emergence of franchise model where budget hotel chains expanded rapidly adopting asset light operating models, standardising the largely unorganised segment. The standalone budget hotels partnered with known brands to take advantage of the latter's brand value. OYO, which entered the market in 2013, initially started with the partial inventory model wherein it used to lease a part of the partner hotel's inventory beforehand, organize those hotel rooms under its brand name (OYO Rooms) and these partner hotels used to provide standardized service to customers of those rooms as per their respective agreements with OYO. Subsequently, OYO changed its business model to franchise model.



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37. *As per the information available in public domain¹, OYO was followed by entry of Fabhotels and Treebo in the year 2014 and 2015, respectively, which operated on similar lines. Given the untapped potential, other players also entered the market e.g. Vista Rooms, Room on Call.*

38. *It is further relevant to highlight that OYO and other like players primarily operate as two-sided platforms which connect budget hotels with the potential consumers. On one side, they serve the budget hotels and on the other hand they serve the potential consumers looking for budget accommodation. Since the present case pertains to a grievance raised by a partner hotel, the relevant product market determination needs to take into account all alternatives available with such budget hotels and the competitive constraints faced by the focal product i.e. the service provided by OYO in the present case.*

39. *OYO has a network of budget accommodation, connecting the network hotels to potential customers under the brand “OYO Rooms”, while each hotel on the network is an independent business providing services to the guests. The arrangement between OYO and the partner hotels is akin to the franchise model. Franchises give hoteliers access to identifiable brand recognition, existing distribution channels and a compelling customer base. The uniform and assured quality standard across the chain hotels is valued by consumers which is why hoteliers may choose to run a branded franchise hotel in order to take advantages of these benefits. In exchange, the franchise brand takes a percentage of the hotel’s revenues or commission. In the case of OYO,*

¹ Anand J., *Has OYO’s rapid growth locked out competition from FabHotels and Treebo*, Tech Circle 20.04.2018, available at <https://www.techcircle.in/2018/04/20/has-oyo-s-rapid-growth-locked-out-competition-from-fabhotels-and-treebo>.



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the budget hotels on OYO's network are entitled to use its brand and know-how and are as such perceived as an extension of OYO. The consumers booking OYO rooms value the brand provided by OYO and the consequent expected quality assurance associated with the brand, which is generally lacking in budget hotels. Driven by this, a large number of hotels operating in the budget/economy category in India have joined the OYO network over the last few years. What OYO offers to these hotels is essentially franchising service comprising a bouquet of services, which enables the franchisee hotels to reap the benefits of OYO brand. In return, OYO takes a commission or share in the revenues while assuring minimum monthly guarantee of revenues to the partner hotel.

40. *Considering the aforesaid, the relevant product market in the present case appears to be 'Market for franchising services for budget hotels'.*

41. *As regards the relevant geographic market, the Commission is of the view that though the Informant is based in Delhi, OYO operates on a Pan-India level and in the franchising market, it seems to face the same/similar competitive constraints and homogenous conditions of competition throughout India. There is nothing on record to suggest that the relevant geographic market needs to be restricted to a particular region/city or State. The relevant geographic market, for the purpose of the present case, has been taken to be India.*

38. The market dynamics does not seem to have changed since the passing of that order (i.e. 31.07.2019) to warrant a different delineation of relevant market. Thus, based on the aforesaid observations made in Case No. 03 of 2019, the Commission is of the view that the relevant market with regard to OYO would be the '*market for franchising services for budget hotels in India*'.



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39. As regards MMT and GoIbibo (or MMT-Go), it is noted that pursuant to the acquisition of GoIbibo by MMT, both these players constitute part of the same group. During the preliminary conference, MMT-Go relied upon Commission's order in Combination Registration No. C – 2016/10/451 (acquisition of 100% of Ibibo Group Holdings by MMT Ltd) dated 18.01.2017, wherein the Commission carried out the analysis in the overall travel market in India as well as in narrower sub segments which included hotel bookings by incorporating online and offline modes in the same relevant market. Placing reliance on the said observation of the Commission, MMT-Go urged for a broader delineation of the relevant market.
40. Delineation of relevant market is based on market realities as they exist at the time of assessment. In rapidly changing markets in particular, market assessment cannot have a static approach. The Combination case cited by MMT-Go took place over two and a half years back. While this may not be a period sufficiently long for traditional markets to undergo perceptible change, the pace of evolution of digital markets is significantly faster. The intervening period has seen the online travel portals and the customised service that they provide to consumers on account of big data analytics to have established a distinct and significantly more prominent position in the hotel reservation space in India. In view of the increased popularity and use of OTAs by a large segment of consumers in India, hotel operators now perceive them as a distinct mode of distribution which cannot be simply replaced or substituted by other offline modes or direct sale without losing out significantly on consumer reach. Thus, on an overall consideration of the market realities and competition dynamics, the Commission finds it difficult to accept the assertion made by MMT-Go.
41. Given the present market realities, for a hotel, all the three booking channels, *i.e.* direct booking, offline booking through travel agents and booking through online travel agents are used simultaneously and not as substitutes to each other. Considering the growing importance of online platforms for visibility and



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discoverability of hotels, it is unlikely that in case of a small but significant increase in the commission rates by all platforms, such a significant proportion of hotels would move completely offline or to direct supply so as to make such an increase in commission unprofitable for a hypothetical monopolist. Moreover, the online mode of distribution through third party platforms, which provide the facility to search, compare and book at the same place, is characteristically distinct from the services that the offline mode such as travel agents provide. The predominant nature of their services, at this stage, appears to be that of intermediation and thus, the Commission is of the view that the relevant market for MMT-Go would be *'market for online intermediation services for booking of hotels in India'*.

42. In these two relevant markets as delineated above, the position of the Opposite Parties respectively will be assessed.

Assessment of Dominance

43. It is submitted by the Informant that the merger of MMT and Go-Ibibo has led to their position of dominance in the relevant market, which has empowered them to operate independently of the competitive forces prevailing in the relevant market. The Informant has provided several facts and figures to support its contention that MMT-Go enjoys a dominant position as a group in the relevant market. The Informant has claimed that as per MMT-Go's own investor presentation, they possess 63% market share in the online OTA segment and have the largest database of hotels in the country and outside the country. It is submitted that as per the expected annual growth rate of MMT-Go, they are expected to grow at a compounded annual growth rate of 39% by the year 2021 as compared to 17% which was in the year 2015.
44. Further, the Informant has alleged that they are aggressively increasing their share by registering a growth of 40 % in 2018 as compared to 14 % in 2016 and 24 % in 2017. The Informant has also compared this 40% annual growth rate post the



acquisition between MMT & GoIbibo, to the growth rate of the relevant market which was only 10% during the relevant time period. It was argued that the growth at four times the industry average is ‘*abnormal*’ by any yardstick, and clearly shows that they are growing at the cost of all other OTAs.

45. MMT-Go on the other hand has countered the Informant’s assessment of dominance. Relying on Commission’s order in *Combination Registration No. C – 2016/10/451* (acquisition of 100% of Ibibo Group Holdings by MMT Ltd) dated 18.01.2017, wherein the Commission observed that MMT and Go-Ibibo together accounted for less than 11% of the overall travel market in India as well as in narrower sub segments which included hotel bookings, MMT-Go has claimed that it is not dominant even for the purposes of the present matter.
46. The Commission has already given reasons for restricting the relevant market in the present case to be ‘*market for online intermediation services for booking of hotels in India*’ and given the said delineation of the relevant market, the market shares in a broader market, as claimed by MMT-Go, lose significance.
47. In the online intermediation market for booking of hotels, MMT-Go as a group held 63% of domestic hotel online market share in 2017, as per its own investor presentation. Though MMT-Go has vehemently argued during the preliminary conference as well as in its written submission that such investor presentation ought not to be considered as the number of suppliers providing substitutable product/service is much larger and goes beyond the OTAs, the Commission does not find much merit in such an argument. The Commission is not convinced that direct suppliers qualify to be a part of the same relevant market, given that no intermediation is involved in such transactions. Further, other players *e.g.* PayTM, HappyEasyGo, Thomas Cook, who have been claimed by MMT-Go to have been posing competitive constraints on them, also do not appear to have any significant market presence in the relevant market. In the relevant market delineated by the Commission, MMT-Go *prima facie* appears to be dominant.



48. As regards the dominance of OYO, the Commission refers to its observations and findings in Case No. 03 of 2019 [*RKG Hospitality Pvt. Ltd. V. Oravel Travels Pvt. Ltd. (OYO)*], given *vide* order dated 31.07.2019, wherein the position of OYO in the ‘*market for franchising services for budget hotels in India*’ was assessed in detail.
49. Based on the information provided by the Informant in Case No. 03 of 2019 (*supra*) and information available in public domain, the Commission was of the view that though OYO ‘*is a significant player in the relevant market, presently it cannot be unambiguously concluded that it holds a dominant position in the relevant market*’. As stated earlier, the market dynamics does not seem to have changed since the passing of that order to warrant a different outcome in the present case. Accordingly, *prima facie* OYO is not found to hold a dominant position, despite being a significant player in the ‘*market for franchising services for budget hotels in India*’.

Analysis of Conduct

50. The Commission observes that the Informant has raised many issues with regard to abuse of dominant position by MMT-Go and also in some instances by OYO. Further, the alleged arrangement between MMT-Go and OYO has also been alleged to be anti-competitive. The Commission has *prima facie* dealt with all these allegations in the ensuing paragraphs.

Room and Price Parity Impositions:

51. It has been alleged that MMT-Go has imposed a term in the contract with hotels whereby the latter is not allowed to sell its room at any other platform or on its own online portal at a price below which it is being offered on MMT-Go’s platforms.



Further, there is a room parity arrangement also which allegedly restricts the inventory made available to other OTAs *vis-à-vis* MMT-Go.

52. Across Platform Parity Agreements (APPAs), popularly referred to as ‘retail Most-Favoured Nation (MFN) clauses’, are stipulations where the sellers guarantee an online selling platform terms, price and/or non-price, that are at least as favourable as those granted to any other platform thus ensuring the former a competitive advantage over its competitors. By securing such favourable terms, the platforms attempt to guarantee the best available price and terms for a given product to its final consumers.
53. Analysis in such markets aims at evaluating whether such price or non-price restrictions lead to more concentration or enhanced entry barriers to the detriment of consumers which necessarily implies looking at the foreclosure effects caused by such MFN or parity clause.
54. Such restrictions have been categorised by various competition authorities as ‘narrow’ restrictions and ‘wide’ restrictions. Under *narrow* restrictions, suppliers agree not to set lower prices or offer better terms through their own websites compared to prices/terms offered on the platform imposing the restriction. *Wide* restrictions, on the other hand, restrict a supplier from charging lower prices or providing better terms on their website, as well as through any other sales channel, including other OTAs. Further, such clauses are generally imposed as a vertical restraint by a platform on the sellers/service-providers selling through the platform. Further, if the platform is dominant, it may also amount to imposition of an unfair pricing condition.
55. The hoteliers and MMT-Go are in a vertical relationship as the latter provide online booking services and thereby essentially function as distribution platforms for former. As per clause 1.3 of the agreement entered between hoteliers and MMT-Go, “[t]he Hotel shall maintain rate parity, and room availability parity between



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Facilitators and other travel agents, other sales channels of third parties and the Hotel itself". Apparently, the room and price parity restriction envisaged in Clause 1.3 of the agreement between hotelier and MMT-Go are broad/wide in nature as the hotel partners are obliged to maintain room as well as price parity between platform and any other sale channel (other OTAs, channels of the third parties and the hotel itself).

56. Broadly defined APPAs may result in removal of the incentive for platforms to compete on the commission they charge to hoteliers, may inflate the commissions and the final prices paid by consumers and may also prevent entry from new low cost platforms. Though the magnitude of the anticompetitive effects of these agreements *inter alia* will depend on the market power of the platform, given the *prima facie* dominance of MMT-Go, such parity restriction needs to be investigated to gauge its impact under Section 3(4) as well as Section 4 of the Act.

Denial of Market Access:

57. The Informant has alleged that Treebo and Fab Hotel have been removed from the platform of MMT-Go as they both did not agree to pay the exorbitant commission brokerage charged by them. This, according to the Informant, is a denial of market access. Further, the Informant has argued that pursuant to the commercial agreement between OYO and MMT, MMT gives preferential treatment to OYO on its portal, whereby the hotels of OYO are given preference, which leads to further denial of market access.
58. While dealing with Case No. 03 of 2019, the Commission had observed that Treebo and Fab Hotel operate in the same relevant market and are thus, competitors. From the search results presented by MMT on random queries for hotels across different locations, it appears that Fab Hotel and Treebo are indeed not present on this platform, while they earlier used to be. If this is a consequence of an agreement between OYO and MMT, which is also reported by media, to not list the closest



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competitors of OYO on the platform, it may potentially contravene the provisions of Section 3(4) of the Act. OYO as a budget hotel chain is in a vertical relationship with MMT, which is essentially a distribution platform for hotels. Both have considerable presence in their respective market segments and any restrictive agreement which may lead to refusal to deal with some players or exclusive arrangement with some players, may potentially have adverse effect on competition. While MMT has been *prima facie* held to be dominant in the ‘*market for intermediation services for booking of hotels in India*’, OYO has been *prima facie* found to be a significant player in the ‘*market for franchising services for budget hotels in India*’. Thus, whether the commercial agreement between OYO and MMT entails preferential treatment to OYO and consequent exclusion of Treebo, Fab hotel and any other hotel chain and if so, the effect of the same on competition merits investigation.

Predatory Pricing:

59. According to the Informant, the Opposite Parties are indulging in deep discounting and predatory practices by charging below the average room rate. Deep discounts are often offered in platform markets to establish network effects. Since MMT-Go has been *prima facie* found to be in a dominant position in the relevant market and they have been in business since the year 2000, such practice by them does not appear to be introductory or aimed at building the network. Though at this stage information on the cost structure of MMT-Go, hotels and the prices charged by hotels and discounts offered by MMT-Go is not available with the Commission, this issue may need to be investigated along with other issues which have already been elucidated above.

Exorbitant/unfair Commissions:

60. Besides aforesaid issues, the Informant has also raised issues like charging of excessive commission by the Opposite Parties from the hotels. As per clause 1.9



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of the agreement entered between MMT-Go and hotels, the commission charged by them to the hotels has to be negotiated. However, as per the submissions of the Informant, MMT-Go are unilaterally imposing exorbitant commission on hotels in the range of 22-40%. Additional charges in the form of volume discounting incentive (VDI), performance link bonus *etc.* also get added to the commission charges. The Commission notes that the term '*excessive*' is ambiguous to the extent that there are no clear standards to determine what price is excessive or fair. As regards the present case, the Informant has alleged that the Opposite Parties charged excessive commission as compared to its competitors. A competitor's price may, however, not be a correct benchmark for ascertaining the price charged by a player. Even otherwise, at this stage the Commission does not find it appropriate to return a finding on this issue especially when the market structure, entry conditions, cost structure of platforms *etc.* remain to be investigated.

Misrepresentation of Information:

61. With regard to the misrepresentation due to delayed delisting and manipulation of market dynamics, the MMT-Go have cited certain justifications. The Commission is of the view that showing non-availability of rooms on the portal, instead of delisting them, even when the hotels have specifically requested for severing of ties with MMT-Go raises concerns. By showing such misleading information and creating information asymmetry in the market, the conduct of MMT-Go has the potential to deny market access to the concerned hotels. As normally understood, a consumer who once sees that a particular hotel is sold out, will not try to contact the hotel directly or try to book it from another portal. This means that such hotel would lose their prospective customers due to this restrictive conduct of MMT-Go that causes prejudice to the hotel owners who list their properties and denies them a fair access of the market leading to loss of business substantially. This also has an adverse impact on consumer welfare as the prospective consumers who may be interested in booking a hotel rooms will be given misrepresented information in order to manipulate their choices in favour of hotels who are available at the MMT-



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Go's platform. The Informants have also alleged that MMT-Go artificially create demand-supply gap on its platform and accordingly fluctuates prices. The Commission finds such issues to be potentially abusive and since MMT-Go has been found to be dominant, they need to be investigated. Though the Commission has taken note of the justifications offered by MMT-Go, given its market power owing to the dominant position, the Commission finds it appropriate to test the veracity of the justifications offered by them.

62. As regards the allegation of fake bookings against OYO, the Commission refrains from returning any *prima facie* finding given that OYO has not been found to be *prima facie* dominant in the relevant market in which it operates.

Hotel Service Fee:

63. It has been pointed out that MMT charges a service fee from the consumer at the time of booking the rooms in the name of the hotels, which is pocketed by MMT. Further, the charging of service fee by MMT is alleged to be discriminatory as such fee is levied on certain hotels and allegedly not levied on high-end of chain hotels. Since MMT is *prima facie* found to be dominant, this conduct of MMT merits investigation.
64. Based on the aforesaid discussion, the Commission is of the view that there exists a *prima facie* case for investigation against MMT-Go and OYO for alleged violation of the provisions of Section 3(4) of the Act. Further, a *prima facie* case for investigation under Section 4 of the Act is made out against MMT-Go, as elucidated in the earlier parts of this order. The DG is, thus, directed to carry out a detailed investigation into the matter, in terms of Section 26(1) of the Act, and submit a report to the Commission, within 150 days.
65. During the course of investigation, if involvement of any other party/entity is found, the DG shall investigate the conduct of such other party/entity(s) who may



have indulged in the said contravention. It is, however, made clear that nothing stated herein shall tantamount to an expression of final opinion on the merits of the case and the DG shall conduct the investigation without being influenced by any observations made herein.

66. The Secretary is directed to send a copy of this order, along with the information, the documents filed therewith and the written submissions filed by the parties, to the DG.

Sd/-
(Ashok Kumar Gupta)
Chairperson

Sd/-
(Sangeeta Verma)
Member

Sd/-
(Bhagwant Singh Bishnoi)
Member

New Delhi
Date: 28/10/2019