



COMPETITION COMMISSION OF INDIA

Case No. 54 of 2020

In Re:

**Mr. Rohit Arora,
Advocate,
D-80, Block D,
East Vinod Nagar,
Delhi – 110091**

Informant

And

**Zomato Private Limited (now Zomato Limited)
GF-12A,
94 Meghdoot,
Nehru Place,
New Delhi – 110019**

Opposite Party

CORAM:

**Mr. Ashok Kumar Gupta
Chairperson**

**Ms. Sangeeta Verma
Member**

**Mr. Bhagwant Singh Bishnoi
Member**

Order under Section 26 (2) of the Competition Act, 2002

1. The present Information has been filed by Mr. Rohit Arora (hereinafter, “**Informant**”) under Section 19(1)(a) of the Competition Act, 2002 (hereinafter, the “**Act**”) against Zomato Private Limited (hereinafter, “**OP**”/“**Zomato**”) alleging contravention of provisions of Sections 3(4) and 4 of the Act.
2. The Informant is stated to be a consumer of Zomato for long and has been ordering regularly from its platform since 2018.



3. OP is stated to be a company providing a platform for consumers to order food from various restaurants located in the vicinity/surroundings of the consumers. As per the Informant, OP operates as a two-sided platform where on one side, it provides listing services to restaurants in lieu of commission to be paid by them, and on the other side, it provides search and food ordering services to its users/ consumers.
4. As per the Informant, initially in 2008, the OP, then called Foodiebay.com, was providing restaurant discovery services in Delhi/NCR such as providing information to users/consumers about the menu, prices, locations, user reviews, contact details and other relevant information of the restaurants. Later, in 2010, Foodiebay was renamed as Zomato owing to a change in its business model. In 2011, Zomato became one of the biggest 'restaurants and food' portals in India, and by late 2012, it became an international company by launching restaurant discovery services in various other countries and grew in 22 countries through both organic and inorganic growth strategies.
5. The Informant has alleged that for entering the food ordering market, Zomato had a competitive advantage of having accumulated millions of users' data from its restaurant discovery website, Foodiebay.com and thus, Zomato's customer acquisition cost was zero, as most of them were already using it for ordering food *via* phone and it had unparalleled insights into consumer behaviour which enabled it to become a major player within a very short span of its entry into the online food ordering market.
6. As per the Informant, *online food ordering* and *food delivery services* are two separate relevant product markets, and Zomato held a strong position in the food ordering market. The dominant position of Zomato was further strengthened in the online food ordering market in India post acquisition of UberEats in January 2020. The Informant has claimed that Zomato leveraged its dominant position in online food ordering market to capture the food delivery market as well.
7. The Informant has submitted that, for the purpose of online food ordering services, Zomato entered into arrangements with restaurants on a principal to principal basis



for listing their menus and letting the consumers order online. With regard to food delivery services, the Informant has stated that, prior to the acquisition of Runnr in 2017, food delivery services were either undertaken by the restaurants themselves or were facilitated by Zomato through third-party independent companies such as Delhivery and Grab. However, after the acquisition of Runnr, Zomato rapidly scaled up its food delivery services in India and became the first one to provide food delivery services in over 500 cities by using data driven strategies.

8. The Informant has alleged that Zomato is abusing its dominant position by raising food delivery charges/delivery prices above the competitive level and by charging unfair, discriminatory (by altering algorithm) and exorbitant delivery charges from its users/consumers. Simultaneously, Zomato is imposing various unfair conditions upon the consumers. It is further alleged that, by restricting food delivery services, Zomato is vertically restraining the restaurants from delivering food themselves and is restricting food delivery from unfavoured restaurants by not assigning delivery executives. Moreover, Zomato used its dominance in the *online food ordering market* to enter into market for *food delivery services* by imposing its delivery services upon the restaurants.
9. In support of his allegations, the Informant mentioned three incidents, as elucidated below:
 - a. *First Incident:* The Informant placed an order bearing no. 1656076534 on Zomato on 14.07.2019. Soon after placing the order, he called the delivery executive on the number displayed on the app and informed about the poor network reception at the delivery address of the Informant, asking him to call at his landline number in order to avoid communication problem at the time of delivery. Few minutes later he checked the status of order on Zomato's app and noticed that the delivery executive had reached the delivery address and the Informant called the delivery executive but his call was not answered. Immediately, he checked the status of the order and noticed that Zomato had cancelled the order, stating that:

“We could not deliver this order, as you were unavailable to collect the food at the mentioned address and your phone was



unreachable. Since the restaurant had prepared your order, we will not be able to refund the amount for this order”

When the Informant intimated the incident through In-app Zomato Chat Support, the support team intimated the Informant about the new terms and policy of Zomato according to which, if the order gets cancelled because of the customer being unresponsive at the time of delivery, a cancellation charge is levied as the food is already prepared/dispatched. The Informant later checked the terms of service on the OP's app and found that as per Term XIII 1.E. k., any cancellation will be treated as authorization breach for which Zomato is entitled to levy liquidated damages which it may determine at its discretion. As per the Informant, he was rather proactive than being unresponsive and had intimated the delivery executive about the network issues and provided an alternate number. The imposition of such arbitrary cancellation policy was alleged to be an abusive conduct on the part of the OP.

- b. *Second Incident:* The second incident was related to spillage of food in an order bearing no. 1136342705 placed by the Informant in September 2020. As per the policy of Zomato, the Informant clicked the photo of the food. When the Informant contacted the In-app Zomato Chat Support and intimated about the incident, the Support refused to entertain the complaint even without asking for proof of food spillage and the response received from the Support was, “*We’re sorry about this. Zomato Valet Kapil Kumar has delivered 156 perfect orders in the last week and he is rated 4.9 out of 5 stars. We’ll treat this mistake as an exception from his end and share feedback with him*” The Informant has pointed out that Zomato was evasive of its responsibility as it is not just playing the role of a facilitator of the transaction between the restaurant and consumer, rather is also engaged in providing the delivery services to the consumers. According to the Informant, this amounts to abuse of dominant position by Zomato as it is evading its responsibility by inserting such clauses in the terms of services which enables it to avoid liability for any acts or omissions, including deficiency in service, wrong delivery of order, time taken to deliver the order, order package tampering *etc.*



- c. *Third Incident:* Almost a month from the second incident, the Informant placed an order bearing no. 1096243650 through Zomato on 30.10.2020 at 11.10 A.M. for Rs. 132/-. Within a few seconds, the Informant decided to order something else and attempted to cancel the food order, which was processed at 11.11 A.M. The Informant hoped to get a refund of the full amount as he had allegedly cancelled the order within 30—40 seconds. However, to the Informant's dismay, Zomato refunded only 50% of the order amount *i.e.* Rs 66, citing that the restaurant had begun preparing the food ordered. When the Informant pointed out how the restaurant could start preparing food in a few seconds, Zomato stated to have changed the reason to restaurant having accepted the order and the chat was purportedly closed arbitrarily without letting the Informant respond. The Informant compared the cancellation policy of Zomato with other platforms such as Swiggy, Talabat.com, Deliveroo, Food Panda *etc.* to demonstrate that the cancellation policy of the former is abusive.
10. The Informant has attributed OP's arbitrary and exploitative conduct to its dominance, arising out of its vertical integration by the acquisition of delivery firm Runnr in 2017 and horizontal expansion by acquiring UberEats in January 2020. The Informant has placed reliance on the number of Zomato app downloads on Google Play store, number of orders executed, presence in various cities and self-admission/proclamation of leading position by its CEO and founder in the press, as indicators of the dominance of Zomato in the *online food ordering* market.
11. Besides abuse of dominance, it is alleged that Zomato contravened Section 3(4) of the Act as it bundled online food ordering services with food delivery services and imposed vertical restraints in the form of tie-in arrangement on the restaurants which resulted in entry barriers for logistic companies such as Delhivery and Grab (marginalized companies) to enter into food delivery services in India.
12. Based on the above, the Informant has prayed to the Commission to investigate OP's conduct and pass a cease-and-desist order restraining the OP from imposing unfair conditions on users/consumers and imposing vertical restraints on restaurants from



providing food delivery services to consumers. However, the Informant has prayed that no monetary penalty be imposed on the OP, as the Informant is appreciative that OP has radically transformed the food industry.

13. The Commission considered the present Information in its ordinary meeting dated 28.01.2021 and directed that a copy of the Information be forwarded to Zomato seeking its comments, along with other relevant information/documents. The Informant was also directed to file a certificate under Section 65B of the Evidence Act, 1872 in respect of the electronic documents filed with the Information, which was complied by the Informant on 12.02.2021.
14. The OP filed its response in confidential as well as public version, *vide* emails dated 05.04.2021 and 09.04.2021, after duly seeking extension of time from the Commission. The OP sought confidentiality over its confidential response, affidavit and confidential annexures filed on 05.04.2021 under Regulation 35 of the CCI General Regulations, 2009.

Zomato's reply

15. In its reply dated 09.04.2021, Zomato, at the outset, submitted that the Informant is agitating a consumer complaint disguised as a competition issue and that his case is nothing more than a consumer complaint. With respect to the three incidents quoted in the Information, Zomato stated that the Informant has placed at least 51 orders through Zomato over a period of 2 years, out of which he had requested consumer support in 8 instances, and only in 3 out of those 8 instances, his grievance was not resolved to his satisfaction. Zomato also provided specific rebuttals to the three incidents.
16. As regards the first incident, it has been stated that, on 14.07.2019, the Informant placed an order through Zomato, then directly contacted the delivery partner asking him to contact him on his landline number and not on his registered mobile number when delivering the order. The delivery partner was unable to contact the Informant and, therefore, cancelled the order. The delivery partner informed the customer support team that he tried to call the Informant three times, but he did not answer his



calls. Further, the customer support executive tried calling the Informant twice, but the Informant did not answer. Zomato asserted that there were other calls made to the Informant's registered mobile number for previous orders where the Informant responded indicating that the phone number was accurate. Zomato claimed that it has no means to either verify or track when a consumer has directly communicated delivery instructions to a delivery partner. When such instructions are communicated through Zomato, its customer service executives ensure that such instructions reach the delivery partner. But in the present circumstances, when the instructions were directly passed on to the delivery partner, it would have been unfair for Zomato to provide the Informant a full refund since the delivery partner had spent time, energy and fuel to pick up and transport the order.

17. With regard to the second incident, Zomato has stated that its customer support executive asked the Informant to select the item that was spilled. However, the Informant did not proceed with the complaint (as was requested by the customer support agent, which is evident from the screenshot of the chat shared by the Informant himself in the Information) and did not provide a photo of the spill which *prima facie* shows that the Informant was just interested in getting a quick refund, and when he realised that this will not happen, he did not proceed with the complaint and is now twisting the facts by stating that Zomato did not ask him to provide photographic evidence of the spill. Zomato submitted that a photographic image of the spill is only sought when a user selects the item(s) spilled. As the Informant did not select the item that was spilled, the customer was not prompted to share a photograph of the spillage. As per Zomato, had it been a genuine case, the Informant should have raised the issue with the customer support team or contacted them through email, attaching photographic evidence of the spillage.
18. In addition to the above, Zomato has added that, as a general matter, in its experience, Zomato has witnessed and continues to witness several frivolous and disingenuous claims for free credits/refunds. For instance, between 18.02.2021 and 03.03.2021, Zomato's customer support team received approximately 78,000 emails, of which more than 50% were from customers who had a history (basis previous data) of seeking refunds without genuine issues/complaints. Thus, Zomato aims to ensure that



frivolous complaints are weeded out. Further, spillage is an issue which Zomato, despite its best efforts, cannot control. It is also practically impossible for Zomato to verify and determine at which stage of ordering and delivery process the spillage took place, which could be at the restaurant's end or during delivery or, in fact, be a frivolous instance. Thus, Zomato aims to review all the information available to it on a case by case basis and determine fair compensation for aggrieved customers.

19. As regards the third incident, Zomato has refuted Informant's claim that he cancelled the order dated 30.10.2020 'within 30—40 seconds'. As per Zomato, the Informant had placed the order at 11.09 A.M. and had reached out for cancellation at 11.11 A.M., which was two minutes after placing the order. Even then, contrary to the Informant's allegation, he was provided a full refund for the order, a fact which the Informant has wilfully and fraudulently failed to disclose. Zomato has added that, once a restaurant accepts an order, it diverts resources towards its preparation and as such, Zomato attempts to ensure that the cancellation fee is commensurate with the effort put in by restaurants and the inconvenience faced by customers. Further, once an order has been accepted, the primary objective is that food should not be wasted and, therefore, Zomato discourages customers from cancelling.
20. Zomato has also challenged the relevant markets delineated by the Informant, stating that the food services industry is extremely dynamic and integrated, due to which such delineations do not accurately reflect ground realities.
21. With respect to online restaurant search services/restaurant discovery services segment, Zomato submitted that users have an option to search for or discover restaurants through various online and offline methods. Even within the online space, there are several different types of restaurant discovery mechanisms, including general search engines such as Google or services such as JustDial or TripAdvisor. Alternatively, users may also discover restaurants and their reviews through blogs such as LBB Delhi or Eater or through social media platforms such as Facebook, which have groups dedicated to restaurant reviews. Further, even websites or apps that ostensibly specialise in restaurant discovery services, such as DineOut, EazyDiner, *etc.*, allow users to book tables and offer discounts through



coupons/vouchers. These websites/apps compete in providing the best deals to the users. Therefore, the activity of restaurant discovery is extremely wide and has a number of different types of options through which a user may find a restaurant, which compete with each other on various different parameters. Thus, in such an industry, it would be difficult to determine the position of the OP and other players in similar activity.

22. With regards to food ordering services, Zomato stated that it operates in a highly competitive environment where several players constantly innovate and evolve their models to suit changing consumer needs. As per OP's estimates there were approximately 5.4 lakh restaurants in the organised sector and approximately 20 lakhs in the unorganised sector in India. Zomato also relied upon some of the industry reports as well as the CCI Market Study on E-commerce to submit that the food tech industry is growing at a rapid pace.
23. Zomato has claimed that, apart from it, there are various players in the food ordering services segment *e.g.* Swiggy and Google backed Dunzo, which facilitate delivery of food/other items and restaurants or customers may use the services of these players. In addition, as per the OP, this segment is already witnessing the entry of new players such as Amazon which, in February 2020, announced that it will be entering the food services segment as an aggregator and delivery platform similar to Zomato and Swiggy. Further, a number of cloud kitchens operating their independent portals compete effectively with restaurant aggregators/platforms. OP has submitted that there are players which have a presence in the online mode and also self-deliver orders. Further, payment facilitators such as GPay, Paytm and PhonePe have also enabled customers to order food directly from restaurants using their apps and, as a result, such restaurants have started listing themselves on these apps as well.
24. Furthermore, OP has stated that customers may pick an app to place an order based on the offers running at a given time, the type of food they wish to eat, delivery time, brand name, *etc.* Given that customers can download each of these apps on their phones and switch between them with ease due to the effects of multi-homing, in



effect, each of these entities compete with one another to attract customers for each order.

25. Thus, as per the OP, the Informant has incorrectly defined a market for online food ordering without considering other modes of food ordering, and it would be incorrect to limit the segment to online food ordering merely because there has been an increase in online ordering due to the pandemic. Furthermore, it faces intense competition from several large and small players in this segment, and there are low barriers to entry, constant multi-homing and ease of switching. Thus, OP stated that it operates in a highly dynamic and competitive market segment.
26. Zomato further stated that its delivery charges are fair, reasonable and non-discriminatory and are based on distance covered, city, area, Order Value (OV), demand-supply mismatch, cost of operations, time of delivery, number of orders to be serviced at the time, weather conditions, seasonal peaks, demand in the market and such other parameters determined from time to time. As per the OP, delivery charges are fair for consumers, ensuring that the orders are serviced professionally, within a short period of time and through technology *via* which they can live track their order and seek assistance at any time. Moreover, delivery fee is also a commercial factor in the form of reasonable level of compensation to be provided to the delivery partners. However, Zomato may choose to provide any offers to customers by charging a lower delivery fee or no delivery fee and these offers may be run in association with its restaurant partners.
27. Zomato clarified that no changes were made to its determination of delivery charges, since the Uber Eats acquisition and delivery charges only increased after March 2020 (beginning of the lockdown) as Zomato started serving orders from very far-off locations as compared to pre-lockdown, as close-by restaurants were unable to sustain themselves. Further, charges increased after October 2020 due to a significant increase in fuel prices, which was beyond Zomato's control.
28. Zomato averred that it does not limit customers from placing their orders directly with restaurants should they choose to do so, and the restaurant's menu and phone number



are provided on the restaurant's page on the Zomato's website/app (free of charge), even whilst the customer is trying to place an order through Zomato, which allows the customer to decide the items they wish to order; and, thus, they can call the restaurant directly to place their order.

29. With respect to OP's cancellation policy, it has been submitted that the same corresponds to industry standards and rather, is more reasonable than those set by other players such as Box 8, Dunzo, Pizzahut, Dominos, *etc.* Justifying its cancellation policy, OP has further stated that cancellation charges are justified with an intent to avoid wastage of time and food and are reasonably applied based on policy considerations.
30. On Informant's allegation of OP not owning any liability in respect of its delivery partner's conduct, Zomato submitted that its policy in relation to limitation of liability with respect to delivery partners is fair and reasonable as they are independent service providers, and agreements are entered on a non-exclusive basis. Therefore, Zomato cannot reasonably be expected to undertake liability for their actions. However, Zomato tries its best to ensure that customers experience hassle free delivery of their orders and provides training to its delivery partners, tracks their movement to ensure that they are on the right path and are fulfilling the deliveries in a timely manner. However, beyond that, Zomato is unable to physically monitor the contents of the order, the manner in which it is packed/brought and if the customer has provided the delivery partner with specific instructions directly. Thus, it would be unreasonable to expect Zomato to compensate the customer in such instances where it could not have intervened or done anything in cases of damage/spillage *etc.*, despite its best attempts. Despite this, Zomato aims to address customer grievances and tries to compensate its customers after reviewing the damage that has taken place upon reviewing the spillage through photographic evidence. Moreover, Zomato's policy corresponds to industry standards and is, in fact, fairer than those set by other players, as some of them do not provide any recourse.
31. With respect to abuse from restaurants' perspective, Zomato has submitted that restaurants may service their orders directly or by partnering with Zomato and given



the fiercely competitive nature of the market, Zomato lacks the market power to restrict the restaurant partners. Further, as regards the Informant's allegation of Zomato limiting or restricting food delivery services by not assigning delivery partners to 'unfavoured' restaurants, in violation of Section 4(2)(b)(i) of the Act, Zomato refuted such allegations as baseless.

32. Zomato, in respect of the Informant's allegation of leveraging its dominant position has averred that it has not 'leveraged' its brand name in the restaurant discovery services segment to restrict any other player in the food ordering segment as it has no market power to do so and that the restaurant discovery space is highly competitive with Google being one of the largest players. Other major competitors include EazyDiner, TripAdvisor, Ixigo and Dineout. Further, Zomato submitted that it has not actively discouraged or restricted any entity from entering the food ordering segment. Moreover, the Informant has not provided any evidence whatsoever that any potential entrant was harmed or was effectively unable to enter this market segment because of Zomato's conduct.
33. As regards the allegation of tie-in arrangement, Zomato at the outset stated that it does not have the requisite market power to indulge in tying. There are various ways of catering to orders placed by consumers, and the restaurant is not bound to deliver *via* Zomato only; rather, the restaurant can deliver directly or it can get the food delivered by third party delivery service provider (such as Delhivery, Pidge, Dunzo, Shadowfox, *etc.*). Thus, there is no compulsion or 'tie-in' arrangement, given that restaurants are able to service orders through multiple channels. It submitted that when it had entered into the food ordering segment in 2015, it did not have any delivery partners, and only facilitated food ordering from restaurants that either had their own delivery fleet or relied on services to deliver food. However, customers were constantly disgruntled with orders that were delivered by restaurants themselves; there was neither any customer service to help the customers, nor any live-tracking to provide a fair estimate on the time of delivery; and often, orders would arrive cold, or in damaged condition. This resulted in a bad customer experience and negative feedback for Zomato. This was causing reputational harm for Zomato as delayed/unprofessionally delivered orders left an extremely unpleasant experience



with the stakeholders, including customers. Thus, in order to address this, Zomato replaced the restaurant self-delivery with delivery services through its delivery partners to provide overall better stakeholder experience, taking into account the feedback received and benefits that could be generated with this change in policy. Zomato also clarified that some chains as well as standalone restaurants that deliver specialty items such as large pizzas, handis, cakes *etc.* requiring specialty delivery and the ones who have specifically invested into infrastructure and technology to deliver high quality customer experience, continued to self-deliver their orders. Further, Zomato stated that it competes in a market with multiple players and, in such a fiercely competitive market, if Zomato is not able to provide a seamless competing offering, it will find itself irrelevant in the market very quickly.

Informant's response/rejoinder to OP's submissions

34. Pursuant to the directions of the Commission, the Informant filed his response to Zomato's aforesaid submissions on 28.06.2021 claiming that he did not make any false or misleading statements knowing them to be false or misleading and stated that he does not intend to press upon violation of Section 4(2)(a)(i) of the Act any further.
35. As regard his allegation of tie-in arrangement, the Informant reiterated its delineation of two separate relevant markets and stated that online food ordering service is the tying product. The Informant submitted that Zomato indirectly admitted that it does not allow restaurants to deliver orders when they are placed on its platform, and restaurants are free to use their own delivery fleet/delivery fleet of a competing delivery company only when orders are not received by them through Zomato's platform. Thus, Zomato is imposing a tie-in arrangement on restaurants in violation of the Act.
36. The Informant also revised the relevant market delineation proposed by him in the Information and stated that the market is *online food ordering services provided by food aggregator app* as it is not substitutable with orders *via* other modes, and a rational consumer will install a single food aggregator app to order food. Moreover, as per the Informant, payment gateway apps cannot act as a substitute for food



aggregator apps, and submitted that multi-homing can only be between competing apps; thus, a rational consumer will not substitute a payment gateway app with Zomato's platform. With respect to the second relevant product market, the Informant, while disagreeing with Zomato's delineation of the same, stated that it is the ability of a consumer to switch to a substitute which is decisive for delineating a relevant product market and pressed upon *food delivery services* as the second market.

37. As regards Zomato's dominance, the Informant submitted that Zomato's submissions with respect to its market share were in total contrast to statements made by its promoter in the public domain and should be rejected by the Commission, and emphasised that factors such as its market share, its size and resources, size and importance of the competitors, economic power including commercial advantage over competitors, entry barrier in the form of marketing and economies of scale and user data, when combined together makes Zomato the most powerful and dominant platform in both relevant markets, having the ability to operate independent of competitive forces and affect the consumer and relevant market in its favour. Further, the Informant submitted that Zomato's reply on dominance is based on wrongful delineation of relevant markets and should be rejected.
38. With respect to alleged abuse of dominance by Zomato, the Informant averred that Zomato used tie-in arrangement instead of exclusive agreement to restrict restaurants from availing the food delivery services of competing delivery companies. By virtue of tie-in arrangement, Zomato has entered and expanded its food delivery services in India. Moreover, it denied market access to competing delivery companies from entering food delivery services. The Informant averred that Zomato enjoys a position of strength in the first relevant market in terms of orders placed by consumers on its platform. Furthermore, referring to 'network effects', the Informant highlighted that, when a large number of consumers use Zomato's platform, it leads to a similar number of restaurants getting listed on its platform as well. Zomato, as per the Informant, has leveraged its dominant position in online food ordering services to restrict restaurants from delivering orders placed on them through OP's platform, which left no scope for competing delivery companies to enter the food delivery market.



39. As regards the imposition of unfair and discriminatory delivery charges by Zomato, the Informant has stated that the restaurants can provide free or lower cost delivery services to consumers, as their delivery fleet is cost-efficient compared to the delivery fleet of food aggregators; however, they are unable to do so, as Zomato has restricted restaurants by indulging in tying in services, and thus, such imposition of delivery charges is an instance of abuse of dominance by Zomato.

Analysis of the Commission

40. The Commission has considered the Information filed along with Zomato's submissions with regard to additional information sought from it and the Informant's response filed thereafter.
41. On careful perusal of the Information, material available on record and submissions filed by the parties, the Commission finds that the grievance of the Informant primarily stems from the three incidents cited in the Information. The first incident pertains to the food ordered by the Informant using Zomato's platform on 14.07.2019, which could not be delivered to the Informant because the Informant's phone was unreachable which, according to the Informant was intimated to the delivery person in advance. The second incident relates to food spillage for an order placed by the Informant using Zomato's platform in September 2020; and the third incident is with regard to an order placed by the Informant through Zomato on 30.10.2020, which was allegedly cancelled within a few seconds of placing the order with the partner restaurant and for which Zomato refunded only 50% of the order amount. All these three incidents have been termed as 'abuse of dominant position' by the Informant under Section 4 of the Act. Besides, the Informant also cursorily alleged tie-in arrangement in respect of online food ordering and food delivery under Section 3(4)(a) of the Act, though, in his rejoinder to Zomato's response, this allegation has been stated in a detailed manner. Further, the Informant stated in his rejoinder that he does not intend to press upon violation of Section 4(2)(a)(i) of the Act any further.
42. The Commission at the outset notes that Zomato has rebutted on facts with regard to each of the three incidents and has stated that in one of the incidents (*i.e.*, incident 3)



a full refund was given to the Informant as against his misrepresented claim that he only received half refund. In his rejoinder, the Informant has not disputed having received a full refund with regard to this incident. With regard to another incident (*i.e.*, incident 2), Zomato has stated that, despite the customer care executive specifically asking the Informant to choose which item he had issue with, the Informant did not proceed with the node. Had the Informant selected the items he had an issue with, the node would have asked for a photograph of the spilled food. In his rejoinder, the Informant explicitly chose not to comment further on this. As regards the remaining incident (*i.e.*, incident 1), while the Informant may have been aggrieved as a consumer for not being delivered the food, the incident does not, as such, appear to qualify to be an abusive act on the part of a platform.

43. The Commission observes that the Informant has delineated two separate relevant markets as *online food ordering services provided by food aggregator app in India* and *food delivery services in India*, which Zomato has disputed. As per Zomato, the food services industry is extremely dynamic and integrated, due to which such delineations do not accurately reflect ground realities. Moreover, Zomato asserted that its customers have the option to search for or discover restaurants through various online and offline methods, thus, there is no foreclosure, there is ease of switching, constant multi-homing and low barriers to entry as apart from it, its competitors, *e.g.* Swiggy and Dunzo, also facilitate delivery of food/ other items and there are new entrants in the fray like Amazon also.
44. The Commission does not find these aforesaid definitions in consonance with the market realities and approach adopted by the Commission while dealing with the platform market cases. While each platform market may have its own specificities, some common broad principles apply to each sector. The Commission has also looked into a case [bearing *Case No. 16 of 2021, NRAI vs. Zomato and Anr.*] against Zomato and another online intermediary for food ordering and delivery, *i.e.*, Swiggy. Since the allegations in that case mainly pertained to Section 3(4) of the Act, the relevant market was not required to be delineated as per the provisions of the Act. However, Zomato and Swiggy were observed to be online food delivery platforms operating as *online intermediaries for food ordering and delivery*. Further, the Commission



observed these two intermediaries to be competing with each other in the same segment on various parameters. Placing reliance on the said observations, the Commission is of the view that *prima facie* Zomato does not appear to hold a dominant position.

45. Even otherwise, with respect to the three personal incidents of abuse alleged by the Informant, the OP has sought to negate the same with evidence on record, which has not been refuted by the Informant substantively in its rejoinder, and thus, the Commission observes that no instance of abuse has been made out against the OP.
46. In light of the aforesaid, the Commission does not find it imperative to delve any further into the allegations pertaining to abuse of dominance under Section 4 of the Act.
47. As regards the allegation pertaining to tie-in arrangement, the Informant has alleged that Zomato has used its market power in online food ordering services to vertically force restaurants to avail the food delivery services also from Zomato. This allegation, though termed as a tie-in arrangement, appears to be similar to one dealt by the Commission in *Case No. 16 of 2021* as regards the allegation of bundling by Zomato, wherein it was alleged that Zomato has bundled its ordering services with the delivery services by not allowing the restaurant partner to self-deliver the orders placed through Zomato's platform. In the said case, the Commission did not find a *prima facie* case of contravention against Zomato as well as Swiggy on this particular allegation, based on the following observations:

47. The Commission, at the outset, observes that bundling of services has been alleged as a contravention under Section 3(4)(d), which mandates a rule of reason analysis. Zomato and Swiggy, the two biggest players in the online intermediation of food ordering and delivery services market, compete for the end-consumer on three main parameters (i) array of choices available to the end-consumers in terms of RPs listed on their platforms; (ii) prices of products offered by those RPs on their respective platforms; and (iii) time



taken by Zomato/Swiggy to deliver the orders placed by a consumer as well as the quality of such delivery.

48. It emerges from the claims made by Zomato and Swiggy that bundling delivery with ordering enables them to control the time taken for delivery and qualitatively standardise such delivery for the end consumer e.g. the delivery partners are tracked live by the consumer, who can see where such partner has reached during the currency of the transaction, the delivery partners are trained with basic etiquette, consumers get real-time customer support in case of delayed delivery or issues related to spillage/packaging and at times also to claim refund for such issues, etc. Such branding/standardisation and reduction in the time taken for delivery improves consumers' perception about the platform i.e. Zomato/Swiggy and thus, help such platforms compete better in the market.
49. In that sense, apparently, 'delivery of the food' ordered through their platform, seems to be an important characteristic feature of the business model as well an important parameter of competition that Zomato and Swiggy have adopted. Swiggy, as stated by it, operates an end-to-end model where the orders generated on the Swiggy platform are delivered by Swiggy's delivery fleet and this model is stated to ensure better performance, to the benefit of consumers. Though Zomato allows certain RPs to self-deliver, such self-delivery is allowed based on objective criteria when an RP demonstrates the requisite broad capacities to do so.
50. Though NRAI has countered some of the aforesaid assertions, the Commission nevertheless observes that the delivery partners are perceived as an extension of Zomato/Swiggy, since for the consumer ordering and delivery appear to be a composite service. The integrated service of food ordering and delivery provided by the



OPs, when opted for by consumers, appears to be in alignment with user interest and preference of availing a hassle-free 'one stop' service. Further, unlike other e-commerce platforms, in case of food delivery market where these platforms are primarily delivering food for immediate consumption, time taken for delivery is of the essence and real time tracking plays a pivotal role. Moreover, these platforms, given their multisided characteristics, are competing in the market for consumers as well as for RPs and, as it appears, the competition between them is primarily a competition among bundles, where the time taken for delivery of orders and the qualitative aspect of it constitute relevant parameters of competition between these online food ordering and delivery platforms. Thus, the bundling does not seem to raise any competition concern as such. Even otherwise, the Informant has not been able to substantiate its claim that bundling of delivery with ordering, in itself, has led to or has the likelihood to cause AAEC either between restaurants or between hyperlocal delivery service providers.

(emphasis supplied)

48. Based on the aforesaid, the Commission finds no reason to hold otherwise in this matter with regard to the allegation of bundling/tying of food ordering services with food delivery services.
51. In view of the foregoing, the Commission is of the opinion that there exists no *prima facie* case of contravention of the provisions of the Act against the OP in the instant matter, and the Information filed is directed to be closed forthwith under Section 26(2) of the Act.
52. Before parting with the order, the Commission deems it apt to deal with the Informant's application dated 31.03.2021 requesting the Commission to call for information from third-party stakeholders which, in view of the discussion above, needs to be rejected.



53. Further, the Commission notes that, during the course of the proceedings, OP had filed its response to the Information in two versions *viz.* confidential as well as non-confidential. It had also requested confidentiality over certain documents/information filed by it under Regulation 35 of General Regulations, 2009. Certain limited excerpts from such response, over which confidentiality has been sought, have been relied upon by the Commission in this order. Such excerpts, which have been reproduced or used in this order, have not been granted confidentiality. The rest of the documents/information on which confidentiality has been sought by the OP is allowed, subject to Section 57 of the Act, at present, for a period 3 years from the date of passing of the order. The confidentiality request of the OP is hence disposed of accordingly.
54. The Secretary is directed to communicate to the parties, accordingly.

Sd/-
Mr. Ashok Kumar Gupta
Chairperson

Sd/-
Ms. Sangeeta Verma
Member

Sd/-
Mr. Bhagwant Singh Bishnoi
Member

New Delhi
Dated: 04/04/2022