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Fair Competition
For Greater Good

CCI Workshop on E-commerce

Changing Competition Landscape in India

AUGUST 30, 2019

SUMMARY OF WORKSHOP PROCEEDINGS

Competition Commission of India

9th Floor, Office Block - 1, Kidwai Nagar (East), New Delhi - 110023, India.

I. INAUGURAL SESSION

Welcome Address
Shri Ashok Kumar Gupta, Chairperson, CCI

Chairperson, CCI in his Welcome Address said that the mandate of the Commission is to promote and sustain competition and fair play in markets and to achieve that, the two instruments of enforcement and advocacy need to be embedded in clear understanding of markets. He highlighted the importance of market studies as a way to proactively reach out to the market participants and to better understand a sector. He emphasized that market studies help in identifying the reforms required in a sector, so as to preserve the investment and innovation incentives of market participants, to create a level playing field and to promote efficiency. The Chairperson informed that CCI intends to initiate a series of market studies in sectors which are undergoing rapid change.

He emphasized that while growth of e-commerce has the potential to increase competition, bring information transparency and facilitate innovation, digital markets are not impervious to anti-competitive conduct. Thus, competition authorities have a role to play in ensuring that these markets remain open and contestable. He stated that while there is a need to preserve firms' *ex ante* incentives to invest in the digital sector like in any other sector, this would apply to both incumbents as well as potential entrants and a myopic view of competition would not be appropriate.

Price effects alone, he said, would no longer help gauge competition dynamics. Quality, innovation, and now increasingly data have become important dimensions of competition that can have far-reaching effects. The Chairperson also pointed to the ongoing debate on how digital markets should be looked at, how distinct these ecosystems are from the traditional market configurations, what ought to be the parameters of competition analysis, whether regulations or case-by-case application of competition law would suit the needs better. And he said that the objective of the study and the workshop was to make this debate less abstract and more driven by empirical insights.

Keynote Address

Dr Rajiv Kumar, Vice Chairman, NITI Aayog

Dr. Rajiv Kumar in his Keynote Address congratulated CCI for carrying out the Market Study on E-commerce, underscoring the need for evidence based policymaking that would require resesrch. Pointing to the growing importance of the e-commerce sector in the Indian economy, he mentioned that e-commerce would grow five times by 2026, the GDP of India would double and the share of e-commerce in the GDP would also be larger. At present, the Indian e-commerce sector is the 9th largest in the world but by 2047 it would become second largest in the world. Calling e-commerce to be the sunrise sector, he emphasized the role of policymakers and regulators in facilitating the e-commerce explosion in a manner that is beneficial to the buyers and sellers.

He touched upon how e-commerce benefited various stakeholders such as the logistics industry, farmers, and women entrepreneurs by lowering the entry barriers and cutting intermediaries. He said that markets are large enough to accommodate all stakeholders and there exists ample space for both online and offline retail to co-exist. As an example, he pointed out that the uberisation of truck transport has bought benefits to the whole industry. He also advocated the need for liberal FDI regime in e-commerce.

In his address, Dr. Kumar quoted an OECD study which alluded to the increasing conglomeration of platforms' function. He stressed that degree of cross substitution needs to be ascertained so that it doesn't lead to predatory effect. He also stated that data, which is popularly referred to as the new oil, when combined with modern technology gives unprecedented market power to the platforms which can be used for benefits of consumers as much as it can be used for causing harm to them. In such a scenario, it becomes imperative for CCI and other regulators to work closely with the industry in order to be prepared to deal with challenges. Any regulation, he said, should have a soft touch. Commenting on the strategies adopted by conglomerate e-commerce platforms, he stressed that CCI has a greater role to ensure that their market power does not lead to abuse of the same.

Vote of Thanks

Ms. Payal Malik, Adviser, CCI

Ms. Malik thanked Dr. Rajiv Kumar for his insightful address. Drawing from the Keynote, she emphasized that evidence-based policy requires research in the micro foundations of markets. The instruments need to be fine-tuned and policymaking must aim towards arriving at equilibrium. She stressed that regulation and policy need to be light touch and not hammer and tongs.

The Inaugural Session was followed by panel discussions dedicated to specific e-commerce segments, namely, online food delivery, online hotel booking and online retail shopping. The panels comprising, representatives of online platforms, manufacturing sector, retail, hospitality, restaurants, think tanks, trade associations, senior government officials, extensively deliberated on the issues and challenges relating to e-commerce in India and the need for ensuring and preserving competition both within the e-commerce market place and in its interface with traditional markets. The sessions were moderated by senior journalists from print and electronic media.

II. SESSION I: CLICK ONLINE FOR SERVICES

Session I consisted of two panels focusing on online food delivery and online hotel booking.

Panel I: Feeling Hungry: Online Food Delivery

Moderator	Ms. Ratna Bhushan, Senior Editor, The Economic Times
Panelists	Mr. Mohit Gupta, CEO - Food Delivery, Zomato
	Mr. Rahul Bothra, CFO, SWIGGY
	Mr. Jimmy Shaw, Managing Director, Bona Sera Hotels
	Mr. Anurag Katriar, Executive Director & CEO, deGustibus Hospitality
	Mr. Thomas Fenn, Partner, Mahabelly
	Mr. Munaf Kapadia, CEO, The Bohri Kitchen

Mr. Bothra opened the session to a question on how he thought food delivery has evolved over a period of time and how are start-ups benefitting from it. He stated that online food delivery has been the harbinger of change for overall food industry. He also pointed out that the sector has risen from almost nothing to being the fifth in the organized food services market in India. He stated that in US food services have surpassed the grocery market in 2015 whereas in India it is only 7-8% of overall grocery market. He also stated that China's overall food services market was 15 times more than India. He pointed out that there is a perceptible change in India with respect to online food ordering. Restaurant industry is able to increase their margins with the presence of these online food delivery systems. He emphasized that this sector has also created employment by hiring around 5 lakh delivery partners. Mr. Bothra stated that they have played a very important part in driving fair and healthy competition among their partners. He further pointed out that India is supply-starved. There are only around 2 lakh organized food delivery joints in India compared to 8 million in China, which is a 40 times gap. He pointed out that as we have a population almost equal to China, there is a need to create more supply. There would be a lot of innovation happening and 'cloud kitchen' is one such way to go nearer to the customers and make food and choices available to them.

Mr. Katriar, on being asked about the broad contours of the contracts between restaurants and aggregators and how have they evolved in the last few years, stated that restaurant fraternity is not against growth through technology but the terms of engagement have to be more fair and equal to each side as the business model for each side is different. One of the main issues according to him in the delivery space is **'deep discounting'**. He stated that these discounts are not voluntary. He stated that the aggregators enjoy a certain dominant position. He pointed out that solely discounting may cater to growth of the platforms but the growth of the industry as a whole is needed. He further stated that the second issue which is bothering the restaurant fraternity is that the terms of engagement are changed by the aggregators unilaterally or under coercion. He pointed out that this is where the discontentment is brewing. Data masking according to him is another issue as it does not allow customers' information to be shared with the restaurants. He stated that when a restaurant is the one serving the customer and is responsible if something goes wrong, how could the restaurant be denied the data of the customer. This according to him cannot be called a fair term of engagement. Thereafter, he emphasized that 'unbundling of services' is another issue because as of today if a restaurant has to list itself on the aggregator platform it has to register for delivery services also. He urged that this choice should be left to the restaurants. He stated that if they do it on their own they can do it at a much cheaper cost. He further added that lot of times restaurants are shown as not being able to serve on the platforms because of various reasons such as not enough riders available in the town *etc*. So if the services are unbundled, the restaurants would not suffer on account of the platform's misrepresentation.

Mr. Fenn, on being asked about sustainability, growth and employment of smaller restaurants and startups, stated that food is extremely difficult business for new restaurants opening in India. Only 4 out of every 100 restaurants actually make it to the second year. He pointed out that platforms increased access of restaurants, **but took away pricing decisions** which has led to a decline in the operational margin range from 12% to 8%. This, according to him, is highly problematic and needs to be addressed. He stated that the advent of platforms began around 2015, the market at that time was nascent and aggregators were willing and genuine partners in the market who wanted to grow the business with restaurant partners. However, this has changed over a period of time as now they do not have the kind of conversational and operational power as they had earlier being a small restaurants. He pointed out that now they have to rely on platforms to function even if they charge high commissions and getting out is not an option. Customer behavior has also changed. These platforms have created a 'sandbox' which has made it difficult to scale and stand. Investors look for growth avenues which can be scaled up and withstand the changing situations, so no investors are available for restaurants. He stated that they are looking at more organic ways to grow rather than looking at institutions which can lend money. He also urged the platforms that they should look at problems of restaurants as their own as the restaurant industry is the second highest employer in the country.

Mr. Kapadia, on being asked that since his business is delivery-only, would it have been possible for him to scale up his business this fast without the support of the aggregators. He responded by stating that without the presence of aggregators it would not have been possible for his business to grow and scale up. He stated that he could think of venturing into this business as delivery could be taken up by Zomato, SWIGGY and UberEats. However, he stated that there are disadvantages also of being on these platforms as when he uses Zomato, SWIGGY and UberEats, his orders increase but still he is not able to build any customer base or re-market to them as he does not have access to their data. He pointed out that he is not able to leverage that brand equity on these platforms because once he is on the platform he has to give 30% to even be visible on the platform.

Mr. Shaw, when asked about the impact of the relationship between the aggregators and the industry on investors, employees, customers, influencers, government and all other stakeholders, stated that hospitality industry is the oldest industry and technology industry is probably the last one to have happened. He pointed out that in India, technology was first used in food services industry in mid 80s or early 90s. He built India's first restaurant point of sale computerized solution. According to him, tech industry is the only industry which does not evolve like the other industries. Next generation has to built-up from destruction of the previous generation so it is destructive by nature. He pointed out that 'Palm Pilot' was the first mobile solution used by the food service industry to take orders in the mid-90s. Mr Shaw further stated that it is wrong for an industry to usurp the rights of others. He pointed out that it is the hospitality industry because of which these platforms have come up so the hospitality is not subservient to the technology industry. He also stated that these platforms were driving their business on the values of their investors and focus was not on profit, which is the underlying motive of a business, but on valuations. As per Mr. Shaw, these platforms are not creating employment as they claim since they are just luring delivery boys by offering them some extra amount and not giving them a secure job. He complained that these platforms give deep discounts on products which they do not own and when they have to give discounts, their customers become the customers of the restaurants so it's now their responsibility to appease them. He also stated that these aggregators have made the reviews on platforms a curse for the hospitality industry as they have made reviews public. He stated that now every restaurant manager has a restaurant budget to give instant discounts to customers who say they are going to give bad reviews if they are not served more. He called it a curse they have to live with. He urged that Government has to play two vital roles *first* create clear and stable rules and *secondly* when these rules are created Government should invite views from the very industry they are creating rules for. He also appealed to CCI to solve the problems relating to the aggregators as they keep changing goalposts.

Mr. Gupta, on being asked whether aggregator platforms offer a level playing field for brands, stated that when they started their delivery business they did not have a logistics service and they basically generated orders for their partners. They empathize with restaurants and that is why they have not opened their own restaurants. He further stated that they would not have existed if there were no restaurants. He pointed out that they digitized menus to make it easy for customers to know the menu of a restaurant even before going there. He stated that even if yellow pages existed it did not carry full menu. He is of the opinion that for the growth of food industry, platforms and restaurant partners have to work together. Mr. Gupta further stated that they are committed to address the concerns of restaurant partners and all expansions and innovations have to bear certain amount of pain but if this journey is taken up together, they would be able to overcome these hurdles.

Mr. Fenn, in his final comments**,** spoke about the impact of 'data masking' on restaurant industry. Data is not new for restaurants as it came before technology platforms came in. Now it is digitized and can compound volumes of customer information. The restaurants were doing that on an analog basis as they worked on the feedbacks of the guests. He pointed out that data is critical to hospitality industry. They try to create a customer profile and try to see what profile of the customer actually fits in the restaurant or in a delivery kitchen context. If misuse of data was the concern, he emphasized that the same would apply both to restaurants and the platforms and, thus, the platforms cannot keep away the customer data from the restaurant under the guise of privacy. Customer data is an important brick in the entire system and any one person does not have a propriety right over it. The need of the hour is to cater to the needs of the customers through human intervention.

Mr. Bothra stated that data should not be shared without customer consent. He further stated that the focus should be on feedbacks which are being provided to the restaurant owners. He was asked whether delivery aggregators are not using customer data to develop their own private brands as SWIGGY itself has its three private brands. To this Mr. Bothra stated that private label strategy is to look at unmet needs of customers. He stated that through cloud kitchens they have sought to fill the supply gap. They have also helped partner brands to open virtual brands for example if they have excess capacity in their restaurants through this mode they tell them what new cuisines they can add to their kitchen. For example, they observed a supply gap in affordable home-style meals and that is why they have launched the affordable home-style brand.

Taking the discussion further, **Mr. Katriar** stated that even if platforms were growing in terms of the numbers of clicks received, it was not helping the restaurant partners**.** Private labels are not required as it is just a mode to bring their own brand. Home-style food joints already existed in the market. In terms of employment, if 500 thousand jobs had been created by aggregators then restaurants have employed millions of people. He also stated that since discounts are on all the 365 days the aggregators should not call it special. Discounts may give platforms clicks but it was not helping the restaurants. If platforms have to give discounts, the same should be funded entirely by them.

Mr. Gupta accepted that data is used by aggregators but this is done to help and assist customers. He pointed out that working together is the key to growth of the industry. On the question of how long deep discounting would go on, he stated that investors who invest into businesses want to be sure that this would grow. So, all businesses have to seek out sustainability and profitability. Discount is used at a certain point of time to attract customers for them to understand the impact of businesses.

Mr. Bothra stated that pricing is only one parameters of competition, quicker preparation of food and faster delivery is the main focus. Discount is used but even if restaurant partners do not provide discount then also people are ordering from them. There is fair play and platforms are competition friendly. Restaurant partners and aggregators have to work together to let the food industry grow.

Panel-II: Where to stay: Online Hotel Booking

Moderator	Mr. Rohin Dharmakumar, CEO, The Ken
Panelists	Mr. Mohit Kabra, Group CFO, MakeMyTrip
	Mr. Ankit Rastogi, Head of Accommodation and Activities, Cleartrip
	Mr. Gurbaxish Kohli, Managing Director, Pritam Hotels
	Mr. Nirav Gandhi, Director, Hotel Express Towers
	Mr. Adarsh Manpuria, Co-Founder, FabHotels

Mr. Dharmakumar set the context of the session by emphasizing the role and importance of ecommerce and technology that have been rewriting industries and sectors around the world in search engines, cabs, food and hotel booking etc. He discussed the mirroring point that with great growth comes great conflict, and that tremendous growth emanates disruptions and within such disruptions lie conflicts. Online hotel booking has led to remarkable growth, with existing customers booking rooms more frequently, more availability of different types of rooms and new kinds of players in the market. But at the same time there are industry participants in the value chain who ask whether the growth is growing the pie or whether itis shifting of the pie within an existing industry? While there is extreme competition in terms of players in market, like Online Travel Agencies (OTAs), discovery sites, content review sites etc., however, the important question is whether a cursory view of the number of players a true representation of the actual market shares, transactions and the power of the individual players? Perhaps not.

While discussing the role of OTAs, he pointed out that there is a certain standardization and understanding in the minds of the consumers that has been taking place, for instance a consumer paying 2000 INR would have certain expectation of the kind of service/product it would fetch. There has been a marked behavioral change in customers booking hotels online, who prefer to book hotels for a destination prior to booking travel tickets. More so, the definition of rooms itself has also undergone change with the changing needs of the customers, *i.e.* the atomic unit of a room for 12 hours or 24 hours is now changing. Thus, OTAs empower customers not only with the ability to compare, research and pre-book ahead of their journey online, but also book their requirement depending upon the number of hours, while in transit. So much so that people book a hotel or an experience first and then the rest of their trip including their airline, as opposed to the earlier practice of customers who booked travel tickets first and then went for walk in check-in to book hotel rooms.

At the same time, the flip side is that residential apartments are now turning into hotel rooms. Therefore, it becomes imperative to question whether they are subject to the same kind of regulations, taxation etc. that hoteliers are subject to? The gap that has been brought out is that there are 20000 hotels which are registered with the Government while there are 50000 hotels that are unregistered and not subject to the same laws and OTAs list 70000 hotels but not all of them are formally counted as hotels.

He pointed out that there are some players who are seen as extremely dominant with high market share. In this context, he raised various questions like - Is the overall market competitive? Does transparency, fairness and competition neutrality really exist? Whether there is fair competition across OTAs or within OTAs? Do platforms favour one set of players (their own brands, strategic partners) over the other? Are lopsided discounts leading to market distortions? E-commerce has removed entry barrier but the question is whether regulatory barrier to entry is replaced with to some extent by capital barriers to entry? So has the ability to burn capital become similar to an implicit barrier to entry?

Transparency, fairness and competition neutrality are key burning issues among OTAs, hotel owners and hotel associations and a common consensus is needed to bring about a win-win situation for all.

Mr. Manpuria started with a brief introduction to Fab hotels, which is a brand franchise for budget hotels in India which started in 2014 and at present runs more than 550 exclusive hotels that are registered with it as part of the fabhotel network. These unorganized budget hotel operators look to them for exclusive sales and marketing distribution. Fabhotel does revenue generation and provides them with all operational assistance necessary to run their hotel to a certain standardized level. It provides them with proprietorship technology so as to make it easy for these operators who are not trained in hospitality, and who aspire for certain level of service and visibility both online and offline**.**

Mr. Manpuria underlined the twofold role of online booking marketplaces. First, to provide a wider and more democratic access to booking options in the hotel industry, and second to the hotel operators themselves to be able to gain wider distribution reach of customers not available previously through the offline segment. Therefore, OTAs can play a meaningful role because of their scale and their reach to drive the growth of tourism itself, both business and leisure. Such growth of hotel industry GDP needs to be driven by promotion of greenfield opportunities for new SME entrepreneurs, setting up of hotel industry as an income generation avenue and provision of employment opportunities as a result of the growth of that market, not just for the employment of the platform but also for the industry in general. However, to maintain a win-win situation of any ecosystem and similarly for the hotel booking market, it is important that the interests of all stakeholders are aligned and not lopsided in favour of any one particular player.

As mentioned earlier, the principle of global online market places *i.e.* neutrality in non-discrimination to suppliers, transparency and exhaustiveness of all options available on a supply side, to a discerning customer travelling and looking to book something online is of utmost importance. He emphasized that the founding principle of exhaustiveness to be of paramount importance in the context of having a level playing field. Customers should be able to view all options available to them irrespective of the brand (be it Oyo, Lemon Tree, Fabhotel) or unbranded hotel available on the largest platforms that one looks to for trust and convenience, and customers should be able to sort them in any way they want as per their preferences by price, location proximity, reviews of other guests which are genuine indicators and instill confidence in them to make the booking.

Lastly, he stated that for any ecosystem to thrive and grow, all stakeholders should grow, and for the overall pie size to increase it is pertinent to use technology to promote the growth of supply itself, which would demand alignments of commercials, between the online and offline market places. This becomes important considering the fact that there are many hotel operators today which are at grass root level who would like to expand business, but the margins and commercials have to make sense for them.

Mr. Rastogi stated that Cleartrip is one of the regional OTAs which started its operation in India about13 years ago, and have expanded toMiddle Eastern and North African countries. It looks at travel as a holistic brand and focuses slightly on the premium market, and has around 20000 properties listed on it**.**He started the discussion by stating that each OTA has its own strength and weakness, and Cleartrip by virtue of their larger share of air booking business, brings in larger set of audience which can add value to a limited number of players serving accommodation. OTAs have been harbinger of change in the market over the years and lot of customization is now possible through technology. Leisure is a very nascent segment of tourism and has just started off in the country and at the same time OTAs have been pioneer in terms of the skills that they have added to the platform and provided to small hoteliers across the country. Most importantly, he emphasized that OTAs have been instrumental in the evolution of customer behaviour from regular booking of hotels to unique offers on platforms. He pointed out that inventory is a perishable product, *i.e.* a room that doesn't get sold in the same night is rendered useless. While the ecosystem is nascent and evolving, like dynamic pricing and promotions, segmentation of audience etc., the Indian audience continues to challenge both sides of the vertical, *i.e.* the supply and the demand. There are clear patterns of customers evolving from regular hotel buyer towards alternate accommodation, customers looking for something more unique, wave of standardization on one side and a wave of finding unique place to stay every time. Similarly, payments is a space that has been disrupted widely and OTAs or any technology players, meta partners have played a part in doing that.

Mr. Gandhi touched upon the fact that platforms influence everyone and they are building technology, meta searches etc. and if their cost is high then there is no reason for the additional cost to be pushed to their partners and customers. Platforms should bear the cost themselves because they chose it instead of keeping it neutral and instead their listings are completely influenced by their own dynamics, *i.e.* OTAs drive businesses wherever they are getting higher commissions. They have merely shifted the people from offline to online platform which is inevitable, so as such there has been no increase in the size of the pie. There are no ethics in business of platforms and gross market value is the only key consideration for platforms. Like the food industry, they are looking at valuation but not growing with their partners. These platforms provide deep discounts and free rooms to customers. Thus, customers become addict to such offers. He pointed out that platforms are unfair in their approach as they don't share information or fail to give fair/complete information and digitization; this along with lack of regulation has made the market prone to abuse by OTAs who are now dictating unfair terms.

Mr. Kabra asserted that while 'online platforms' is a very commonly used word, not all platforms are alike. There are search engines, marketplaces, meta platforms, agency platforms, listing platforms. Each platform operates in a certain manner and is distinctin nature in terms of its operation, functioning etc. MMT has been in India for almost 18 years, having started its operations in 2001. For the first 10 years, it was air ticketing that took wings due to easy transport, it being a unidimensional product and easy to put it out even when there is narrow bandwidth of internet.

Not all hotels are rated nor are they able to get into common set of listings or parameters on which they can be rated, so it is difficult for end consumers to figure out as to what exactly the payment is made by them for. While many hotels can do it themselves, it will be difficult for each hotel/service provider to market themselves to the world at large, and therefore role of intermediaries like MMT comes to play, and they provide a platform where such content is put into place, while making it easier for customers to make choice, more often ahead of their travel. He pointed out that only a small proportion of hotel services gets sold online, and walk-in tends to be the highest category with approximately 30% of the booking going to them. The largest buying behaviour is predominantly offline walk-in. He stated that it is a myth that income generated through online platforms is more than offline platforms and stressed on the coexistence of offline and online market in the hotel industry in a meaningful manner.

Mr. Kohli stated that while technology brought in certain advantages like ease of booking rooms for guests, viewing of rooms online, it was used by the platforms later to get into a dominant position which enables them to set standards of other business. The year 2015 saw more than a dozen of OTAs and their commission was 8-10%. Over a period of time, due to the increasing popularity of OTAs, there was a paradigm shift of guests (same set of consumers) from offline travel agents towards OTAs. As a result of which OTAs became dominant and started to dictate terms to hotel owners, which the owners have resisted to a great extent. He stressed that OTAs and hoteliers are two pillars which have to continue and coexist together, for if OTAs do not have their inventory, they will have nothing to sell. He accentuated that it is time the market remains fair and the terms of contract become fair, transparent and bilateral in nature and not lopsided.

On being asked about competition, **Mr. Manpuria**, stated that there should be more domestic travels and more innovation to make the markets for hotels more competitive. He observed that

OTAs like MMT have helped in creating awareness and convenience to audiences even in the remote cities. First prerequisite is the convenience and the awareness to lead to the growth of the industry. However, equally important part of this growth are the supply operators which helps them to operate their current accommodations (*i.e.* the hotels they own) and the expansion of their supply base as the industry looks to grow double digit and there is an exponential shift in the behaviour of people travelling and making bookings online. To make it sustainable it is imperative that the marketplace remains competitive, transparent and not dictate terms.

He cited an example to illustrate the point - matrimonial sites were the first ones to take behaviour from offline to online, which required the customers to disclose religion that was met with initial resistance but later people started disclosing their religion. Therefore, markets are dynamic and not static in nature. An offline travel agent is bound to promote the hotels from which they would get more commission, therefore it is imperative for OTAs to list all the options available in the interest of transparency and exhaustiveness which are the founding principle of global online market places. Thus, it is critical to explore in the interest of the growth of the overall industry, whether all options are available.

He pointed out that the margins are thin for hotel owners and occupancy for hotels is generally 55% to 60% in India. The best of the successful brands/ chains of hotels in the country and worldwide have 75% to 85% occupancy. However, for the unbranded hotel operator's cost structures *i.e.* their rental, cost of their staff for providing good level hospitality, electricity, licensing charges, the breakeven or their profitability comes to around 65-85%, so it becomes extremely important that all hotels get access to large OTAs which are disruptive and are able to promote themselves and their generation with entrepreneurship and not get discouraged with thin margins and lack of access.

On the issue of discounts, **Mr. Kabra** stated that platforms do not control pricing, instead they only provide discounts/incentives and prices are determined by suppliers (*i.e.* hotel owners) that come out of the margins they make from the suppliers or from the customers themselves. Therefore, looking at discounts purely in terms of what is happening in the online platforms will not capture the entire gambit of discounting. Thus, discounts need to be viewed in context of pricing set by the suppliers themselves, whether it is for a walk-in customer, or for a customer booking through offline channel or for a customer who booked through online portal of the supplier himself.

The other interesting observation was that to make a brand like MMT visible in the minds of the consumer, there was a lot of marketing spend that used to take place. Close to around 75% of MMT's revenue was deployed in marketing and brand promotion. Largely 90-95% of the consumers used to book through desktops, today roughly 80% are through mobile apps. Therefore, for a platform like MMT, it is now relevant to spend those marketing dollars in to direct promotional campaigns with the consumers who are coming on the app and build the real estates on their smartphones. In a manner, it is brand building, but while discounting can get OTAs into getting customers to experience the product for the initial few times, eventually it takes a lot more to retain them on the platform. Brand doesn't necessarily get built through promotion and discounting, but gets built through huge cases of solving customer pain points not just at the time of booking but also post booking experiences and how the OTAs resolve such issues.

Discounts *per se* happen only out of commonality of interest between platforms and suppliers. Moreover, around 15000 rooms gets booked through OTAs while there are 2 million rooms available for being sold and occupancy rate is in 55%-60% range, with some very good branded hotel with 80%-90%occupancy rates, the budget unbranded segment has only 20%-40% occupancy rates and they have no way to market themselves to customers. The incremental cost in every room night sold is very less and it is a perishable commodity. Thus, there is no question of dominance as many players exist in the market, and also the incremental cost of room getting occupied is minimal for platforms. OTAs like MMT can only play a role in facilitating and working closely in tandem with the hoteliers to make sure that they optimise on their channels for gaining volumes and drive customer buying behaviour by building in certain attractive pricing and commercials.

Mr. Gandhi disagreed with Mr. Kabra and stated that there are only 1200-1300 rated hotels then how is it possible for MMT platform to have 70000 hotels rated? Which is the authority who is rating these hotels? He pointed out that OTAs provide biased information and wrong ratings. For instance, hotels established for just 2 years in the pasthave1800 review ratings while hotels for 20 years have only 900 reviews. This leads to customer landing in precarious situation. The platform commissions are exorbitantly high which they charge from hotel owners *i.e.* 40 % on an average. These platforms voluntarily give discounts without the consent of hotel owners resulting in irreparable damage and discerning image/valuation of reputed hotels. This is the biggest problem of hoteliers. The deep discounts only help platforms to generate revenues and for gross marketing valuations.

He stressed on the need for a transparent discount system, wherein the hoteliers themselves decide and float/display the rates without having to pay for the discounts which is provided by the OTAs. He stated that digitalization was inevitable and could not be seen as an excuse for additional discounts and that there is no reason why greater discounts were provided *via* apps than desktops. Hence, the schemes of discounts should be regulated and be made fair and transparent.

III. SESSION –II: MALL CRAWL: ONLINE RETAIL SHOPPING

Moderator	Mr. Rasul Bailay, Senior Assistant Editor, The Economic Times
Panelists	Mr. Rahul Sundaram, Senior Corporate Counsel, Amazon
	Mr. Pawan Kaul, Head – Corporate Affairs, Snapdeal
	Mr. Lalit Agarwal, Chairman and Managing director, V-mart
	Mr. Pankaj Mohindroo, Chairman, Indian Cellular & Electronics Association (ICEA)
	Mr. Kush Agarwal, Member, All India Online Vendors Association (ALOVA)
	Mr. Praveen Khandelwal, National Secretary General, The Confederation of All India Traders (CAIT)

Mr. Bailay in his opening remarks said that like Zomato and Swiggy in restaurant business, OLA and Uber in case of taxi services, the onset of e-commerce boom in the retail sector arguably changed everything and it happened to be the biggest disruptor in retail trade. The e-commerce entities have changed the way we shop online, they have created jobs, created consumerism avenues even in remotest corners of India, they have created infrastructure and logistics. But on the other side e-commerce entities are accused of violating Indian laws, funding discounting, running hybrid inventory model which India does not allow and are engaging in predatory pricing.

Mr. Sundaram stated that as per a study conducted by Indian Brand Equity Foundation (IBEF), 93% of the retailing in India happens in the offline unorganized retail sector and the balance 7% is handled by hyper markets, Reliance Retail, Puma etc; e-commerce handles a small miniscule percentage of the overall retail. It's in a very nascent stage and has lot of potential. In terms of retail where we are evolving is not towards e-commerce but towards an 'omni-channel' set up where small traders are coming online through Flipkart, Amazon and through various other e-commerce startups.

Mr. Mohendroo said that the mobile industry was the most abused category. The retailers are tiny, but they are gloriously smart. Owing to paucity of capital, in the wake of e-commerce, from 2, 95,000 retailers in mobile phones, now there remain 45,000. Around 2, 50, 000 retailers have lost their jobs because of predatory pricing. Most of the so called e-commerce sale was being brought by champion wholesalers who had multiple accounts. The tail, the really small retailers had to shut shop because the e-commerce was driving predatory pricing which was being captured by wholesalers who were then averaging out their price and selling that product. There is virtually no e-commerce in mobile phones in United States. E-commerce should prosper but at about 10-15% of the total smartphone handset market, not more than that.

Mr. Kaul referred to Press Note II and raised the issue of compliance with the e-commerce guidelines prescribed in FDI policy. While the policy is in place, the issue is enforcement - are the things going on as per FDI norms. Going back to history why DIPP did not go for inventory based model, but went for marketplace models or pure play marketplaces for FDI companies was because they wanted to support their MSMEs. Basically to take away their technical obsolescence and provide them plug and play solutions for having bigger market access and exports. For e.g., the case of private labelling, private labelling done by e-commerce companies are based on AI, so it will affect manufacturing. If one looks at manufacturing wherein related party sales are present, Press Note – II came and within two weeks people restructured their group companies into non-group companies and even the board of governors were changed.

Mr. Khandelwal said that they are in favour of e-commerce and e-commerce is the future mode of business in the country. However, what is difficult to understand is how a mobile handset model is available at an offline retailer for Rs.10, 000/- and the same model is available at Rs.7, 000/- on e-commerce marketplace with some cashback or other such scheme. The manufacturers are not resorting to dual pricing. Whatever price has been given to offline retail has been given to online retail. The VC and PEs, those who are funding e-commerce entities, they are least interested in the business model whether the company is going into profits or incurring losses. It is not their motive, they want to escalate the valuation of the company so that at a given point of time they can exit with a larger amount. The VCs and PEs who lend money on valuation basis they don't charge interest in Europe, US and other countries. Finance is available at 1.5% to 3% in foreign countries whereas as in India it is available at 9% or 10%, therefore there is gap of 7% to 8%, so how can small retailers compete with e-commerce entities.

The e-commerce platforms have been forced to come to India. They are not coming voluntarily because India is the world's largest consumer market. Their motive is to dominate and control the retail trade which is generating an annual turnover of more than Rs.45, 00,000 crore. Let them come but they should not indulge into any kind of malpractices, no predatory pricing, no deep discounting. It should be regulated and stern action should be taken against any such company which violates law. So if e-commerce policy is there, if a regulator is there, even if there is no regulator can there be an e-commerce ombudsman atleast. There should be a forum where retailers can go and register their complaints. Let there be fair play, let there be opportunity for one and all. Lastly, there is no obligation of any registration for e-commerce companies in India. It is a vast economy, so the government should make every e-commerce portal whether it is big or small to obtain registration from the government so that the regulatory mechanism can keep an eye on those people so that e-commerce business in the country grows in its right spirit and consumers enjoy the benefit.

Mr. Agarwal said that they believed in the idea of e-commerce, and were not against technology *per se*. Hundreds of thousands of online vendors survive because of e-commerce, one or two platforms however have basically not followed the culture of India or the ideology of e-commerce *per se*. E-commerce has lots of benefits, obviously offline and online offer different experiences, some may like selling online, some may do not want to sell online, some may get successful online, some may not get successful. Everyone has a different story and one cannot colour the whole ecosystem white or black.

Mr. Sundaram said that in this debate what we are forgetting is why some channels are successful and why other channels are not. When a consumer looks at buying from Amazon, Flipkart or from the kirana stores there are 3 or 4 things that she really look at. As long as the customer preferences are concerned we work backwards to what the customer is looking. That is what the magic mantra is and over 5, 00, 000 sellers are on Amazon and they are not big sellers. Most of the 5, 00, 000 sellers are small and medium enterprises, including tribal artisans who are getting a global platform for their products.

Mr. Khandelwal said that there could be a difference of Rs. 500/- to may be Rs.1, 000/- but the pricing on Amazon cannot be justified. Offline retailers don't have a profit margin of more than 2-3%.The online portals are supported financially by investors but the traders are not even given a financial loan by banks. Only 4% of 7, 00, 00,000 traders are able to generate financial loans from banks and financial institutions.

Mr. Agarwal said, India is a large country, there are 5000 such towns in India where lots of retailers are there, bazaars are there, consumers are there and as of now the online penetration into this market has been very minimalistic. Amazon is not funded by someone in India but Amazon is largely funded by retail investors or global investor globally, so they have large amount of capital to be infused and they have deep pockets to support their losses.

They have all the right to do retailing if they are a retailer. Let them be a retailer and still they may not be able to compete in Indian market because Indian retailer and Indian traditional orthodox retailer who are putting in those blood and sweat are great thinkers. As far as retailers are concerned, retailers in India are very much equipped they know what consumers in the small towns need and what those consumers want. They are able to serve those products and the quality that they are able to give the consumer can hold them back. If consumers are buying online, those online companies may not be responsible and they may not be able to return and they may not be able to get their money back.

Mr. Agarwal said, the problem with Amazon is if you want to expand your business from one state to another, you will grow only if you use Amazon's services. It is the issue of bundling of services that the restaurant industry also raised regarding the food delivery platforms.

Mr. Sundaram said, there are two facilities a seller can avail (i) Amazon fulfilled services where the logistics, the backend, the payment gateways, all that is provided by Amazon and (ii) Merchant fulfilled service which is offered on Amazon where just the listing service is offered by Amazon and all the forward-backward logistics, collection of money everything is done by merchant and a majority of sellers are availing the merchant fulfilled services.

Any retail channel, be it e-commerce be it brick-and-motor stores as long as they are able to offer wide selection to the customer, the selection is available in stock, the pricing is right and they are able to deliver to the customer at his convenience is what is going to be the successful model. This could be omni channel as well if I can pick-up something from a retail kirana store, loaf of bread that I want to have for breakfast I will go there. These are substitutable and it is all part of the big retail market.

Mr. Khandelwal, in his concluding remarks, said that they support e-commerce and definitely are going to equip their traders across country for their online presence, but the need of the hour is that there should be a robust e-commerce policy.

Mr. Agarwal said, the Indian retailer can scale up digitally. India has been a great IT resource country. There is huge capacity in India, per-capita income is growing up, aspirations are growing, people want to consume so there is an opportunity. He urged the retailers to go out, spread themselves with multiple stores, may be launch their own digital channel and the government may provide support right from working capital. They have to try to save themselves from the biggies of the world who are coming up with huge capital. Let see how the Indian government promotes these retailers and these traders who can then grow themselves.

IV. SESSION III: E-COMMERCE: REGULATORY AND POLICY MILIEU

Chair	Shri Ramesh Abhishek, Former Secretary, DIPP (now DPIIT)
Moderator	Mr. Sunil Jain, Managing Editor, Financial Express
Panelists	Ms. Sangeeta Saxena, Director, Ministry of Commerce and Industry
	Mr. Joy Bandekar, Found Partner, UDAAN
	Dr. Rajat Kathuria, Director and Chief Executive, ICRIER
	Dr. Arul George Scaria, Assistant Professor, National Law University, Delhi
	Ms. Smriti Parsheera, Fellow, National Institute of Public Finance and Policy
	Dr. Subho Ray, President, Internet and Mobile Association of India (IAMAI)

Ms. Saxena highlighted how the outcome at the 11th WTO Ministerial Conference at Buenos Aires in December, 2017 saw a joint statement being issued by 71 Members of the WTO who said that they would like to have exploratory setting discussed in e-commerce. (called "*exploratory and non-negotiable experience sharing mandate*"). The multilateral outcome also talked about an extension of the moratorium on the customs duty on electronic transmissions for another 2 years. This extension has been going on since 1998, wherein the moratorium has been extended by 2 years, time and again. The Buenos Aires Ministerial Conference said that the signatory Members would like to initiate exploratory work towards future WTO negotiations on trade-related aspects of e-commerce. Notably, China was not a part of this joint statement issued at the Buenos Aires Ministerial Conference.

This was followed by a WTO meeting in Davos, January, 2019. Interestingly, many countries (Cambodia and Guatemala among others) that signed the Buenos Aires Joint Statement did not sign the Davos Statement. China finally signed the Davos Statement and attended all the meetings. Nigeria was the only African country to sign the Davos Statement. 3 Least Developed Countries (LDCs) signed it as well, along with only 3 G-20 members as well. It should be noted that India is not a part of any of these statements and accordingly, is not bound by any discussions that took place. However, after China has joined the Davos Statement, the pressure is on India to also join the discussions. But do we understand how the gains in e-commerce are actually separate from the likely benefits of rulemaking in e-commerce. Also, are developing countries like India actually ready for rulemaking at the multilateral level?

After this, there was the Osaka Track for Data Governance, about DFFT (Data Free Flow with Trust), where they identified and classified data into various categories and said that there should be free flow of non-personal data. There is no mention of protecting or restricting or regulating 'community data'. There have been two negotiating stances adopted by countries. Firstly, countries which want outcomes on very hard elements on free data flows, data localization etc. Secondly, countries which are okay with handling the softer elements like electronic authentication etc.

One of the burning questions is whether we should have a permanent moratorium in WTO on customs duty on electronic transmissions? This is where the developing and developed countries are on opposite sides since the developed countries have mostly done away with tariffs whereas the developing countries have retained them. By having a moratorium, there is a revenue loss for these developing countries. Therefore, we need to think through this.

Mr. Kathuria observed that you cannot get rid of 'significant market power' as a necessary condition to abuse of dominance. Also, the 'consumer welfare' standard of Mr. Robert Bork makes any charge of predatory pricing difficult to be sustained. Deep-discounting has to be seen in the context of the overall welfare. Not just producer welfare, but also consumer welfare. Predation relies on the intent of the producer to drive out the competitor and then drive up the price. This is very hard to prove in any Court of law. There are many things to look at in e-commerce. We should look at whether the deep-discounting model is being accompanied by data collection and profiling of consumers and then whether that data is subsequently sold. If so, then antitrust authorities should take action.

Mr. Bandekar stated how FDI in retail wasn't allowed as mom-and-pop stores would get affected. Same was the logic behind allowing only marketplace model of e-commerce. The question to ask is why can't we have the laws of the land being followed? Press Note3of 2016stated the law and that was later clarified by Press Note2. He stated that some people say that Press Note 3 was a *fait accompli* which companies have inherited. People also say that e-tailers create jobs, but then illegal activities also create jobs. Should we legalise and regularise such illegal activities as well? Fining companies USD 200-300 million is peanuts to them when they 'burn' approximately USD 20 million a month on deep-discounting. The very consistent stand which the government has taken is that it cannot be part of the discussions of the WTO. The government probably has a very fair view as to how it should let the domestic industry evolve and then partake in the discussions. Structural remedies in the 21st century for big companies are going to be infructuous.

Mr. Abhishek stated that there are a lot of unserved and underserved areas in the country which can be benefited by e-commerce. E-pharmacy is an area where 9 lakh pharmacies are being threatened by online pharmacies. Therefore, the process of the growth of e-commerce has to be harmonious. He also stated that deep discounting happens because we need lots of money to create infrastructure such as warehouses and logistics like last-mile delivery, marketing. People who invest would then like to indulge in discounts to get more people on-board, so that they can recover their investment. But things have to be done 'properly' by e-tailers. Online platforms also have a lot of control of data and therefore have to be fair to all. In e-commerce there is the FEMA and there is no overall law on e-commerce. It should also be noted that Press Note 2 of 2018 is only applicable to foreign enterprises, which means that domestic enterprises can indulge in inventory model or even skirt the rules that are otherwise applicable to foreign companies. If government wants to disallow this, it has to make a law applicable to all companies. FEMA only applies to foreign companies. Every violation of FEMA is reported to ED. Whenever any company makes an investment in India, it is not the job of any government department to give a clean chit to the investing company that you are in compliance with all the laws. Nobody gives that kind of guarantee or certification. People who make the investment have to do their due diligence themselves.

Ms. Parsheera stated that there should be a discussion on the multiplicity of forums discussing e-commerce. CCI, the suggested Data Protection Authority of India and the Consumer Protection Authority all deal with mechanisms to deal with unfair conduct and trade practices. These regulators do not have a system to speak to each other. Looking at CCI's Annual Report, referring cases to each other through voluntary references has not really worked so far. A new way must be found to have all 3 agencies speak to each other. When looking at deep-discounting, we need to look at 4 things from antitrust perspective: (i) Is it below cost? (ii) Scale of discounting, (iii) time period of discounting, and (iv) and how is the market share changing?

Dr. Ray said that firstly, we need a composite retail policy which would define the relationship between suppliers, retailers and consumers and how the same should be left to co-regulation or self-regulation. Such as, in the advertising business. People who are selling online do not have to come to forums and complain. It should be left to the industry. Secondly, the source of funding should be kept out of the determination as to whom the rules are applicable. Thirdly, the enforcer should enforce. Before 2014, the ED has raided certain companies such as HomeShop18. It was stated that if the ED is not enforcing the laws, then there might be actually something to it. No point over-enforcing the law and then eroding the entire brand of the company concerned. We need to look at the business of platform which is based on data. We should really see how data is being made more valuable than it otherwise is and that is where we should make laws that make for development of industries but also how citizen's rights are not abused. We should not discriminate on whether the company is American or Chinese etc. However, a platform should not be allowed to 'creep' beyond a point.

Dr. Scaria stated that there were two keywords in the previous sessions. 'Predatory Pricing' and 'Data'. We should ask whether we need regulation? It should then be assessed as to what role should the CCI play in all this? Furthermore, what is the appropriate regulatory structure to be adopted? Perhaps, the Chicago Model focusing on consumer welfare standard might have to be discarded. We might have to go back to the 'structural school'.

Last, the consensus of the panel was that the FDI policy should be applied uniformly irrespective of where the capital is coming from.