



COMPETITION COMMISSION OF INDIA

Case No. 01 of 2020

In Re:

Rubtub Solutions Pvt. Ltd.

AMR Tech Park-I, 1st Floor, IT Industry Nagarathpura,
Hosur Road, Bangalore- 560068

Informant

And

MakeMyTrip India Pvt. Ltd. (MMT)

B-36, 1st Floor, Pusa Road,
New Delhi- 110005

Opposite Party No. 1

Also at:

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

Oravel Stays Private Limited (OYO)

001, Ground Floor, Mauryansh Elanza,
Shyamal Cross Road, Ahmedabad- 380015

Opposite Party No. 2

Also at:

Unit-325, B-2 Tower, Spaze I-Tech Park,
Sohna Road, Sector-49, Gurugram-110049

CORAM:

Mr. Ashok Kumar Gupta
Chairperson

Ms. Sangeeta Verma
Member

Mr. Bhagwant Singh Bishnoi
Member



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

1. The present information has been filed under Section 19(1)(a) of the Competition Act, 2002 (hereinafter the ‘Act’) by Rubtub Solutions Pvt. Ltd. (hereinafter, the ‘Informant’) against MakeMyTrip India Pvt. Ltd. (hereinafter, ‘MMT’) and Oravel Stays Private Limited (hereinafter, ‘OYO’) alleging contravention of the provisions of Sections 3 and 4 of the Act. MMT, and OYO are collectively referred to as the ‘Opposite Parties’.
2. The Informant, a company incorporated in May, 2015, has been operating under the brand name of Treebo Hotels’ and is in the business of providing franchising services to budget hotels in India. In addition to this, Treebo also provides service to numerous independent budget hotels who partner with it under its newly launched ‘Hotel Superhero’ scheme. Under the said scheme, Treebo only provides services such as hotel management technology services, listing on its platform and other online travel aggregators, credit facilities, support and quality control of the staff and hotel management resources *etc.* but does not provide its brand name.
3. MMT is an Online Travel Agency (OTA) engaged in the business of providing travel and tourism related services in India. It is a part of MakeMyTrip group of companies (MMT Group). OYO, on the other hand, provides budget accommodation to customers and is in the market for providing franchising services to budget hotels under the brand name ‘OYO’.
4. Treebo has alleged that MMT has abused its dominant position in the relevant market for online intermediation services for booking of hotels in India. As per Treebo, MMT is dominant in the said relevant market because of its high market share (~ 63%) in the relevant market; its superior market power due to its economic superiority in relation to other competitors; its vertical integration with OYO and the existence of high entry barriers given the network effects.



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5. Besides listing the partner hotels on its own platform, Treebo had also been listing its budget hotels on other OTAs platform such as MMT (which has now been discontinued due to the alleged agreement between MMT and OYO), booking.com, Yatra, Expedia, Agoda, Cleartrip and others.
6. Previously, Treebo was listing its budget hotels on MMT's platform in addition to the intermediation services provided by MMT since July 2015. With its acquisition of Go-Ibibo (hereinafter, referred to as 'MMT-Go') in the year 2016, MMT proposed to make a significant investment in Treebo, in exchange for Treebo listing its hotels exclusively on MMT's platform.
7. According to Treebo, in a meeting held between Rajesh Magow (an official of MMT), Mohit Kabra (CFO of MMT) and Rahul Chaudhary (Treebo co-founder) on 15.02.2017, the proposal from MMT for investment in Treebo was quickly turned into a threat, that if Treebo does not accept MMT's proposal, it would be removed from MMT's platform. Treebo claims to have finally declined MMT's proposals for investment and exclusive listings in a meeting held in March, 2017. In support of these facts and allegations, Treebo has submitted the copies of the emails dated 13.03.2017 which, as per Treebo, exhibits the pressure brought upon by MMT for finalising the deal. However, since the deal did not work out, Treebo could not accede to MMT's proposal pursuant to which all Treebo properties were allegedly removed from MMT's platform in March 2017 in retaliation.
8. Despite the aforesaid, Treebo approached MMT in good faith requesting for another opportunity to list on MMT's platform. After nearly 6 months, MMT again decided to list Treebo back on MMT platform subject to Treebo entering into '*Exclusivity Agreement*' and '*Chain Agreement*' with MMT. In support of the said allegation, Treebo has submitted copies of the emails exchanged between MMT and Treebo dated 01.08.2017 and 03.08.2017.



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9. Treebo claims that it agreed to accept the Exclusivity Agreement put forth by MMT as it incurred excessive losses due to discontinuance of Treebo properties from MMT platform and had no option but to accept the conditions imposed by MMT. As evidence of the high dependence of Treebo on MMT, it has submitted copy of the screenshots of the Treebo's internal accommodation management software showing comparative loss of bookings before and after termination of the listing agreement/arrangement, between Treebo and MMT.
10. It has been alleged that as part of the resumption of the Treebo and MMT relationship, they entered into 2 agreements *namely*, the Chain Agreement (dated 03.10.2017) and Exclusivity Agreement (dated 03.10.2017). The clauses of the said agreements which have been alleged to be unfair/anti-competitive are as under:
- 10.1 **Clause 2.3 of the Chain Agreement (*Price Parity Restriction*):** MMT laid down a specific clause wherein MMT demanded that Treebo maintains price parity with regard to the prices charges by it on MMT and other OTAs.
- 10.2 **Clause 2.1 and Clause 2.2 of the Exclusivity Agreement (*Exclusivity Restriction*):** Treebo was not permitted to list its hotels classified under Category A on the platform of two competitors of MMT, *i.e.* Booking.com (directly and indirectly) and Paytm (directly), 72 hours prior to check in. Category A hotels are hotels in 29 cities, *namely* Pune, Gurugram, Bengaluru, Manipal, Madurai, Trivandrum, Pushkar, Chandigarh, Mumbai, Coimbatore, Aurangabad, Lucknow, Mangalore, Hyderabad, Ooty, Chennai, Pondicherry, Kochi, Ahmedabad, Munnar, Kolkata, Vizag, Coorg, Indore, Guwahati, Kohlapur, Kodaikanal, Kovalam and Shimla. With regard to Category B cities, the said restriction was for 30 days. Category B are hotels in 25 cities, *namely* Delhi, Udaipur, Nagpur, Vijaywada, Bhopal, Jodhpur, Jaipur, Mysore, Goa, Dehradun, Ajmer, Nainital, Vadodara, Alleppey, Rishikesh, Haridwar, Amritsar, Nashik,



Vegamon, Panchgani, Jamshedpur, Manali, Nellore, Noida and Bhubaneswar.

11. A copy of the 'Chain Agreement' as well as the 'Exclusivity Agreement' have been submitted by Treebo along with the information. Allegedly, these agreements were unilaterally terminated by MMT *vide* its notice for termination dated 28.03.2018. In relation to the said allegation, Treebo has furnished a copy of the termination notice dated 28.03.2018 issued by MMT to Treebo. As per Treebo's allegation, the agreements were terminated by MMT as a result of OYO's agreement with MMT wherein MMT agreed to remove OYO's competitors like Treebo from its platform.
12. To substantiate its allegation regarding exclusion of OYO's competitors, Treebo has submitted a transcript along with the electronic record of the conversation between Mr. Rahul Khandelwal, MMT's Senior Vice President, and Mr. Rahul Chaudhary, the Co-founder of Treebo dated 13.09.2019, along with another conversation between Mr. Rahul Khandelwal, MMT's Senior Vice President and Mr. Sidharth Gupta, the Co-founder of Treebo dated 11.11.2019 and 13.12.2019. The said conversations, as per Treebo, reveal that initially MMT was ready to list the hoteliers associated with Treebo under the 'Hotel Superhero' scheme, but when MMT realised that those hotels were already listed on Treebo's website without the brand name, they rejected the proposition of listing even the hotels covered under the '*Superhero*' scheme on its website on the basis of their arrangement with OYO.
13. After Treebo's delisting from MMT's platform, several efforts were made by Treebo to have its hotel partners back on MMT's platform. Treebo also submitted that due to OYO and MMT agreement, MMT refused to list hotels which had partnered with Treebo. Even properties partnered with Treebo under its *Superhero* scheme were banned from listing on MMT's platform. To substantiate the said allegation, Treebo has submitted a copy of the screenshot of an email which was sent by MMT to one of the independent hotels (which was a '*Superhero*' property,



namely, Hotel Oyster Suites) stating that such property cannot be listed on MMT since it was listed on Treebo's platform.

14. Treebo has also alleged that OYO is dominant in the relevant market as it commands a market share of 89% in the said market and has significant amount of market power due to its strong financial standing and its commercial arrangement with MMT. It has been alleged that due to its arrangement with MMT, the dominant downstream intermediary, OYO can be considered to be vertically integrated enterprise. Due to existence of network effects in such a market, there are huge barriers to entry for any new player in the market.
15. Treebo claims that in March, 2019, MMT-Go and OYO have renewed their commercial agreement for a further period of five years, with specific provision to exclude Treebo and Fab Hotels from listing on MMT. Treebo has relied upon a news report published on 13.03.2019 in support of the said allegation.
16. Based on the aforesaid facts, Treebo alleged that MMT has contravened the provisions of Section 4(2)(c) read with Section 4(1) of the Act by unilaterally terminating agreement with Treebo and denying Treebo market access to large share of online customers who prefer to make their hotel bookings on MMT. This, as per Treebo, is a direct fallout of the exclusivity agreement entered into between OYO and MMT. It has been highlighted that the said agreement between MMT and OYO has been *prima facie* held to be in contravention of Section 3(4) read with Section 3(1) of the Act along with Section 4(2)(c) of the Act, by the Commission in its *prima facie* order dated 28.10.2019 in Case No. 14 of 2019, [FHRAI vs. MMT and others]. Further, Treebo has also alleged that MMT has imposed arbitrary exclusivity condition on Treebo through the 'Exclusivity Agreement' entered into between MMT and Treebo, in contravention of the provisions of Section 4(2)(a)(i) of the Act. Treebo has also alleged contravention of Section 4(2)(a)(ii) by MMT *vide* imposition of price parity clauses on Treebo through the 'Chain Agreement' entered into between MMT and Treebo.



17. Besides alleging abuse of dominant position by MMT, Treebo has also brought the aforesaid allegations under Section 3(4) read with Section 3(1) of the Act as Treebo and MMT share a vertical relation. Treebo has alleged that exclusivity clause introduced by MMT caused Appreciable Adverse Effect on Competition (hereinafter, “AAEC”) in term of Section 19(3) of the Act while creating entry barrier for new OTAs, driving out existing OTAs out of the market and there was no accrual of benefits to the consumers. On the same lines, Treebo has argued against the price parity arrangement. Thus, as per Treebo, ‘exclusivity clause’ as well as the ‘price parity arrangement’ introduced by MMT is alleged to be in violation of Section 3(4) of the Act. Further, the arrangement between OYO and MMT has also been alleged to be in contravention of Section 3(4) read with Section 3(1) of the Act.
18. As regards OYO, Treebo has alleged contravention under Section 3 as well as Section 4 of the Act. Treebo has alleged that OYO has abused its dominant position in the relevant market for ‘*franchising services for budget hotels in India*’ by entering into an anti-competitive vertical arrangement with MMT, which is a dominant OTA, to deny market access to its direct competitor, Treebo. This as per Treebo, contravenes the provisions of Section 4(2)(c) read with Section 4(1) of the Act. Further, Treebo has alleged that by imposing restrictive conditions on MMT, OYO and MMT’s deal tantamounts to ‘refusal to deal’ and violates Section 3(4) read with Section 3(1) of the Act.
19. Based on the aforesaid allegations, Treebo has prayed for an inquiry under Section 3 and 4 of the Act against the Opposite Parties, *i.e.* MMT and OYO and has, *inter-alia*, asked the Commission to direct them to discontinue their abusive/anti-competitive practices.



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Analysis of the Commission

20. The Commission considered the information in its ordinary meeting held on 05.02.2020 and decided to pass an appropriate order in due course.
21. The Commission observes that the Informant is primarily aggrieved on account of three issues: *firstly*, that Treebo and its partner hotels are being excluded from listing on MMT's platform through abrupt termination- pursuant to the commercial arrangement between MMT and OYO; *secondly*, that MMT, as a dominant player, imposed 'price parity restriction' on Treebo partner hotels through the Chain Agreement, which restricted it from providing its properties to Booking.com and Paytm (MMT's competitors) at a better rate/price; and *thirdly*, MMT imposed an 'exclusivity condition' on Treebo through 'Exclusivity Agreement' which restricted it from listing its properties on Booking.com and Paytm (MMT's competitors) for a period of 72 hours and 30 days prior to check-in for hotels situated in Category A and Category B cities, respectively.
22. The Commission had examined some of these allegations against MMT and OYO specifically in an information filed by Federation of Hotel & Restaurant Associations of India ('FHRAI') in a recent case, *i.e.* Case No. 14 of 2019 (hereinafter, 'Case No. 14 of 2019') wherein, FHRAI alleged that MMT & Goibibo (MMT-Go) indulged in certain abusive practices *inter alia*, including denial of market access (by virtue of commercial arrangement between MMT and OYO), imposition of price-parity and room-parity condition, predatory pricing, charging of exorbitant commissions from hotels *etc.* OYO and MMT were also alleged to be in contravention of Section 3(4) read with Section 3(1) of the Act. The Commission *prima facie* found MMT to be dominant in the said case in the relevant market of '*market for online intermediation services for booking of hotels in India*' and OYO was found to be a significant player (though not dominant) in the market of '*market for franchising services for budget hotels in India*'.



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23. The Commission notes that the first two allegations are same as well as pertaining to the same time period. Thus, separate assessment with regard to relevant market delineation, assessment of dominance and abuse is not necessary. In addition to the allegation in Case No. 14 of 2019, which was only with regard to preferential treatment being accorded to OYO *vis-à-vis* its competitors (Treebo and Fab Hotels), the present Informant *i.e.* Treebo has alleged absolute exclusion pursuant to the OYO-MMT arrangement. Treebo being one of the direct aggrieved parties of the said commercial arrangement between MMT and OYO, has brought forth evidence in the form of telephonic transcript and termination letter dated 28.03.2018, which was issued after the commercial arrangement between MMT-OYO was inked (*i.e.* February 2018 as per the media reports). Thus, this issue is squarely covered by the *prima facie* observations and findings of the Commission in its order dated 28.10.2019 in Case No. 14 of 2019. As held by the Commission in Case No. 14 of 2019, the restrictive arrangement between OYO and MMT, both of whom have considerable presence in their respective market segments, may lead to refusal to deal which may have adverse effects on competition.
24. Further, the second allegation, *i.e.* imposition of price parity arrangement by MMT, was also analysed in detail in Case No. 14 of 2019. The Commission observes that Clause 2.3 of the 'Chain Agreement' entails price parity as well as room parity condition, similar to those examined by the Commission in Case No. 14 of 2019. Clause 2.3 of the 'Chain Agreement' provides that neither Treebo can provide a better rate to the competing OTAs nor can they provide the rooms to OTAs unless those rooms are first made available on the platform of MMT. The Commission, in its *prima facie* order in Case No. 14 of 2019, observed that across-platforms parity agreements (APPA) may result in removal of the incentive for platforms to compete on the commission they charge to hoteliers, may inflate the commissions and the final prices paid by consumers and may also prevent entry of new low cost platforms. On the basis of this, such parity restrictions were *prima facie* held to be anti-competitive and were directed to be investigated under Section



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3(4) as well as Section 4 of the Act. Considering that this issue is identical to the allegation already under investigation in Case No. 14 of 2019, no further assessment is required to hold that *prima facie* case for investigation of this allegation is made out.

25. With regard to the third allegation *i.e.* imposition of an exclusivity condition by MMT on Treebo, the Commission analysed the possible logic as well as the likely impact of Clauses 2.1 and 2.2 of the Exclusivity Agreement, which are reproduced below for ready reference:

1.1 “D minus 3” Exclusion for Hotels falling under Category A.

2.1.1. Upon completion of the transition period set forth in Clause 2.3 (Transition period), Treebo shall not list the Hotels that fall under Category A (detailed in Annexure 1) on Portals of Booking.com (directly or indirectly) and Paytm (directly) for bookings for the term specified hereinbelow within 72 (Seventy Two) hours prior to the commencement of check-in-day, in accordance with the terms of this Agreement. Illustration – any customer intending to make a booking with Treebo for any Hotel on 12th September, 2017 will not be able to view the availability of the Hotel for booking on Booking.com/Paytm Portals and will view the availability of the same Hotel on MMT Portals starting from 00:01 am on 9th September, 2017 till 11:59 pm on 12th September, 2017. Provided that, there shall not be any restrictions or limitations on Treebo from listing or displaying its Hotels on: (a) the Treebo Portal, (b) any meta/search platforms where the traffic is redirected to the Treebo Portal for confirming any booking, or (c) on any OTA including MMT subject to the exception of Booking.com and Paytm. For the avoidance of doubt, this restriction does not apply to Hotel rooms listed indirectly on Paytm Portal by Cleartrip, Yatra or any other OTA.



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1.2 D minus 30” Exclusion for Hotels falling under Category B

2.2.1 Upon completion of the transition period set forth in Clause 2.3 (Transition period), Treebo shall not list the Hotels that fall under Category B (detailed in Annexure 2) on Portals of Booking.com (directly or indirectly) and Paytm (directly) for the terms specified herein below for bookings within 30 days prior to the commencement of check in day, in accordance with the terms of this Agreement. Illustration – any customer intending to make a booking with Treebo for any Hotel on 12th September, 2017 will not be able to view the availability of the Hotel for booking on Booking.com/Paytm Portals on 13th August, 2017 till 11:59 pm on 12th September, 2017. Provided that, there shall not be any restrictions or limitations on Treebo from listing or displaying its Hotels on: (a) the Treebo Portal, (b) any meta/ search platforms where the traffic is redirected to the Treebo Portal for confirming any booking, or (c) on any OTA including MMT subject to the exception of Booking.com and Paytm. For the avoidance of doubt, this restriction does not apply to Hotel rooms listed indirectly on Paytm Portal by Cleartrip, Yatra or any other OTA.”

26. A plain reading of Clause 2.1 of the ‘Exclusivity Agreement’ shows that Treebo was not permitted to list its hotels situated in cities classified under Category A on MMT’s two competitors, *i.e.* Booking.com and Paytm, 72 hours (*i.e.* 3 days) prior to the check-in day. Similar restriction was imposed for a much longer period, *i.e.* 30 days, in case of hotels situated in Category B cities. Category A included hotels in 29 Indian cities while Category B included hotels situated in 25 Indian cities as mentioned earlier.
27. The aforesaid restriction *prima facie* appears unfair, and hence exploitative, under Section 4(2)(a)(i) of the Act, for the Treebo partner hotels as it denies them an opportunity to list on other platforms/OTAs and to gain access to those platforms, especially Booking.com which appears to be the closest competitor of MMT,



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during the busiest booking periods. Such restriction also seems to be exclusionary as two OTAs were excluded from listing the Treebo chain of hotels, thus potentially leading to denial of market access for those OTAs with regard to those hotels branded by Treebo. Thus, apart from *prima facie* appearing to be in contravention of Section 4(2)(a)(i), the restriction also seems to be *prima facie* in contravention of Section 4(2)(c) of the Act. Though this restriction is presently stated not to apply on Treebo partner hotels pursuant to the termination of the Exclusivity Agreement (*i.e.* March 2018), this fact may not be relevant to relieve MMT of its liability, if this clause is otherwise found to have contravened the provisions of this Act.

28. Based on the foregoing, the Commission is of the view that *prima facie* a case of contravention against MMT for abuse of dominant position under Section 4(2)(a)(i) and 4(2)(c) is made out on account of all the three allegations analysed *supra*. Further, a case against MMT and OYO for entering into a vertical arrangement having an AAEC in the market is also *prima facie* made out under Section 3(4) read with Section 3(1) of the Act.
29. Considering the similarity of facts and allegations, the Commission is of the view that the present case may be clubbed with Case No. 14 of 2019 forthwith, in terms of the proviso to Section 26(1) of the Act read with Regulation 27(1) of the Competition Commission of India (General) Regulations 2009.
30. Accordingly, the DG is directed to investigate the present matter along with Case No. 14 of 2019 and submit a consolidated Investigation Report covering all the aforesaid issues *prima facie* found to be in contravention, as per the timelines applicable to that matter. During the course of investigation, if the involvement of any other party is found, the DG shall investigate the conduct of such other party as well who may have indulged in the said contravention.



31. It is also made clear that nothing stated in this order shall be tantamount to a final expression of opinion on the merits of the case and the DG shall conduct the investigation without being swayed in any manner whatsoever by the observations made herein.
32. The Secretary is directed to send a copy of this order along with the material available on record to the DG forthwith.

**Sd/-
(Ashok Kumar Gupta)
Chairperson**

**Sd/-
(Sangeeta Verma)
Member**

**Sd/-
(Bhagwant Singh Bishnoi)
Member**

**New Delhi
Date: 24/02/2020**