



COMPETITION COMMISSION OF INDIA

Case No. 03 of 2019

In Re:

RKG Hospitalities Pvt. Ltd.
7B, Dr. C.V. Raman Road,
Near Gurudwara, New Friends Colony,
New Delhi-110065

Informant

And

Oravel Stays Pvt. Ltd.
9th Floor, Spaze Palazo,
Sector-69, Periphery Road,
Gurugram-122018,
Haryana

Opposite Party

CORAM:

Mr. Ashok Kumar Gupta
Chairperson

Mr. U.C. Nahta
Member

Ms. Sangeeta Verma
Member

Appearances

For Informant

Mr. M.L. Lahoty, Advocate
Mr. P.K. Sharma, Advocate
Mr. Anchit Sripat, Advocate
Mr. Ravindra Kumar Gupta, Chairman
Mr. Sunil Gandhi, Head Finance
Ms. Preeti Bhardwaj, Legal Executive



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For Opposite Party

Mr. Rajshekhar Rao, Advocate
Mr. Harman Singh Sandhu, Advocate
Mr. Rohan Arora, Associate
Mr. Aman Singh Seth, Advocate
Ms. Yashika Maheshwari, Advocate
Mr. Anandh Venkatramani, Advocate
Mr. Yogesh Vishnoi, Assistant Manager, Legal
Mr. Kapil Malik, AVP, Legal

Order under Section 26(2) 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 RKG Hospitality Pvt. Ltd. (hereinafter, the '**Informant**') against Oravel Stays Pvt. Ltd. (hereinafter, '**OYO**') alleging contravention of the provisions of Sections 4 of the Act.

Facts, as stated in the information

2. The Informant is a company in the business of providing boarding and lodging services under the name and style of 'Divine Inn', situated in New Delhi.
3. OYO provides budget accommodation to customers through online booking under the brand-name 'OYO Rooms'.
4. As per the information, OYO entered the market in the year 2013. Through its software app and website, it registered an exponential growth and has grown into the largest service provider of the budget hotels under its brand name.
5. The Informant has relied upon OYO's own claim made in its own '*Report Card*' for the years 2014-2015 to 2016-2017 published on OYO's blog according to which it is the largest hospitality company in India. The *Report Card* further states that in the quarter ending June-2017, OYO recorded its highest grossing months with total booking value close to \$ 100 million. Net of cancellations, the average



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daily realized room nights had grown 30% quarter on quarter and 70% year on year. The *Report Card* highlights OYO's Net Promoter Score (NPS) to be 42% at a network level and 80% for its new offering 'OYO Townhouse'. This NPS represents number of customers who give a rating of 5/5 less the number of customers who give a rating of 1/5 or 2/5. The *Report Card* further states that OYO has a strength of around 30,000 rooms under full inventory control or '2.0 properties' running at 80% occupancy in key business cities.

6. The Informant has proposed the relevant market as the market for "*service providing budget hotels to customers through online booking in India*", in which OYO is stated to be dominant. The Informant has relied upon an online article/report dated 19.08.2017, published by a data analytics start-up '*Kalagato*' which provides business intelligence to investors and large enterprises.
7. As per the *Kalagato* article/report, OYO dominates the budget hotel segment with 68% market share, while the other players in the same segment being Treebo, Fab Hotels, AirBnB, Trivago, *etc.* lag far behind, owing to a huge gap between the market share of OYO and the next best competitor, *i.e.* Trivago which has a market share of only 13.6%.
8. The Informant has also highlighted the exponential growth of OYO in India as well as internationally. As per the Chief Executive of the Japanese investment giant 'Softbank', Mr. Masayoshi Son, OYO had added 81,000 rooms to its platform during the period April-June 2018, which is about eight times the number of rooms the world's largest hotel chain Marriott had added during the same period. Mr. Son had also stated that with 101,000 rooms in India, OYO is now seven times larger than one of India's largest hotel chains, Taj Hotels Resorts and Palaces. Thus, as per the Informant, the market share, size, resources and economic power of OYO gives it an unassailable advantage over its competitors placing it in a position of



strength which enables it to function independently of the market constraints, as specified under the Explanation (a) to Section 4(2) of the Act.

9. The Informant submitted that online platform of OYO facilitated quick and fast spread of its service providing budget accommodations which attracted customers in high numbers. This prompted hotel owners to register themselves predominantly with OYO so as to sustain themselves by maximizing the sale of their inventories. Accordingly, the Informant also entered into a Marketing and Operational Consulting Agreement (hereinafter, the 'Agreement') with OYO on 25.08.2017 under which the Informant was permitted to (i) utilize the know-how and (ii) be listed on OYO platform or any other online website, as may be expressly permitted by OYO in writing.

10. The Informant has alleged that the Agreement contained terms which were one sided, unfair and discriminatory which OYO was able to impose because of its dominant position in the relevant market. The Informant has highlighted multiple clauses in the Agreement to substantiate its allegations. For the sake of brevity, some of those clauses are summarized below, along with the alleged abuse emanating from such clauses:
 - a) *Clause 1.4:* It allows OYO to unilaterally modify the structure of the Informant's hotel to meet its standards and the same is allegedly unfair.
 - b) *Clause 1.5:* It empowers OYO to put exclusive signage of OYO brand and/or signage for co-branding of OYO with Informant's hotel name. This, as per the Informant, amounts to abuse of dominance as without investing even a single penny, OYO sought to increase its brand value.
 - c) *Clause 1.7:* It subjects the hotel to incentives and disincentives as per OYO's policy based on its performance. Further, the Informant was made to agree that the ranking and performance rating shall be as per the policy decided by OYO and that OYO shall have the sole discretion to change the terms of the



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said policy from time to time. This, as per the Informant, was one sided and unfair.

- d) *Schedule 1 and 3C Scoring Policy:* This policy was alleged to be unfair and oppressive to the Informant as there was no scope of disproving the punitive score given by OYO based on unsubstantiated complaints by customers. The Informant has alleged that OYO has misused the 3C scoring policy by creating circumstances where the relationship between the Informant and its customers became unpleasant. For instance, OYO started booking the rooms at rates lower than what had been agreed to between the parties to the Agreement and to avoid such losses on account of lower rates, the Informant rightfully refused to accommodate such customers. As a result, without any fault of the Informant, the complaints lodged by customers due to their non-accommodation at lower tariff increased 3C scoring against the Informant. OYO aggravated the situation by refusing to restore the agreed room tariff on the pretext that everything being software programmed and could not be altered, and hence refused reimbursement. When 3C score against Informant reached beyond level 16, OYO blocked Informant's hotel at all websites including its own causing huge mental agony and financial loss to the Informant.
- e) *Clause 7:* Through this clause, OYO denied market access to the Informant by debarring it for a period of one year from entering 'into any agreement directly or indirectly to engage with online aggregators including but not restricted to MakeMyTrip (hereinafter, 'MMT'), Goibibo, Treebo, Fab Hotels in any manner for or in relation to selling/marketing/promoting rooms at its premises. However, the Informant was allowed to sell/promote rooms either directly or through any other business partner, service provider (other than specifically named above) for marketing or booking services through online or offline channel(s) with prior written consent of OYO ("Permitted



Channel”). Breach of this term was defined as a material breach under the Agreement.

- f) *Clause 9:* OYO had a right to forthwith terminate the Agreement under certain circumstances enumerated in the Agreement (e.g.), while the Informant could terminate the Agreement by giving 30-day written notice. Further, Clause 10.2 constituted a check on the right of the Informant to terminate the Agreement. Upon termination, the revenue share to be paid to OYO was required to be paid by the Informant within 48 (forty eight) hours of termination of the Agreement. Delay in payment was subject to 18% interest per annum from Informant to OYO while there was no reciprocal provision of such interest in case of default by OYO.
- g) *Clause 2 and Clause 13.4:* Clause 2 provided for revenue sharing arrangement between the parties which was in the form of percentage of OYO’s share in the gross revenue earned by the Hotel based on sequential slabs. Rs. 500,000 was the Assured Benchmark Revenue which was to be compensated by OYO in case of the gross revenue being less than the said amount in any month. *Vide* email dated 31.08.2017, OYO clarified that it’s commission is applicable only when the gross revenue exceeds the Assured Benchmark Revenue, which is inclusive of 18% Goods and Services Tax (‘GST’). However, OYO started to subject the Informant to pay 18% GST over and above the commission payable by the Informant. The Informant raised this issue in an email dated 24.02.2018 as the commission agreed upon was inclusive of 18% GST. In reply dated 07.03.2018, OYO admitted that it had charged commission including GST @ 18% only up to October 2017, *i.e.* for two months since the Agreement became effective and justified levy of 18% GST additionally from November 2017 onwards on the ground that it had already notified the Informant about the same. This, as per the Informant, was flagrant violation of Clause 13.4 as per which the agreement was liable to be modified only when agreed by both the parties. The



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Informant claims to have raised objection to such unilateral modifications, however, the same remained unresolved.

11. *Vide* email dated 30.08.2018, the Informant again wrote to OYO raising the following issues requesting for a resolution before discussing the renewal of the Agreement:
 - a. Charging of GST though the Agreement stated that it is inclusive.
 - b. Charging of platform fee of 2.5% per month of revenue by OYO which was not included in the contract at all.
 - c. 'Audit Revenue Adjustments' charges which is merely a head to extract the money as there is no discrepancy.
 - d. Bookings on OYO platform below the agreed base rate.
12. The Informant alleged that in furtherance of its single point agenda of capturing the market, OYO offered predatory discount (60% alleged) on hotel room bookings and an additional cash-back of 40% on Paytm transactions during winter holidays of Christmas and New Year as per the newspaper reports. The conduct of OYO was stated to be *malafide* since its primary focus is to garner a high market share to the exclusion of other players by creating unviable market conditions.
13. The Informant also highlighted that a letter was written by the Federation of Hotel and Restaurant Association of India (FHRAI) to OYO wherein it reprimanded OYO for its conduct and warned it of stringent action.
14. Based on the aforesaid facts, the Informant has alleged that the conduct of OYO is designed to eliminate competition from the market. Though its discounting strategies may appear beneficial to the customer in the short run, such strategy would render the market players in the hospitality industry unviable to compete in the long run. Further, the Informant has alleged that owing to its dominant position,



OYO is exploiting the Informant as well as similarly placed players to its advantage.

15. Stating aforesaid facts and allegation, the Informant has, *inter alia*, prayed for initiation of an inquiry against OYO into alleged abuse of its dominant position and into such other aspects as the Commission may deem appropriate in the matter.
16. The Commission considered the information in its ordinary meeting held on 05.03.2019 and decided to call the Informant as well as OYO for a preliminary conference. On 22.05.2019, both parties presented their oral submissions before the Commission, through their respective learned counsel. Thereafter, the Informant as well as OYO filed their respective brief written submissions on 30.05.2019 and 31.05.2019, respectively.
17. During the preliminary conference, the learned counsel representing the Informant reiterated the facts and allegations elucidated in the information.
18. The learned counsel appearing for OYO, on the other hand, denied the allegations regarding anti-competitive conduct by OYO. At the outset, he argued that the Informant has not come before the Commission with clean hands as it has not disclosed its prior relationship and contracts with OYO which date back to the year 2016. It was contended that the Informant has never raised any concern with regard to competition law all along and that the current dispute is purely a contractual issue.
19. While explaining its business model, it was submitted that OYO is not an aggregator as it provides hospitality services itself and therefore competes with hotel chains and does not compete with Online Travel Agencies ('OTAs') and/or aggregators of hotels or meta search engines. Under the franchisee model, OYO provides a network of high quality standardised hotels under the "OYO" mark and



markets and promotes this network to a large number of potential guests, in comparison to the aggregator model of Uber and Ola, Swiggy, Zomato and MMT, Expedia, *etc.*

20. With regard to delineation of relevant market, OYO submitted that limiting the market definition to only online bookings, as submitted by the Informant, is unsustainable as the online and offline channels are merely two modes of selling travel and travel related services. Online and offline modes are substitutable from a supply side perspective as well as from a consumer's point of view. Further, OYO does not provide online booking services as a standalone business, rather it provides the hospitality service and therefore, competes in the provision of such service and not as an OTA.
21. With regard to dominance, the learned counsel for OYO denied OYO being dominant in any relevant market. It was submitted that the data relied upon by the Informant is unreliable as, a) it does not disclose or provide the methodology relied upon by it to arrive at the market size; b) it does not disclose the market in which the market shares are provided; c) in the market share computation, the Informant does not include MMT, which is one of the largest players in the relevant market proposed by it. However, OYO continues to maintain that OTAs like MMT and OYO operate in different markets.
22. OYO, in its written submission, relied upon various other reports and submitted that it does not enjoy a majority market share. It has been stated that irrespective of the way the market size is estimated and even if limited to the Informant's submission of budget hotels, OYO's market share does not cross 4.3%. Further, the new entrants continue to enter the market and grow. Lastly, it was submitted that given that OYO is not an essential trading partner for hotels or guests, OYO cannot be said to be in a position to affect any of its competitors in its favour. Thus,



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as submitted by OYO, the test for dominance given under explanation to Section 4 of the Act is not satisfied.

23. While addressing the allegation of the Informant that OYO is charging GST over and above its commission, it was submitted that the first few months of the GST rollout (from July 2017 onwards) had several teething issues. During this period of uncertainty, Informant sought OYO's view on the GST implication. On 31.08.2017, OYO informed the Informant that GST will be included in the commission charged by OYO. However, subsequently, OYO noted that hotels were receiving a double benefit, *i.e.* not paying the GST which is being paid by OYO and receiving the input credit for the same. Accordingly, on 24.10.2017, OYO issued a communication informing hotels that *w.e.f.* 01.11.2017, GST would be charged over and above the commission. Accordingly, in the event hotels did not agree with this fair distribution of GST benefits (with no reduction in revenues received by the hotel), they were free to terminate the relationship with OYO with no cost or lock-in period.
24. As regards charging of platform fee, it was submitted that the platform fee contribute towards covering the increased expense of supply of toiletries and other consumables and network and data card. Further, OYO continues to cover the costs of the Google listings, *etc.* at no charge to the hotels. In order to meet these expanding costs, OYO introduced a platform fee of 2.5% through a notification. It was submitted that the Informant did not respond to this notification, neither it expressed any concerns with the introduction of the platform fee nor it terminated its agreement with OYO.
25. With regard to selling of rooms below agreed rates, the learned counsel for OYO submitted that the Agreement does not provide for any base rate. There is only a minimum monthly guarantee of revenues which OYO has assured the Informant. If the hotel revenue did not reach the committed minimum guarantee, OYO would



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be required to compensate the Informant for the shortfall. Further, with respect to the allegation of the Informant that OYO earned commission on rooms sold by the hotel directly was an abuse of its dominant position, OYO submits that as all rooms in the hotel are available as inventory for OYO to offer on its platform, the partner hotels benefits from the walk-in customers which are attracted to them because of OYO's brand. Further, if the Informant wished to pay commission only on bookings received through online platforms, they have an option to list with pure aggregators (*i.e.* OTAs) and not enter into an agreement with OYO.

26. Further, while defending OYO's 3C quality score, the learned counsel for OYO submitted that the said quality score is the basis on which the hotel gets evaluated on the OYO platform based on the three "C Pillars" *i.e.*, 'constant' availability of rooms, 'compatible' rooms and 'customer' review. The lower the 3C score, the better the overall rating of the hotel. It is submitted that OYO has no incentive to deprioritise or block any specific partner hotel/property from its platform. In fact, more the properties on OYO's platform, higher would be the revenue OYO can earn. But, due to consistent poor 3C scores and failure to improve its guest services, the Informant was blocked from the OYO platform from 10.10.2018 and the minimum guarantee payable to the Informant for the month of October, 2018 was proportionately reduced.
27. With regard to Informant's allegation of auditing being done by OYO, it was submitted that such audits are necessary to keep a check on the partner hotels. OYO came across a number of instances of cheating where partner hotels do not disclose bookings received outside the OYO platform and audits are required to ensure that there are no leakages/ unaccounted bookings which are not being captured on OYO's system. It is submitted that the agreement with OYO also provides that OYO has the right to audit financial records periodically. Further, OYO asks for 'audit revenue charges' from hotels where audits are either denied or where the



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number of rooms found to be sold is more than the rooms recorded on the OYO tab. It is submitted that the Informant has denied OYO's auditors access to conduct the audits on a few occasions and at instances, correct revenue and occupancy details were not accurately provided. This led OYO to exercise its rights to audit the registers of the Informant.

28. Countering the allegation regarding predatory pricing, OYO submitted that short term discounts over the holiday period cannot be deemed to be predatory as they are in the nature of promotional offers. In addition, OYO submitted that it has entered into a revenue sharing model with the Informant and, thus, higher revenue/profits earned by the Informant will benefit OYO. Further, any discount that is given by OYO is absorbed by it and not passed on to the hotel and in any event the Informant is protected with committed minimum guarantee under its contract.
29. Further, in respect of the direction given by the Commission to OYO to provide information on certain aspects, OYO filed written submission stating that OYO is unable to assess the number of hotels available on OTAs under franchisee route as this information is not available from any public listings. However, data related to number of hotels listed on OTAs such as TripAdvisor, Goibibo, MMT and Booking.com was provided, which, as submitted by OYO, did not capture a vast majority of budget hotels that are available only through offline channels and are equally easily accessible.

Analysis of the Commission

30. The Commission has considered the submissions made by the parties and the material available on record, along with the information available in public domain.
31. Before arguing the matter on merits on 22.05.2019, the learned counsel for OYO also submitted that the quorum at the preliminary hearing did not satisfy the



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standard set by the Hon'ble High Court of Delhi in *Mahindra Electric Mobility Limited and Anr. and Competition Commission of India and Anr.* [W.P. (C) 11467/2018 decided on 10.04.2019] regarding the presence and participation of a judicial member when adjudicatory orders are passed by the Commission. The Commission in this regard places reliance on the order of the Hon'ble High Court of Delhi in W.P.(C) No. 6661/2019 (*Cadd Systems and Services Pvt. Ltd. case*) wherein it has been held that the import of judgment in *Mahindra* case cited above is not that the working of Commission be brought to standstill until the judicial member is appointed in the Commission. The Hon'ble court did not interdict the functioning of the Commission pending such appointment. Further, the Hon'ble Court observed that as per Section 15 of the Act, orders passed by the Commission cannot be called in question on account of any vacancy or any defect in the constitution of the Commission. Further, the Hon'ble Supreme Court, *vide* its order dated 10.09.2018, passed in *K.R.Tamizhmani and Others v. The State of Tamil Nadu and Others* [M.A No.2217 of 2018 in T.C.(C) No.137/2015], clarified that '*till such time a reconstitution of the tribunal does not take place arising from a retirement of a member from the legal field, the existing Tribunal will decide all the cases*'. Therefore the Commission rejects the objection raised by OYO.

32. Though no specific sub-sections of Section 4 of the Act have been highlighted by the Informant, there is a general allegation of abuse of dominant position by OYO. Based on the reading of the information and the submissions made by the learned counsel for the Informant, the Commission finds that the Informant has primarily argued that owing to the dominant position held by OYO, the Informant had no option but to agree to the terms and conditions of the Agreement offered by OYO which were one-sided, unfair and discriminatory and that OYO unilaterally changed the said terms to the disadvantage of the Informant in sheer abuse of its dominant position. Thus, the conduct of OYO was alleged to be abusive under Section 4 of the Act.



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33. To analyze a case of abuse of dominant position, it is necessary to define the relevant market for ascertaining whether the enterprise under scrutiny, *i.e.* OYO in the present case, holds a dominant position in such market. Thereafter, the conduct is examined to ascertain whether such conduct amounts to abuse or not.
34. Under the Act, the relevant market constitutes a ‘product/service’ dimension as well as a ‘geographic’ dimension to it. Relevant product market encompasses all those products or services which are regarded as interchangeable or substitutable by the consumer, by reason of their characteristics, price and intended use. Consumer perceptibility with regard to interchangeability among products or services is the most important parameter for defining relevant product market.
35. To commence a meaningful discussion for delineation of relevant product market and for further assessment, it is imperative to understand the sector under scrutiny. The hospitality industry has witnessed a tremendous change in the last decade. The change initiated with the emergence of OTAs like MMT, Goibibo, Yatra.com, Booking.com *etc.* which primarily operate as pure aggregators that *inter-alia* connect the hotels/properties with the end consumer by facilitating bookings. As an aggregator of hotel booking services, these aggregators provide a platform to various hotel owners to ‘list’ their hotels on these aggregators’ apps which was accessible to the potential consumers. The consumers can use the platform/app to search, compare and book the hotels from the vast choices available as per their liking and willingness/ability to pay for their travel requirement. These apps also provide value added services such as use of filters to make search more effective and targeted, incorporating customer reviews to help potential customers, online payment options *etc.* Thus, by reducing the transaction and search costs and introducing varied choices with price comparisons, these apps offered an important breakthrough to the traditional mode of booking. In return, these aggregators charge a commission from the hotel/property owners which may comprise a listing



fee and/or a transaction fee based on certain completed transactions using the services.

36. The second wave of transformation in the hospitality industry was marked by the emergence of franchise model where budget hotel chains expanded rapidly adopting asset light operating models, standardising the largely unorganised segment. The standalone budget hotels partnered with known brands to take advantage of the latter's brand value. OYO, which entered the market in 2013, initially started with the partial inventory model wherein it used to lease a part of the partner hotel's inventory beforehand, organize those hotel rooms under its brand name (*OYO Rooms*) and these partner hotels used to provide standardized service to customers of those rooms as per their respective agreements with OYO. Subsequently, OYO changed its business model to franchise model.
37. As per the information available in public domain¹, OYO was followed by entry of Fabhotels and Treebo in the year 2014 and 2015, respectively, which operated on similar lines. Given the untapped potential, other players also entered the market *e.g.* Vista Rooms, Room on Call.
38. It is further relevant to highlight that OYO and other like players primarily operate as two-sided platforms which connect budget hotels with the potential consumers. On one side, they serve the budget hotels and on the other hand they serve the potential consumers looking for budget accommodation. Since the present case pertains to a grievance raised by a partner hotel, the relevant product market determination needs to take into account all alternatives available with such budget hotels and the competitive constraints faced by the focal product *i.e.* the service provided by OYO in the present case.

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



39. OYO has a network of budget accommodation, connecting the network hotels to potential customers under the brand “OYO Rooms”, while each hotel on the network is an independent business providing services to the guests. The arrangement between OYO and the partner hotels is akin to the franchise model. Franchises give hoteliers access to identifiable brand recognition, existing distribution channels and a compelling customer base. The uniform and assured quality standard across the chain hotels is valued by consumers which is why hoteliers may choose to run a branded franchise hotel in order to take advantages of these benefits. In exchange, the franchise brand takes a percentage of the hotel’s revenues or commission. In the case of OYO, the budget hotels on OYO’s network are entitled to use its brand and know-how and are as such perceived as an extension of OYO. The consumers booking OYO rooms value the brand provided by OYO and the consequent expected quality assurance associated with the brand, which is generally lacking in budget hotels. Driven by this, a large number of hotels operating in the budget/economy category in India have joined the OYO network over the last few years. What OYO offers to these hotels is essentially franchising service comprising a bouquet of services, which enables the franchisee hotels to reap the benefits of OYO brand. In return, OYO takes a commission or share in the revenues while assuring minimum monthly guarantee of revenues to the partner hotel.
40. Considering the aforesaid, the relevant product market in the present case appears to be ‘*Market for franchising services for budget hotels*’.
41. As regards the relevant geographic market, the Commission is of the view that though the Informant is based in Delhi, OYO operates on a Pan-India level and in the franchising market, it seems to face the same/similar competitive constraints and homogenous conditions of competition throughout India. There is nothing on record to suggest that the relevant geographic market needs to be restricted to a



particular region/city or State. The relevant geographic market, for the purpose of the present case, has been taken to be India.

42. The relevant market thus, would be '*Market for franchising services for budget hotels in India*'. In the said market, the strength of OYO needs to be assessed as a step precedent to analysing its conduct.
43. The Act explains dominant position as a position of economic strength enjoyed by an enterprise in the relevant market, which enables it to operate independently of competitive forces prevailing in the relevant market or affect its competitor or consumer or the relevant market in its favour. Such ability of the enterprise to behave independently of competitive forces needs to be assessed in light of all relevant circumstances and the factors enlisted under Section 19(4) of the Act. A complete and correct assessment warrants comprehensive examination of the competitive conditions of the market, taking into account the inherent characteristics of the market, the market structure, nature of competition, competitive strategies adopted by the market participants and all such factors that strengthen or weaken the market position of the enterprise under scrutiny. Thus, every case warrants a unique assessment based on its facts and market under consideration.
44. The relevant market in the instant case is '*Market for franchising services for budget hotels in India*'. The information is silent on the parameters on which OYO has been alleged to hold a dominant position. The Informant has referred to an article dated 19.08.2017 by a data analytics start-up, viz. *Kalagato*, to argue that the OP/OYO holds 68% market share and the next competitor Trivago lags far behind with only 13.6% market share. OYO has objected to these market share figures stating that neither the said article discloses/provides the methodology relied upon to arrive at the market size nor does it disclose the market in which the market shares are provided.



45. The Commission does not find the market share figures provided by the Informant reliable as the relevant market proposed by the Informant is different from the one delineated by the Commission. The relevant market determined by the Commission does not envision OYO as a travel App or just a pure aggregator. Even otherwise, an overall reading of the *Kalagato* article suggests that the market shares calculated in the said article only indicates the percentage of people who have downloaded the travel apps on their smart phones. Thus, 68% of the smart phone users (who have at least one travel app on their mobile phones) have downloaded OYO App. Having an app on the smart phone does not necessarily indicate a converted or successful transaction with the said hotel *e.g.* a smart phone user may have many travel apps on his/her phone but that does not conclusively indicate how much those apps have been used to consummate the transaction.
46. Further, the Informant has also relied upon OYO's *Report Card* (annexed with the information) and its blog dated 09.11.2017 wherein OYO has boastfully proclaimed to have been dominant in the budget hotel segment. The Commission observes that such qualitative claims are not unusual for any business in a normal commercial parlance to boast about its success and the same cannot be relied upon for concluding dominance.
47. Since the information available on record is insufficient, the Commission relied upon some information available in public domain to assess the market landscape and the position of OYO therein. As per the information available in public domain, the closest competitors of OYO in the relevant market seem to be Fab Hotels and Treebo, apart from the smaller/fringe players *e.g.* Vista Rooms, Comfort Inn, Room on Call *etc.* OYO appears to be the leading player in the relevant market with a significant market share in terms of number of hotels and rooms on its network. Though such numbers are not accurately ascertainable, it can be stated that OYO has the maximum number of budget hotels on its network, as per the information available in public domain. The hotel rooms affiliated to OYO



outnumber the rooms affiliated to its competitors by a significant margin. However, market share alone may or may not indicate dominance. The assessment of dominance also needs to take into account other factors listed under Section 19(4) of the Act such as the structure of the market in question, importance and potential of competitors, entry barriers, dependence of consumers on the enterprise *etc.*

48. In the present case, to assess whether having the largest budget hotel network confers OYO a position of dominance *vis-à-vis* the hotels in India, it is important to appreciate the market conditions in totality. While a potential franchisee would wish to obtain a franchise from a franchisor whose brand has the widest recognition, franchising is only one of the many business models that a hotel can be operated under. The choice of business model by a hotelier would be driven by factors such as popularity and acceptance of chain brands compared to independent hotels, availability and adequacy of promotional avenues and ease of access to customer base for independent hotels *etc.*
49. During the preliminary conference, OYO submitted a compilation containing a report on hospitality/accommodation industry prepared by RedSeer Management Consulting Pvt. Ltd, a market research and advisory firm. As per the said report, 70% of the total rooms (~ 2.6 million in the year 2018) were in the budget segment, implying the total rooms in the budget segment to be around 1.82 million. As per the Informant, the rooms on OYO's network are around 1,69,000. Collating these numbers, OYO's tentative share, on the basis of rooms on its network, comes out to be under 10%. Since OYO has the highest number of budget rooms on its network, the share of FabHotel, Treebo and other players in budget rooms would be even lesser. Thus, franchising is still an emerging trend in India, particularly in the budget hotel segment.
50. Majority of budget hotels in the country still operate as independent hotels. These hotels seem to be increasingly dealing through OTAs. At this stage of evolution



of the market, both the OTAs and franchise hotel chains like OYO are focusing on on-boarding of partner hotels. Furthermore, the OTAs seem to be responding to the emergence of budget hotel franchisers with new and innovative means to provide better value to both partner hotels and consumers, in order to match the value addition provided by the franchisers. For instance, some OTAs have launched assured hotel services, which essentially involve lending of their respective brands to the budget hotels, thereby extending their role beyond just providing intermediation services for booking of hotel rooms. Such models, while may not be technically categorised as franchise, can provide services to budget hotels substantially similar to what franchise models offer. Thus, the competition dynamics in the relevant market are still unfolding, which hinders a deterministic assessment of the relevant market and OYO's position in it. Furthermore, given that franchising as a business model is still in its nascency, there is a large untapped universe of hotels for the existing and potential competitors of OYO to access. Based on the foregoing, the Commission is of the view that though OYO may be a significant player in the relevant market, presently it cannot be unambiguously concluded that it holds a dominant position.

51. However, regardless of whether OYO is dominant or not in the relevant market, its conduct has been analysed.
52. In the franchise model, which is predominantly the nature of OYO's arrangement with its partner hotels, the commercial arrangement requires certain reciprocal obligations between franchisor and franchisee, which may have valid business justifications. For example, the Informant has alleged that *vide* Clause 2.1, OYO has sought a revenue share on the gross revenue, including the revenue earned from bookings done directly with the partner hotel. This clause may have a logical business justification. It is intuitive that through provision of branding services, OYO not only enhances the chances of getting online bookings through OYO's platform but also attracts the offline bookings or direct online booking by



consumers from partner hotel's website. Thus, as claimed by OYO, the commission payable on gross revenue share is a return for the branding which facilitates direct bookings with the hotel, apart from attracting direct consumers through OYO's platform.

53. Another clause that has been alleged by the Informant to be unfair is Clause 7 which requires the Informant not to enter 'into any agreement directly or indirectly to engage with online aggregators like MMT, Goibibo, Fab hotels *etc.* in any manner for or in relation to selling/marketing/promoting rooms at its premises for one year. The Commission is of the view that franchisee agreements stand on a different footing as the branding plays a vital role in such arrangements. The franchisee is often seen as an extension of the franchisor and is perceived as a single brand seller *e.g.* McDonald's sell burgers only of McDonalds and not of KFC. The importance of contractual provisions for protecting the franchisor's know-how, which is likely to have real efficiency benefits, needs to be carefully considered. Thus, the provisions designed to protect know-how and a particular brand value are likely to involve exclusivity in order to prevent the franchisee from unduly appropriating the benefits of this know-how by using it to distribute competing goods or by engaging, directly or indirectly, in activities similar to those of the franchisor. Thus, the Commission is of the view that the business justification given by OYO for these restrictions seems to have merit.
54. With regard to other clauses also *e.g.* (Clause 1.4 empowering OYO to unilaterally modify the structure of the Informant's hotel; Clause 1.5 allowing exclusive signage of OYO brand and/or signage for co-branding of OYO with Informant's hotel's name; Clause 1.7 subjecting the partner hotel to incentives and disincentives as per OYO's policy based on its performance; Schedule 1 and 3C Scoring Policy *etc.*), the Commission finds merit in the submissions made by OYO. There appears to be valid business justification for having the aforesaid clauses to allow aligning of the partner hotels to OYO's brand image, to ensure that the



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services offered are of a standard benchmark quality and to ensure consumer satisfaction.

55. With regard to charging of GST and Platform fees, the Commission is satisfied with the submissions made by OYO. Though OYO communicated it to the Informant that GST would be included in the commission charged by OYO, subsequently it was realised by OYO that the hotels were receiving input credit for the GST while not paying the same to the tax authorities. This fact remained undisputed by the Informant during the preliminary conference as well as in the written submissions filed by it thereafter. Accordingly, hotels were informed that *w.e.f.* 01.11.2017, GST would be charged over and above the commission. Even for the platform fee, the Commission finds merit in OYO's submission that such increased fee was required to cover the increased expense of supply of toiletries and other consumables, by OYO to the respective partner hotels.
56. As regard the 3C scoring policy adopted by OYO, the Commission finds it to be a quality check tool based on which the partner hotels are evaluated on the OYO platform. As submitted by OYO, it has no incentive to deprioritise or block any particular partner hotel/property from its platform. Rather the network is strengthened if more hotels join it. The Commission finds no reason to interfere with such quality evaluation tool, specifically when the same is aimed towards enhancing consumer welfare in terms of providing better quality services.
57. Thus, as enumerated in the aforesaid paragraphs, it cannot be concluded that the terms and conditions of the Agreement in the present matter are unfair, as alleged in the information.
58. Based on the aforesaid, the Commission does not find alleged contravention of the provisions of Section 4 of the Act against OYO being made out. In view of the foregoing, the Commission is of the opinion that there exists no *prima facie* case and the information filed is closed under Section 26(2) of the Act.



59. Secretary is directed to inform the parties accordingly.

Sd/-
(Ashok Kumar Gupta)
Chairperson

Sd/-
(U.C. Nahta)
Member

Sd/-
(Sangeeta Verma)
Member

New Delhi
Date: 31/07/2019