



MARKET STUDY ON E-COMMERCE IN INDIA

Key Findings and Observations

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Competition Commission of India

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Disclaimer

This Report on the Market Study on E-commerce in India and the information contained herein is for general purposes only and is based on broad trends and views that have emerged in the stakeholder consultations. This Report is not intended to be exhaustive, and does not provide a complete summary of any legal issue(s) pertaining to the e-commerce sector in India and is not a legal document, which may be used for the purposes of any proceedings, legal or otherwise. Although this Report may identify certain specific actions and issues, this should not be taken as implying that there are no other actions or issues relating to the e-commerce sector.

The Report relies on surveys, stakeholder interactions, focused group discussions, one-on-one meetings, workshop deliberations and written submissions made by stakeholders. It is assumed that the information provided during the course of the market study is complete, accurate, and not misleading.

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CHAPTER 1

INTRODUCTION

1. In April 2019, the Competition Commission of India ('the Commission') launched a market study into electronic commerce (e-commerce)¹ titled 'Market Study on E-commerce in India' ('the study'). In view of the rapid growth and the rising importance of online trade in a large number of product categories, the purpose of the study was to better understand the functioning of e-commerce in India and its implications for markets and competition.
2. There was no *a priori* hypothesis of harm to competition caused by any pre-identified business practice(s) of any market player(s) that the study intended to test. The objective was to engage with industry and ascertain the Commission's enforcement and advocacy priorities in relation to e-commerce, with greater clarity on market developments and emerging impediments to competition, if any.²
3. The study, a combination of secondary research, questionnaire survey, focused group discussions ('FGDs'), one-on-one meetings, a multi-stakeholder workshop and written submissions of stakeholders, covered the three broad categories of e-commerce in consumer goods (mobiles, lifestyle, electrical & electronic appliances, and grocery), accommodation services and food services. 16 online platforms, 164 business entities [including sellers (manufacturers and retailers) and service providers (hotels and restaurants)] and 7 payment system providers from across India participated in the study. In addition, 11 industry associations, representing different stakeholder groups, also participated.³
4. The study covered various aspects of e-commerce, but the focus was on gathering qualitative insights from market participants on such trends, practices, and issues,

¹ According to the Draft National E-Commerce Policy, Department for Promotion of Industry and Internal Trade, Ministry of Commerce & Industry, Government of India, "e-commerce includes buying, selling, marketing or distribution of (i) goods, including digital products and (ii) services; through electronic network. Delivery of goods, including digital products, and services may be online or through traditional mode of physical delivery. Similarly, payments against such goods and services may be made online or through traditional banking channels i.e. cheques, demand drafts or through cash."

² Press Release: CCI Market Study in E-Commerce in India, https://www.cci.gov.in/sites/default/files/press_release/ccipress.pdf

³ The Study sought information from stakeholders on a voluntary basis and the same was not provided pursuant to the Commission exercising any legal authority under Section 36(4) of the Act wherein the Commission is entitled to seek and direct persons appearing before it to furnish such information, as may be required.

which are relevant to competition. Information was received *inter alia* on the impact of e-commerce on competition and competitive strategies of businesses, the functioning and role of online platforms and their contractual arrangements with sellers/service providers.

5. The survey and stakeholder interactions focused on the business users of e-commerce. To gather information pertaining to consumers, secondary sources such as existing studies/surveys were relied upon. The respondent market participants' perception of consumer behaviour and preference was also taken into account. Further, there was a presupposition of the benefits that the shift of economic transactions from brick and mortar/physical market to digital space has accorded to the consumer.
6. The interim observations on the survey, FGDs, and meetings were presented in a Workshop titled 'E-commerce: Changing Competition Landscape in India' ('the Workshop') held on August 30, 2019. The Workshop brought together representatives of all stakeholder groups to deliberate on the issues identified.⁴ Public comments were also invited on the interim observations.
7. This Report⁵ summarises the main findings of the study. It is clarified that the findings do not correspond only to the survey responses. They are an outcome of triangulation of inputs gathered through all the six limbs of the study, i.e. secondary research, survey, focused group discussions, one-on-one meetings, workshop deliberations and written submissions made by stakeholders.
8. The Report is structured as follows: the key market trends and main features of e-commerce are outlined in Chapter 2. Chapter 3 discusses the key competition issues that have emerged from the study. The observations of the Commission based on the findings are presented in Chapter 4.
9. It is appropriate to clarify that the issues identified on the basis of this market study include those that may, directly or indirectly, have a bearing on competition, or may hinder the realisation of the full pro-competitive potential of e-commerce. Some of the issues in specific circumstances may have a potential to contravene the provisions of

⁴ Proceedings of the Workshop can be found at https://www.cci.gov.in/sites/default/files/whats_newdocument/proceedings.pdf

⁵ Implementation Partner for the study was Economic Advisory, Ernst & Young. This Report has been drafted by the staff of the Commission.

the Competition Act, 2002 ('the Act'), which shall be the subject matter of case-by-case determination by the Commission.

10. The study has been useful in providing us with insights into conceptual and analytical questions such as delineation of relevant market, assessment of market power, business rationale for certain conduct etc. relevant for the purpose of enforcement of the Act. Detailed documentation of the same does not form part of this Report, brief allusion has been made where deemed relevant.
11. A range of issues outside the competition arena also came up during this study. However, in view of the mandate of the Commission, the Report does not include findings in relation to non-competition matters.

CHAPTER 2

STUDY FINDINGS: TRENDS AND FEATURES

12. India is the fastest growing market for the e-commerce sector. Revenue from the sector is expected to increase from USD 39 billion in 2017 to USD 120 billion in 2020, growing at an annual rate of 51 percent, the highest in the world.⁶ Consumers benefit from e-commerce for the convenience of accessing it anytime and from anywhere with internet access. The mobile phone subscriber base in India has increased from 904.51 million in March 2014⁷ to 1173.75 million in September 2019.⁸ The number of internet users has increased from 445.96 million in 2017 to 665.31 million in 2019 and is expected to increase to 829 million in 2021.⁹ Besides the growth in smartphone penetration and access to internet, the growth of e-commerce has been enabled through introduction of cash on delivery at a time when Indians were still adapting to digital payments. Discounts and deals offered by the marketplaces, faster deliveries including one-day delivery and access to a large product range, especially in tier II and tier III cities where choices were limited, revolutionised retail as well as service delivery.
13. E-commerce in India has attracted investors from across the world. Although funding in the e-commerce sector started in 2009, it gathered momentum in 2014 and maximum investment of around USD 3500 million took place in 2017 in 124 funding rounds. Since 2009, the e-commerce sector has received around USD 13,338 million in 904 funding rounds. Due to the increase in investments in the e-commerce sector, new companies started to enter the market since 2009. Maximum number of new e-commerce companies *i.e.* 1650 were formed in 2015. At present around 4757 e-commerce start-ups are active in India.¹⁰
14. E-commerce in the goods category in India has grown at a compound annual growth rate (CAGR) of 57% in last seven years, and is expected to grow by 18.6% till 2022.¹¹ The online retail market in India is estimated to be worth USD 17.8 billion in terms of

⁶ [Indian Ecommerce Industry Report](https://www.ibef.org/industry/ecommerce.aspx), IBEF, 2019. <https://www.ibef.org/industry/ecommerce.aspx>

⁷ Telecom Regulatory Authority of India - March 2014, [Page 1](https://main.trai.gov.in/sites/default/files/PR-TSD-Mar-12_05_14.pdf).
https://main.trai.gov.in/sites/default/files/PR-TSD-Mar-12_05_14.pdf

⁸ Telecom Regulatory Authority of India - September 2019, [Page 1](https://main.trai.gov.in/sites/default/files/PR_No.118of2019_0.pdf).
https://main.trai.gov.in/sites/default/files/PR_No.118of2019_0.pdf

⁹ Indian Ecommerce Industry Report, IBEF 2019, Page 3.
<https://www.ibef.org/download/E-Commerce-October-2019.pdf>

¹⁰ Data on year-on-year funding and number of start-ups till 31st Mar'19 sourced from Tracxn.

¹¹ Economic Impact of Internet Services in India, Internet and Mobile Association of India (IAMA), Page 6

gross merchandise value (GMV)¹² as of 2017.¹³ As of July 2018, the number of transactions in e-commerce retail was 1-1.2 million per day and on e-commerce platforms was 55-60 million per month.¹⁴ The growth engine has been smartphones, with only or primarily online retailers or e-tailers witnessing their sales mix shifting heavily into smartphone and electronics, supported by direct partnerships with brands.¹⁵ As per a Working Paper of UNIDO, nearly half (45%) of the manufacturing output in India comes from the Micro Small & Medium Enterprises (MSMEs) and 43% of the MSMEs participate in online sales in India.¹⁶

15. The sales from online travel bookings in India is likely to reach USD 39.09 billion by 2021,¹⁷ growing at a CAGR of 16% between 2015 and 2021.¹⁸ In hotel booking, an increase has been witnessed across all star categories in reservations using online reservation systems and other websites, with the all-India average increasing from 10.3% in FY 13 to 24.5% in FY17.¹⁹
16. The food tech industry in India is estimated to grow at a CAGR of more than 12% between 2016 and 2021,²⁰ driven by the growth in internet and smartphone penetration. As per National Restaurant Association of India (NRAI) report, during FY 16 to FY 19, the delivery marketplaces raised 90% of the total funding, while remaining proportion of total funding amount raised was equally split between cloud kitchen (35%) and other business models (21%) in the food tech industry.²¹ India's food tech expansion is no

¹² GMV is the total value of merchandise sold through an online platform during a certain period of time.

¹³ Indian Ecommerce Industry Report, IBEF, October 2019, Page 9.

<https://www.ibef.org/download/E-Commerce-October-2019.pdf>

¹⁴ ibid

¹⁵ "E-Tailing: Tumultuous platform-seller history but latest govt. norms could accelerate shift to a more stable relationship", Published on: Feb 2019. <https://redseer.com/newsletters/e-tailing-market-updates/>

¹⁶ "National report on e-commerce development in India", Department of Policy, Research and Statistics, Working Paper 15/2017, 2017, United Nations Industrial Development Organization

https://www.unido.org/sites/default/files/2017-10/WP_15_2017_.pdf

¹⁷ eMarketer Forecasts India's Digital Travel Sales <https://www.emarketer.com/Article/eMarketer-Forecasts-Indias-Digital-Travel-Sales-Will-Top-225-Billion-This-Year/1016257>

¹⁸ "Online travel could make up 43% of total market by 2021",

<https://www.livemint.com/Companies/8VgCJU0SGjdr125tqbbk6H/Online-travel-could-make-up-43-of-total-market-by-2021-Pra.html>

¹⁹ "Indian Hotel Industry – Review & Prospects", CARE Ratings Industry Research, January 7 2019, page 17.

<http://www.careratings.com/upload/NewsFiles/Studies/Indian%20Hotels%20Industry%20Dec%202018.pdf>

²⁰ TechSci Research report "India Foodtech Market By Operation Type, By Source of Order, By Payment Method, Competition Forecast and Opportunities, 2011 – 2021", April 2016.

<https://www.techsciresearch.com/news/1002-india-foodtech-market-to-grow-at-12-cagr-till-2021.html>

²¹ "NRAI India Food Services Report 2019", National Restaurant Association of India, 2019, page 179

longer a metro phenomenon, as non-metro cities grew seven times faster (quarter on quarter) as compared to metro cities (80% growth vs 12%).²²

17. Against this backdrop, the study attempted to understand the market participants' perception of the emerging trends relating to e-commerce as also to gather information on the key features of the e-commerce ecosystem in India. The key findings are summarised below.

Growing importance of digital commerce

18. The results of the study confirm that online commerce is gaining importance across the sectors studied. Within the broad category of consumer goods, the study covered the goods most sold online in India, namely, mobile phones, electrical & electronic appliances, lifestyle related goods, and also included grocery where online commerce is still nascent in the country. In the goods category, the findings reveal that the share of online distribution and its relative importance as a sales channel vis-à-vis the offline channels varies significantly across products. For instance, in case of mobile phones, online sales reportedly account for around 40% of total sales in India, with smartphones selling online more than feature phones. Latest models of mobile phones are often launched exclusively on e-commerce platforms. On the other hand, for electronic/electrical appliances and lifestyle related products including apparels, shoes, accessories and fashion products, the respondents considered online as more of a supplementary channel, brick & mortar sales being the predominant mode of sales. Nature of goods and the extent of price-differential between sales channels were among the factors cited by stakeholders that explain the variation in the online-offline split of sales between products. This divergence constrains construction of a unified narrative on retail as a whole and points to the need for product-specific assessment of markets and competition dynamics.
19. For the respondent hotels, online bookings as a proportion of total bookings has been rising, though bookings via offline travel agents, corporate tie-ups and walk-in customers remain significant. Hotels in the budget and mid-market segments, as per

²² "Quiet Revolution in India's Traditional Internet Sectors", Redseer Consulting Newsletter, as accessed on 23 September 2019.

the study, now consider distribution through online travel agencies (OTAs)²³ to be a necessary and increasingly important access route to consumers.

20. In the food service category, 83% of the respondent restaurants reported to have an online presence with online sales accounting for on an average nearly 29% of the respondent restaurants' revenue. 69% of these restaurants have gone online between 2016 and 2018. The casual dining and quick service restaurants in particular were found to be considering e-commerce significant for their survival and growth.

Increasing price competition

21. Confirming what is expected of online trade, the study points to an increased intensity of price competition across the categories studied. Online trade has led to greater price transparency. As per the study, majority of the respondent hoteliers and retailers track competitors' prices and adjust price levels in response. The frequency of price change was found to be high. In case of goods, most of the respondent retailers were found to change the price several times in a day, while some reported price revisions on a weekly basis and during promotional events. Majority of the hoteliers reported to undertake price revision on a daily basis. In the food service segment, only few respondent restaurants were found to track competitors' prices.
22. While the idea of dynamic pricing strategy is not new, e-commerce has transformed the way price information is disseminated. On the one hand, consumers enjoy increased price transparency and the consequent ease of price-comparison, on the other hand it enables sellers to monitor competitors' prices on a real-time basis and use the same as an input in setting their own prices.
23. Use of price comparison tools has been reported by majority of the hotel respondents. Being on price comparison tools is considered advantageous as consumers use these tools to find the best deal and it enhances visibility of the brand. However, the survey showed that price comparison tools for the respondent hotels on an average lead to conversion rate²⁴ of less than 10%.

²³ An OTA is a travel website that specializes in facilitating online search, comparison and booking of travel products, including accommodation services.

²⁴ Conversion rate is the percentage of consumers who actually buy the product after visiting a product page. In other words, it is a measure of how many sales occur for each view on a listing.

24. In all the categories covered in the study, there was near unanimity amongst sellers/service providers on online discounts being the key factor influencing competition. Consumer preference, according to significant majority of respondents (sellers/service providers), was being sculpted around the metric of price/discounts. While lower prices benefit consumers, the increasing focus on discounts, according to them, poses a risk to competition on non-price aspects such as quality and innovation that may hurt consumer interest in the medium to long run.

Strategic response to e-commerce

25. Businesses across sectors and at the various levels of supply chains were found to be gearing up to avail the opportunities of e-commerce while also equipping themselves to address the attendant challenges.
26. The retailers surveyed were found to be exploring various means to expand their footprints in the online space. Some of the large brick and mortar retailers surveyed have launched their own websites to complement the physical sales. The smaller retailers are primarily using third party marketplace platforms to access the online consumers. Also, there has been an emergence of a class of sellers who sell exclusively online, with no brick and mortar presence. Retailers in the grocery space are beefing up doorstep delivery arrangements in the face of increasing competition from online grocery platforms.
27. The contract terms between manufacturers and distributors, according to majority of the sellers surveyed, now include specific clauses with respect to online sales. Albeit having embraced the online mode as an important and growing sales channel, the manufacturers were concerned about any distortionary impact that e-commerce might cause. Large brands are selling their products through their own websites as well as using the marketplace route. Small brands were found to be relying mostly on the marketplace platforms to access online consumers. Among large brands, it also emerged that they have introduced e-commerce teams in their sales departments to monitor prices and sales via marketplaces.
28. On the services side, emergence of the online delivery-only formats popularly known as cloud kitchens is the most important trend observed in the food service category. An offshoot of e-commerce in food, the trend of opening up of cloud kitchens as a means for low-cost expansion into new cuisines or geographies is fast catching on even with

the established players. For the online ordering and delivery platforms as well, cloud kitchens have become the new growth frontier. They have entered into the domains of cloud kitchen infrastructure, i.e. provision of delivery-only kitchen facility to partner restaurants, while some have launched their own cloud kitchen brands/private labels.

29. In the accommodation service category, e-commerce has enabled a new business model in the form of large franchise chains in the budget hotel segment. These chains access online customers through their own websites and mobile applications while also listing their properties on OTAs. Some OTAs have launched assurance programs, wherein they lend their brand names to a set of selected hotels while listing them on their platforms, which act as signal of quality to the customers.

Business models of e-commerce platforms

30. In the goods category, there exist two types of business models, namely, the marketplace model, whereby platform operators facilitate transactions between buyers and sellers and can fulfil the orders by handling logistics, deliveries and returns and the inventory model, that allows online retailers to own inventory and directly sell to consumers through their own platform. While e-commerce companies which have foreign direct investment (FDI) are allowed to adopt a marketplace model, they are not allowed to hold inventory and sell directly to consumers.²⁵
31. Some e-commerce platforms in the goods category, besides providing marketplace/intermediation services to connect sellers and consumers, also provide related services such as warehousing facilities, transactional support services, promotion and advertising, centralized payment processing, shipment and delivery of goods, refund and replacement, etc. Some have a presence in B2B (business-to-business) wholesale, wherein the B2B entities reportedly procure goods from brands/manufacturers and sell them to sellers, who may in turn sell the goods on the marketplace platform to consumers. The nature of fee charged varies across platforms. Some charge fixed upfront fee and commission per transaction, the rate of commission varying across product categories. Marketplaces who offer delivery service may also

²⁵ As per Press Note 2 of 2018, Department for Promotion of Industry and Internal Trade (DPIIT), Ministry of Commerce and Industry, Government of India, 100% FDI under automatic route is permitted in marketplace model of e-commerce and FDI is not permitted in inventory-based model of e-commerce https://dipp.gov.in/sites/default/files/pn2_2018.pdf. As per Clause 5.2.5.2 of consolidated FDI policy, 2017, 100% FDI under Government approval route is allowed for retail trading, including through e-commerce, in respect of food products manufactured and/or produced in India. https://dipp.gov.in/sites/default/files/CFPC_2017_FINAL_RELEASED_28.8.17.pdf

include shipping charges. The other sources of revenue are advertisements and customer subscription programs.

32. Online hotel booking industry thrives majorly on OTAs where customers can book and easily compare not only the offerings of all chain and independent hotels, but also their performance through user reviews. The OTAs earn through commission per booking, advertisements, hotel assurance and customer programmes²⁶. OTAs also provide certain ancillary services to the hotels such as location photography, pricing comparison, and business solutions for hotels.
33. The e-commerce platforms in food services in India have evolved from providing restaurant discovery services to becoming aggregators whereby they partner with restaurants for taking orders online and delivering food to the customers. Online table reservation sites have also become prominent. The aggregators charge commission for their delivery service, which is usually a fixed/variable percentage of each order value and some charge a separate fee for listing. Platforms also provide multiple ancillary services to the restaurants, such as advertising, packaging, pricing analytics, menu and food photography etc. One respondent platform has entered into the supply of raw materials to restaurants.

Role of online marketplace platforms

34. Online marketplaces are multi-sided platforms that connect sellers, buyers and advertisers to facilitate transactions between them. A platform offers a multisided environment that internalizes transaction costs and takes advantage of the network effects across the different user groups²⁷. The study reveals that third-party online marketplaces play a central role in e-commerce in India. An estimated 64%²⁸ of digital retail trade in India is through online platforms. While large brands/retailers own and manage popular standalone websites, online commerce in India is driven largely by third party platforms. Intermediation by online platforms allows for an online presence of businesses, without being required to operate own websites. The indirect network effects contribute to the growing importance of online platforms and most sellers/service

²⁶ Customer programmes are subscription-based programmes that entail certain additional benefits for customers such as free cancellation, 24X7 support etc.

²⁷ With indirect network effects or cross-side network effects, the value of the service increases for one user group when a new user of a different user group joins the network/platform. In the context of e-commerce platforms, the more consumers are on the platform, the more valuable the platform is to sellers/service providers, and vice versa.

²⁸ Internal computation based on data available on IBEF

providers in India, both in goods and services, now depend on intermediary platforms to access consumers online as consumers increasingly rely on these platforms to search for and purchase products on the internet. The degree of dependence of sellers/service providers on platforms was found to be a function *inter alia* of the nature of the product in question, the size and resources of the seller/service provider and their brand equity.

35. On the question of whether the advent of online platforms has increased the rate of market participation and have led to widening of markets, there was mixed response. A section of business users of platforms, consisting primarily of manufacturers and omni-channel retailers (i.e. retailers having both online and offline presence), were of the view that the size of the pie has not increased significantly, but shift of business from the physical to the digital space is taking place at a rapid pace. On the other hand, a section of small-scale enterprises who participated in the study confirmed expansion of markets for their products due to the advent of e-commerce platforms.
36. The goods marketplaces reported to have taken multiple steps to improve sellers' experience in the last two years. These include improving the quality and image of the marketplace and related services, offering sellers to have a seller shop on the marketplace, introducing seller's helpdesk etc. One of the marketplaces' group company has connected 'kirana' stores in over 20 states for last mile delivery programme. It has also included products of women entrepreneurs and artisans via special programmes.
37. In the accommodation service category, the technology platform of the OTAs is facilitating customisation of services to guests/customers. Further, OTAs help diversify a hotel's customer base, particularly in the budget hotel segment, by making their properties visible to a large set of potential customers. The value addition offered in terms of travel packages also help bring new customers to hotels.
38. In the food category, marketplaces reported to have taken various initiatives to improve the restaurant experience. These include providing hygiene ratings to restaurants through third party hygiene auditors, flagging fake or incorrect ratings, engaging restaurant community by sending newsletters featuring restaurants and their videos and improvements in partner (restaurant) mobile application/portal and partner support.

Factors influencing business users' choice of marketplace

39. The sellers/service providers were asked to choose from a given list of factors, the ones that they consider important while choosing a marketplace. They were also asked to cite any other factor that they deemed relevant. The marketplaces were asked to do the same based on their perception of sellers' considerations. The findings for each category studied are summarised below.²⁹ However, it is appropriate to clarify that most marketplaces were hesitant in responding to this question as they thought it was better suited to be answered by the sellers. Sellers/service providers, on the other hand, during the discussions, clarified that while they could point out the factors that were important from their perspective, they were not in a position to choose between platforms and typically depended on the major platforms for their access to online customers.
40. As per the survey, the goods marketplaces perceive that number of customer visits,³⁰ fees charged by marketplaces, conversion rate and payment services are the most important factors influencing sellers' choice of marketplaces. According to respondent sellers, in addition to the factors highlighted by the marketplaces, delivery services also play an important role in their choice.

Table 1 Factors influencing sellers' choice of marketplace

Identified by marketplaces	Identified by sellers
<ul style="list-style-type: none"> • Customer visits • Fee charged • Conversion rate • Payment options • Delivery services • Advertising • Customer services 	<ul style="list-style-type: none"> • Conversion rate • Customer visits • Delivery services • Payment options • Fee charged • Advertising • Promotional measures taken by the marketplace • Product display features

41. In the accommodation service category, as per the survey, the OTAs consider that the number of customer visits, commission charged, cancellation policy and advertising might be the most important factors that influence the service providers' choice of an

²⁹ The factors listed in the tables for each category are in order of importance

³⁰ Number of customer visits is a metric used to measure the total number of times customers navigate to a platform's website.

OTA. For hotels, conversion rate and transparency in payments also came up as other important criteria.

Table 2 Factors influencing hotels' choice of OTA

Identified by OTAs	Identified by hotels
<ul style="list-style-type: none"> • Customer visits • Commission charged • Cancellation policy • Advertising • Customer services • Conversion rate • User ratings 	<ul style="list-style-type: none"> • Customer visits • Conversion rate • Commission charged • Transparency in payments • Advertising • Customer reviews

42. According to the food marketplaces, the factors that may impact the restaurants' choice of listing on an online platform are the number of customer visits, conversion rates (views to orders), the fee charged by platform to restaurants and customer services. The significant factors for a restaurant while choosing an online platform are the fee charged by the platforms, delivery services, advertising and logistical support.

Table 3 Factors influencing restaurants' choice of marketplace

Identified by marketplaces	Identified by restaurants
<ul style="list-style-type: none"> • Customer visits • Conversion rate • Fee charged • Customer services • Delivery services • Payment services • Advertising 	<ul style="list-style-type: none"> • Fee charged • Delivery services • Advertising • Logistical support • Customer services • Promotional measures • Contractual support

Factors influencing consumers' choice of marketplace

43. In the survey, the marketplaces were asked about their perception regarding factors that influenced consumers' choice of marketplace. These, in turn, could be construed to be the key parameters of competition between platforms for consumer on-boarding. In all the categories, price and availability of products were cited as important considerations. Certain factors were peculiar to the sector concerned, such as return policy in case of goods, delivery charges/time and cancellation policy in case of food

services and customer reviews/loyalty points³¹ in case of hotel booking. The following table lists the factors for each category studied.

Table 4 Factors influencing consumers' choice of marketplace

Goods	Food service	Accommodation service
<ul style="list-style-type: none"> • Range and availability of Goods • Price • User friendliness • Customer services • Delivery • Return policy 	<ul style="list-style-type: none"> • User-friendliness • Price and discount • Availability of searched food item • Customer services • Number of restaurants listed • Delivery charges and time • Cancellation policy 	<ul style="list-style-type: none"> • Price • Loyalty points • Customer reviews • Availability • Customer services • User friendliness

Search Ranking

44. Sellers'/service providers' access to customers on online platforms depends *inter alia* on their ranking on the platform's website in response to related search queries. The respondent marketplaces were asked to rank a list of given factors in terms of their relative importance in determining the ranking of search results on their platforms. The sellers/service providers were also asked about their perception of factors, which according to them, influenced search ranking on online marketplaces. Search results on a platform include both organic listing, i.e. algorithmically generated results and paid listing, i.e. advertisement-based results. While these were visually distinguishable and/or listed separately in case of some platforms, in some such a distinction could not be made.
45. The sellers/service providers across the three categories expressed concern about the lack of clarity on search ranking criteria. They found the search ranking mechanism to be opaque and a large section of the respondents presumed that the search ranking was influenced *inter alia* by special arrangements between the platforms and sellers/service providers, participation/non-participation in discount schemes and also

³¹ Loyalty points are a part of a customer loyalty programme whereby the platform provides rewards to customers such as discounts, rebates, free merchandise, coupons, etc.

the commission paid. Nonetheless, the respondents ranked the factors provided in the survey in terms of their relative importance, as per their inference.

46. Some marketplaces in the goods category did not rank but found most factors in the list provided to be relevant. Based on the ranking done by the others, advertisements, click through rates³², customer ratings³³ and conversion rates emerged as the most relevant factors that influenced search ranking. While click through rate, customer rating etc. were relevant factors for organic search listing, advertisements³⁴ assured prominent positions to the business users in paid listing. According to the sellers, price, customer rating, recognition by the marketplace or special arrangement with marketplace and conversion rate might be among the important factors that affected search listing.

Table 5 Factors relevant for search ranking on goods marketplaces

Identified by marketplaces	Identified by sellers
<ul style="list-style-type: none"> • Advertisement • Click through rate • Customer rating • Conversion rate 	<ul style="list-style-type: none"> • Price • Customer rating • Recognition by the marketplace (preferred/ assured/ certified seller) • Conversion rate • Speed of delivery

47. In case of hotel booking, OTAs highlighted advertisement, click through rate, customer rating/review and conversion rate as the most relevant factors. Hotels perceive price, discount, pre-booked inventory by the OTA³⁵ and location to be the most relevant factors.

Table 6 Factors relevant for search ranking on OTAs

Identified by OTAs	Identified by hotels
<ul style="list-style-type: none"> • Advertising (including special promotion and deals) • Click through rate • Customer ratings/reviews 	<ul style="list-style-type: none"> • Price • Discount • Pre-booked inventory by the OTA • Location

³² Click-through rate, or CTR, measures the ratio of number of clicks to total number of impressions.

³³ Customer ratings allow a customer to share information on the product attributes, which he/she considers important and rate those attributes on a scale.

³⁴ An advertisement in e-commerce, also known as online advertisement and internet advertisement is a paid appearance on a website.

³⁵ The practice of advance booking, whereby the platform pre-books certain part of the inventory of hotels by paying a nominal amount in advance to them, for up to a specific time period.

Identified by OTAs	Identified by hotels
<ul style="list-style-type: none"> • Conversion rate (click to sale) • Distance of the hotel from the desired location 	<ul style="list-style-type: none"> • Hotel brands • Advertising • Customer ratings/reviews • Exclusive agreements • Past booking cancellation rate of the hotel

48. As per the respondent food aggregators, ranking of restaurants on the platform is majorly affected by factors like proximity of the restaurant to the user, ratings/reviews submitted by the users, advertisement and past searches. According to the restaurants, to get visible on top of the listing the most important is the advertisement route, followed by the ratings/reviews on the quality/quantity or packaging of the food served/delivered to the customer, location and restaurant service. Special arrangements with the platform too was perceived as a factor that might influence search ranking.

Table 7 Factors relevant for search ranking on food marketplaces

Identified by marketplaces	Identified by restaurants
<ul style="list-style-type: none"> • Proximity to the user • Customer ratings/ reviews • Advertisement • Past searches 	<ul style="list-style-type: none"> • Advertisement • Customer ratings/ reviews • Location • Restaurant service (orders, cancelation, complaints) • Special agreements with the platform

Market Structure

49. In each of the three broad categories covered in the study, the platform/intermediation service market is concentrated with few large players. This conforms to the expectations in such markets. As a growing number of users makes the platform more valuable, it attracts more users, platforms benefit from a 'positive feedback loop', which can lead to market concentration.

50. Market concentration in online intermediation for goods is high, with two marketplaces accounting for an overwhelmingly large share of the online intermediation services provided in terms of GMV. Within the broad category of goods, the grocery segment has two large specialised players, small niche platforms, besides the two goods marketplaces operating across product categories. In the food service category, there

are three major players having significant shares of the market in terms of transaction volume along with small listing platforms that provide niche restaurant-based services other than delivering. The OTA market is highly concentrated with one player holding majority market share in terms of gross booking value.

51. No specific cost or constraint in switching between platforms was reported by the sellers/service providers, though setting up of internal systems to meet the requirements of each platform has obvious cost implications. Majority of respondents availing the intermediation services of marketplace platforms felt it was important to have a presence on all the major platforms to effectively compete for online customer access and reported to have significant dependence on these major platforms. Certain instances of exclusive contracts between platforms and sellers/service providers and fidelity/exclusivity reward mechanisms were also reported.

Payment Systems

52. Payment system providers facilitate the digital transactions taking place on an e-commerce platform, which is imperative to the success and smooth experience of completing a transaction. Accordingly, the study included payments service providers such as payment aggregators, UPI based payment systems and providers of prepaid payment instruments. This segment was not studied as a sector, but as a pivotal component in the e-commerce ecosystem.
53. In the goods category, all the respondent marketplaces use external online payment systems. However, two large respondent marketplaces also have their own prepaid payment instruments through their related/group companies. Having its own prepaid payment instrument allows the marketplace to offer cashback-based discounts and process faster refunds in case of returns. Only a handful of participants have their own wallets, which are closed in nature- the credit amount in such an e-wallet cannot be transferred, redeemed at other marketplaces or converted into cash. However, wallets of a few marketplaces are open wallets, which are integrated with other marketplaces to make payments. Banks also tie up with marketplaces for providing customer deals on payment options.
54. In case of hotel booking, some OTAs have their own internal/ closed prepaid payment instrument such as wallet or loyalty rewards/ points system to reduce cost of providing cash backs or deals on transactions through their platforms and facilitate instant refund

to the customer. OTAs also run their own deals to incentivize the customer to use the platform's own prepaid payment instrument.

55. In the food service category, food marketplaces run their own customer program and provide redeemable points, cashback to their closed prepaid payment instrument. A small share of the respondent restaurants also have their own prepaid payment instrument or own currency that can be used to pay on their own portal, such as that of a cloud kitchen or those restaurants who want to promote the usage of their own portal.

CHAPTER 3

STUDY FINDINGS: COMPETITION ISSUES

56. This chapter summarises the major issues relating to competition, identified on the basis of the market study. The issues raised by a majority of the study participants centred on the practices of e-commerce marketplace platforms. Outlined below are the key issues, which may influence competition between e-commerce marketplace platforms and/or competition between business users of such platforms and the issues that may hinder realisation of the full pro-competitive potential of e-commerce. For expository simplicity, the issues have been discussed separately, however, they were often found to co-exist, reinforcing the effect of each other.

I. Platform neutrality

57. In the categories of goods and food services, an overwhelming majority of the respondent sellers and restaurants raised concern regarding platform neutrality. In the goods space, the concern stemmed from the two broad issues of (a) platforms' own private label³⁶ products being in direct competition with other brands in the same product categories and (b) a set of platforms' 'preferred sellers' enjoying preferential treatment from the platforms. The market outcome on such platforms was allegedly being influenced or determined by the marketplace instead of it resulting from competition on the merits amongst the sellers/brands. In food services, the dual role played by platforms who own and list their cloud kitchen brands exclusively on the platform, akin to private labels, created an inherent conflict of interest between the platform's role as intermediary on one hand and as a market participant on the platform on the other.
58. Thus, in essence, the issue that has come to the fore is that the online platforms, when they serve as both a marketplace and a competitor on that marketplace, have the incentive to leverage their control over the platform in favour of their own/preferred vendors or private label products to the disadvantage of other sellers/service providers on the platform. The platforms have a variety of mechanisms that they can use to act

³⁶ Private labels refer to brands owned by a platform, which are produced by a third-party manufacturer and are sold under the platform's brand name.

upon such incentive, including their access to transaction data and ranking of search results.

59. The intermediary role of the platform allows it to gather all such competitively relevant data as price, sold quantities, demand etc. pertaining *inter alia* to each product, seller and geography. On the consumers' side, this enables the platform to better target product recommendations for users and improve the quality of the platform. On the sellers' side, this may allow it to use such data to introduce its own private label or boost its own sale or that of its 'preferred sellers'. The respondent sellers cited specific instances of introduction of private labels by major goods marketplaces in top-selling niche product categories. In the food services segment, the issue of launching of own cloud kitchen brands in high demand food categories in hyper-local markets was pointed out to be a consequence of such cross-usage of data.
60. Sellers'/service providers' access to customers on platforms depends *inter alia* on the sellers' ranking on the platform's website in response to related search queries. Organic search ranking is generated by search algorithm of the platform and thus the platform is in control of the search parameters and results. The dual role of the platform gives rise to the concern of ranking biases that may be created by the platform as a discriminatory device. In the goods category, the platforms' private labels reportedly are typically showcased as bestsellers to customers, while in the food services segment the platforms' own cloud kitchens are given prominent placement. The study respondents were of the view that the 'black box' nature of the search algorithm constrained the customers' ability to identify the biases, thereby curbing the possibility of self-correction. Lack of transparency vis-à-vis the search ranking criteria was also raised as an issue generally which made a section of respondent service providers believe that the commissions paid by them influenced their search ranking and thus the so called organic listing on platforms also effectively amounted to paid listing.
61. User review/rating was identified by the platforms as a key input to search ranking determination. Lack of transparency and credibility issues around the user review and rating policy of some of these platforms was highlighted by the business users as a factor that further allowed for search result manipulation, which in turn impacted their ability to compete effectively with the vertically integrated entities or the platforms' preferred entities.

62. In addition, the respondent sellers and service providers were also of the view that the commercial terms such as commission rates, penalties etc. for the platforms' own/preferred entities were different from what were offered to other sellers/service providers.
63. The marketplace platforms operating in goods have consistently maintained during the course of the study that all sellers listed on their platforms, including those selling the platforms' own private label products, are independent sellers. Thus, it is not incentive-compatible for them to prefer a few at the expense of the quality of the platform, particularly given the intensity of competition that exists between online platforms and the still predominantly offline retail landscape in India. The food delivery marketplaces/aggregators having their own cloud kitchen brands were of the view that cloud kitchens helped bridge the supply gaps that they were able to identify at both the levels of cuisines and geographies due to their unique position as a marketplace. Thus, cloud kitchens, both through partner restaurants and own private labels, aid in market expansion, according to them.
64. On the issue of intensity of competition between platforms, majority of the business users who participated in the study, were of the view that platforms' conduct vis-à-vis the business users was not reflective of any competitive pressure that the platforms might be facing on this side of the market. The businesses maintained that they lack countervailing power and are dependent on the large platforms as is evident from the fact that they are not able to go offline individually even when they find the contract terms imposed by the platforms to be abusive and unacceptable. Manifestly, the presence of other platforms or the offline segment does not work as a disciplining device for these large platforms as regards their conduct vis-à-vis the business users. Thus, according to them, the platforms' behaviour itself is a testimony to their position of strength vis-à-vis the business users, which enables them to dictate terms to the business users and devise policies which work to their and their vertically integrated/related entities' advantage.

II. Platform-to-business Contract Terms

65. The other issue that the business users of platforms have raised most stridently in all the three categories covered in the study, is the alleged exploitation of superior bargaining position by the platforms by way of imposition of 'unfair' contract terms. The

platforms allegedly determine and revise the terms of engagement unilaterally, often causing harm to the business interest of the sellers/service providers. This has created an environment where the trust of businesses on platforms is undermined and they cannot expect to have a sustainable relationship with platforms.

66. Underlying the differences between the large platforms and their business users is the misalignment between their fundamental business objectives. These platforms focus on growth and on increasing the transaction volume/value generated on their platforms, which essentially drives their policies. Many such policies allegedly force the businesses to compromise on profitability and their brand equity. The business users participating in the study urged for the terms of engagement to be fair and equitable, which did not undermine their business goals. Businesses, especially in the service categories, also pointed out the rather disquieting trend of their decision-making power vis-à-vis key business variables *de facto* being shifted to the intermediary platforms.
67. The first issue of platform-business difference regarding their terms of engagement related to one-sided contracts and unilateral revision of contract terms such as commission rates. As per the study findings, there is no standard contract that is made available to all business users by a platform. The contracts are customised, which according to the platforms is intended to address individual needs of the sellers/service providers who are not all similarly placed. The sellers/service providers however were of the view that non-standard contracts did not mean the contracts were mutually negotiated, it only provided the platforms the scope for imposing any term and condition that suited their interest. According to them, there is a wide range of commission rates that sellers/service providers pay to the platforms, and the rates are increased arbitrarily by platforms without any negotiation.
68. The service providers in the accommodation and food service categories further averred that they were vulnerable to practices such as demotion of their appearance in search results on account of lower commission rates paid. If search results were influenced by commission paid, it could drive up the cost of distribution for hotels/restaurants while also disregarding consumers' expectation of objectivity. Moreover, switching to another platform when the commission rate charged by a platform is found to be exorbitant is not a practical alternative since all major platforms have similar practices, which affect the businesses in the exact same manner.

69. The second issue is with respect to exploitative/unfair terms in contracts, which suited the interest of the platforms but undermined the business model of the service providers – such as deep discounting and bundling of services. The deep discounting practice followed by the major platforms was pointed out by the respondent hotels and restaurants to be the main grievance in their relationship with the online platforms. In online food ordering & delivery and online hotel booking, the discount schemes and the extent of discounts to be offered to customers are unilaterally decided by the large platforms, according to the hotels and restaurants. The platforms stated that their hotel/restaurant partners participate in the discount schemes only if they so desire. However, the partners stated that non-participation affected their visibility on the platform through lower search ranking thereby affecting their customer access and ability to compete effectively. They further mentioned that while initially these discounts were funded entirely by the platform, over the years the burden of funding discounts has been gradually shifting on to the hotels/restaurants. The restaurants perceive that search ranking on platforms is a function of discounts funded by a restaurant and participation in customer deals. Deep discounts are offered to drive consumer traffic on to the platform and is thus a major parameter of competition between platforms on the consumer side. However, this practice of unilateral discounting was allegedly undermining the market position of the service providers, i.e. the hotels and restaurants, by eroding their profitability and devaluing their products in the eyes of consumers. In the goods category, sellers were compelled to participate in discounts/deals often at unviable rates; as non-participation would result in low visibility, according to the respondents.
70. The other contract term that the business users in the food service segment found to be an unfair imposition by the large platforms was the mandatory bundling of delivery service with listing service. This required the restaurants who wanted to list on a platform to also mandatorily register for the platform's delivery services. This choice, according to the restaurants, should be left with individual restaurants. The concern raised by the restaurants was threefold. Firstly, availing the platform's delivery services may drive up cost of doing business. Restaurants who have their own delivery fleet claimed that they could provide this service to the consumers at a much lower cost. Secondly, when the platforms fulfil deliveries, they are in a position to influence competition between restaurants by denying/delaying delivery from some restaurants to customers, depending on the other terms of engagement between the platform and

the restaurant. Thirdly, the restaurant partners were left with little insight into the orders generated via the platforms, which relates to the 'data masking' issue discussed below.

71. As per the restaurateurs, critical customer information is not shared by platforms with restaurants, while the same is mined for launching and promoting the platforms' own cloud kitchens. Data is critical to the hospitality industry and is not new for restaurants as they were maintaining customer data in analogue format based on customer feedback systems even before the advent of the technology platforms. Customer data does not only help restaurants understand customer profile and see what profile actually fits in the restaurant or in a delivery kitchen context but also gives the opportunity to the restaurant to get a direct feedback from the customer on the food delivered. This assumes particular importance when the food is not delivered by the restaurants directly to their customers but is done through an intermediary platform. Platforms were of the view that the data that was necessary for improving the restaurant partners' performance was being shared with them. However, restaurants stated that the data shared by platforms is not customer-wise data but an aggregate picture of their periodic performance in terms of customer review and rating, which itself has its pitfalls and is susceptible to manipulation, according to the restaurants. If misuse of data or breach of privacy was the concern, the restaurants emphasized that the same would apply to both restaurants and the platforms and, thus, the platforms cannot keep away the customer data from the restaurants on the pretext of privacy. Customer data, according to them, is an important brick in the entire system and only the intermediary cannot have the right to hold it. Thus, 'data masking' by large food delivery marketplaces/aggregators was cited as an unfair imposition on the restaurants.

III. Platform Price Parity Clause

72. A platform price parity clause restricts sellers/service providers from offering their goods or services at lower prices on other platforms. It is contractually imposed by a platform on the sellers/service providers to guarantee the lowest price for the platform itself. Platform price parity clauses are called 'wide' if they apply to price offered on all other platforms, including the seller's/service provider's own website and are considered 'narrow' if they prevent the seller/service provider from setting a lower price on its own website, while imposing no condition vis-à-vis prices on other platforms. As per the study findings, online platforms in the service categories, i.e. online travel agencies and online food ordering & delivery platforms operating in India, typically include 'wide' parity

provisions in their contracts with hotels and restaurants respectively. The rationale put forth by some platforms for stipulating such a clause was to ensure competitive price for consumers on their platform.

IV. Exclusive Agreements

73. As per the study, most sellers and service providers use multiple intermediary platforms to access online customers. The platforms also typically list an array of competing products and sellers on the platform in order to provide consumers with the ability to search and compare across a broad range of offerings. However, the stakeholders also reported instances of exclusive agreements between brands/service providers and online platforms. Such agreements are of two kinds – (a) agreements under which a certain product offering is launched exclusively on a single online platform and (b) agreements which make a platform list only one brand in a certain product category.
74. As per the retailers who participated in the study, smartphone brands are launching their newest products exclusively on one of the two major goods' marketplace platforms, through the 'preferred sellers' of the platform concerned. These 'preferred sellers' operate exclusively on a platform and do not multi-home. Thus, during the initial period after launch, these products are available exclusively on a single online platform and are made available to the offline/brick and mortar retailers later.
75. In the food service category, instances of exclusive agreements between platforms and restaurants were reported, under which restaurants commit to be listed exclusively on a platform. Restaurants enter into these agreements when exclusivity is incentivised by platforms by way of offering better terms of engagement, such as lower commission/service fee charged and business assurance.
76. In the accommodation service category, reportedly, a hotel chain in a particular category was listed exclusively on a major OTA and its rival chains were allegedly delisted from the platform.

V. Deep discounts

77. The major online platforms in India, while providing the technology infrastructure to connect sellers/service providers with buyers, may also be engaged in pricing by way of funding price discounts for the products listed on the platform. The respondent

platforms operating in goods e-commerce have denied any direct role in pricing or discounts; third party sellers offer discounts, according to them. The respondent online travel agencies and food delivery platforms did not dispute their role in discounting. As the study shows, many platforms, which operate as pure marketplaces without having their own inventory, do also offer discounts over and above the price set by the seller/service provider. This is purportedly aimed at customer acquisition and is pursued by the platforms as part of their growth strategy. The discounting practices of large online platforms have emerged as a major point of contention in the study. Respondent business users of platforms in all the three categories have raised concern around discounts on multiple grounds.

78. Firstly, sellers/service providers were of the view that discounts offered by marketplaces differ across sellers/service providers. The differential discounting structure, according to them, affects competition and the playing field on the platform. Owing to lack of transparency about what constitutes the basis for the extent of discounts available to a particular seller/service provider on a particular product, there is an apprehension amongst sellers/service providers that platforms use discounts as a discriminatory device. For instance, the exclusive partners were believed to be receiving higher discounts on their products. In the case of vertically integrated platforms, the study revealed a widespread perception amongst sellers/service providers that platforms' own products/ related entities benefitted from higher discounts, which in conjunction with assured visibility meant higher consumer traffic and better competitive market position for these products/players.
79. Secondly, in the service categories, when intermediary platforms offer discounts over and above the price set by the service provider, the service provider loses control over the final price that is offered to the customer. The final discounted price on online platforms has obvious influence on consumer expectation with respect to price of the same product available through other channels, for instance in case of walk-in bookings in hotels or in case of dine-in in restaurants. The extent of discount offered on the platforms is reportedly such that the service providers are not able to profitably match the same in the other modes of booking. This, according to them, creates an artificial price-distortion and drives consumers increasingly to online platforms, which in turn leads to higher dependence of service providers on these intermediary platforms. Further, the platforms, which are playing a pure matchmaking role without offering

discounts, are not able to attract consumers at a scale that would allow the business users to consider them as comparable alternatives.

80. According to the service providers, the deep discounts upend the business model of the service providers who lose agency and the ability to protect their brand equity. Deep discounts, according to them, can lead to permanent value erosion of their products and undermine their market position.
81. Even when the service providers are funding the discounts, for instance in the food service category, it is the platform that reportedly decides the discount scheme and structure. As per the respondents, businesses individually have no say over the design of the discount schemes or the platform-business split on discounts. Given their dependence on platforms, businesses agree to such schemes and fear an adverse effect on their visibility otherwise. This was mentioned particularly with respect to the small revenue hotels/restaurants. The deep discounting practice of platforms, according to majority of small and mid-segment restaurants and hotels, is raising serious viability concern.
82. Lastly, the predominant concern regarding deep discounts in the goods category centred on the issue of alleged below-cost pricing in certain product categories, such as smartphones and electronic/electrical appliances on online platforms, impairing the ability of brick and mortar players to compete in the market. As per the retailers who participated in the study, each of the two major platforms in the goods category, has a set of exclusive 'preferred sellers'. The retailers perceive these sellers effectively as extension of the platforms. These sellers reportedly get the products at a significantly discounted price from the B2B arm of the platform. Brands too are directly entering into agreements with these 'preferred sellers' for joint funding of discounts on platforms.
83. The price points at which these sellers sell the products on the marketplace platforms are in many instances lower than the cost price for the brick and mortar retailers. These retailers maintain that, therefore, they either have to match the online discounts at a significant loss or the online market would be foreclosed for them. This was pointed out to be a particularly pressing concern in the case of mobile phones, where online markets constitute around 40% of the total sales in the country.

CHAPTER 4

OBSERVATIONS

84. This chapter brings out the observations of the Commission on the competition issues identified in the market study, without determining whether a conduct is anti-competitive or is justified in a particular context. The Commission is of the view that many of these issues would lend themselves to a case-by-case examination by the Commission under the relevant provisions of the Act.
85. The chapter also enumerates certain areas for self-regulation by the e-commerce marketplace platforms. These have been advocated with a view to reduce information asymmetry, promote competition on the merits and to foster a sustainable e-commerce ecosystem in India.

I. Platform neutrality

86. The concern regarding platform neutrality emanates from situations where the online platforms serve as both a marketplace and a competitor on that marketplace. Platforms essentially vertically integrate when they operate in the products traded on it, which may be through manufacturing/selling of private labels or by having direct or indirect interest in retail or through operating their own cloud kitchen brands. Such vertical integration may create an incentive to improve the platform's own/related entity's market position relative to its competitors by engaging in preferential treatment on the platform.
87. Whether leveraging through preferential treatment of the platform's own or related entities would be a profitable business strategy for the platform and the effect that such a strategy is likely to have on competition would depend *inter alia* on the nature of the market that the platform operates in, market power of the platform, i.e. the competitive constraints the platform faces, and any pro-competitive rationale justifying such conduct. The issue of preferential treatment by platforms to its own products or to its own/related entities, including factual establishment of the same and its effect on competition, is thus a matter of case-by-case determination by the Commission.
88. Notwithstanding the above, it is observed that lack of transparency in the platforms' functioning and practices can on the one hand allow for possible distortion of

competition on the platforms and on the other hand, consumer choice may not reflect consumer preference with perfect information. The three elements, which according to the business users of the platforms, are susceptible to manipulation/exploitation by platforms, are search results, sellers'/service providers' data and user review/rating mechanisms. Without a formal determination of violation of the provisions of the Act, improving transparency in these areas can reduce information asymmetry, which in turn can positively influence competition not only on the platform but also between platforms. Making more information available on the search ranking criteria, collection, use and sharing of data, and review and rating mechanisms will thus help address the concern of the business users of platforms to some extent.

89. Understandably, there are limits to the amount of information that can be made explicit and it is also acknowledged that sharing of certain information may entail the risk of providing businesses the opportunity to game the systems. However, that should not constrain the platforms to strike an appropriate balance between minimising this risk and addressing the issue of opacity while putting in place a framework that ensures adequate transparency.

II. Platform-to-business Contract Terms

90. Online marketplace platforms create significant market opportunities and offer great potential for businesses to widen their market access. This also leads to a growing dependence of businesses on these platforms. A fragmented supply side and only a few major intermediary platforms create a situation of asymmetry of bargaining power. As the study reveals, this bargaining power imbalance and information asymmetry between platforms and their business users may be prejudicial to the interest of business users. Moreover, the possibility of multi-homing by businesses does not appear to act as a competitive constraint since all major platforms have similar practices on the sellers'/service providers' side of the marketplaces, which affect the businesses in similar manner. The issues of unilateral revision in contract terms and imposition of 'unfair' contract terms by the major platforms have led to growing unease and tension in platform-business relations. Such an environment of conflict and mistrust may not be conducive for realizing the full potential of digital commerce, which promises myriad benefits to consumers, businesses and the economy.

91. To foster trust and a sustainable relationship with the business users of the platforms, the platforms may devise ways to govern, *inter alia*, the following aspects to protect the interests of all contracting parties –i) negotiating framework for basic contract terms ii) discount policy iii) penalties and iv) conflict resolution.
92. Imposition of unfair condition or price in sale or purchase of goods and services by dominant enterprises is prohibited under section 4 of the Act. Thus, the Commission, can intervene, on a case-by-case basis, in matters where unfair conditions or price is imposed through contractual provisions, by an enterprise that is dominant in the relevant market. Further, terms in a contract may directly or indirectly lead to exclusionary effect on competition while also being exploitative/ unfair to the business users. In such cases, the Commission can also examine these contracts under section 3(4) of the Act.

III. Platform Parity Clauses

93. A review of the antitrust literature on price parity clauses shows that these restrictions can give rise to competition concerns. Firstly, existing platforms, in the presence of parity clauses, may not have sufficient incentive to compete on commission rates. Secondly, a new platform could charge lower commissions to service providers that offered a discounted rate, in order to gain a toehold in a concentrated oligopolistic market where incumbent platforms enjoy scale economies and network effects. Platform parity clauses imposed by incumbent platforms may serve as a barrier to entry by such low-cost platforms. Thirdly, these clauses can also help cement coordination or tacit understanding that may exist between platforms, by disincentivising deviation from a consensus rate of commission. Thus, platform parity clauses can potentially lead to higher commission rates and discourage entry.
94. Parity clauses can also generate efficiencies in certain circumstances and be justified on the ground that they protect investment incentives by preventing free riding. Platforms invest in making their webpages user-friendly and in improving search and comparison functionalities. Absent a price parity restriction, a service provider may take the advantage of these features of a superior quality platform to draw customer attention to its product and then sell the product through its website or another platform at a lower price. This may lead to consumers searching and comparing on qualitatively superior platforms and making the transaction on another platform or on the service providers' own website where they are charged the lowest price. If a large number of service

providers and consumers behave in this fashion, the platform may factor in the same and lose incentive to invest in superior features. Thus, in absence of price parity restriction, competition on non-price parameters may be harmed in certain circumstances.

95. The competitive harms and efficiencies resulting from platform price parity clauses may vary across markets. It is a fact-specific question whether a price parity clause may be justified as procompetitive in any market and under what circumstances. The analysis of price parity clauses will *inter alia* take into account how plausible the free riding concern is, and to what extent it would affect the investment incentive for platforms to outweigh the direct loss to price competition caused by a price parity restriction.
96. As per the scheme of the Act, platform parity clauses can be examined by the Commission under section 3(4) of the Act, in a rule of reason framework. The factors enumerated in section 19(3) of the Act allow the Commission to assess both harm to competition emanating from platform price parity clauses and any pro-competitive rationale that may justify the same. If the platform imposing the parity restriction is found to be an enterprise dominant in a relevant market, the conduct can be examined under section 4 of the Act.

IV. Exclusive Agreements

97. Exclusive agreements are not *per se* anti-competitive. However, they raise potential competition concern when used as an exclusionary tactic to foreclose competition to rivals or to impede entry. Such concern would be pronounced when there is insufficient competition in either the platforms' market or the market where sellers/service providers compete. A platform with market power, by forging exclusive contracts, may be able to prevent the market from being more competitive. Thus, the benefits accruing from competitive markets such as lower prices, better products or more choices may be lost. Exclusive agreements may make rival platforms incur significant additional cost to induce the brands/service providers to give up the exclusive contract with the major platform. Listing of only a single brand/service provider in a given product category on a major platform can make it difficult for rival brands/service providers to get their products before the consumers. On the other hand, exclusive agreements can also generate efficiencies and improve competition among the brands of different manufacturers or service providers.

98. Exclusive agreements will therefore have to be analysed and assessed on a case-by-case basis. The Commission can examine exclusive agreements under section 3(4) of the Act in a rule of reason framework. When one of the contracting parties is a dominant enterprise, exclusive agreement can also be examined under section 4 of the Act.

V. Deep Discounts

99. Discounts lead to lower prices and can reflect cost savings arising from a variety of sources. Further, digital platforms are commonly known to pursue a growth-over-profit strategy of subsidising users resorting to low pricing strategies. Discounts offered by the platforms in the early years are typically seen as a means to establish network effects for user on-boarding. However, discounts can harm competition when used as an exclusionary device by enterprises with market power.
100. The concern raised by sellers/service providers with respect to discounts offered on/by marketplace platforms is threefold - i) discounts are discriminatory ii) discounts imposed by platforms in exercise of their superior bargaining power adversely affects the business models of the service providers iii) discounts push prices to below-cost levels in certain product categories and impair the offline small retailers' ability to compete.
101. An assessment of discounts for antitrust purposes typically involves evaluation of market power of the enterprise offering the discounts, the nature of the discounts, the intent/rationale behind the same and effect on competition.
102. The issue of discounts being purportedly used in a discriminatory manner by platforms may be assessed from the perspective of whether higher discounts are offered as an incentive to forge exclusive contracts and to curb multi-homing by service providers. The Commission, under section 3(4) of the Act, can evaluate such vertical agreements in a rule of reason framework to assess whether the disparity in discounts offered is used as a mechanism to induce exclusivity and whether the same leads to appreciable adverse effect on competition. In case a platform is dominant in a particular relevant market, the issue of discriminatory discounts can be examined under section 4(2) of the Act.
103. In the service categories studied, discounts are offered by even the pure intermediary platforms following marketplace model with no control over the inventory sold through them. As mentioned earlier, discounts are purportedly funded by platforms for consumer

on-boarding. It is causing the service providers, i.e. hotels and restaurants to lose control over the price of their products sold/distributed through online platforms, which also affects price and sales through other channels. Discounting is a common business strategy but where the design of the discounting schemes is misaligned with the rational business practices of the service providers, the use of such discounts as a competitive strategy comes into question.

104. The issue can be examined by the Commission under section 4(2) of the Act, which prohibits imposition of unfair condition by dominant enterprises. Thus, under this provision, the Commission can examine the conduct of a dominant platform.
105. However, given that multiple major platforms in the same markets are stated to be engaged in this practice, what seems to lie at the core of this issue is an imbalance of bargaining power between platforms and businesses. Thus, the aspect of discounts as an unfair imposition, particularly in the context of accommodation and food services categories, may be amenable to be addressed through a fair and transparent contractual framework.
106. In the goods category, the issue raised by the sellers relates to online discounts on major goods platforms purportedly pushing the prices below cost and impairing the offline small retailers' ability to compete in certain product categories. The platforms denied any involvement in pricing. They consistently maintained that all sellers on their platforms were independent sellers who themselves set prices. This, however, does not detract from the fact that the 'preferred sellers' appear to be operating exclusively on either of the two major platforms. Being the most successful and principal seller (in terms of sales) on a major marketplace platform would suggest that the same seller should be able to replicate the commercial success on a rival marketplace platform. However, that does not seem to be the case. While being an exclusive seller on a platform is not anti-competitive in itself, it is perplexing as to the nature of trade-off derived by such seller by limiting itself to a single marketplace platform. Unfair pricing contravenes the competition law under Section 4(2) of the Act when indulged in by a dominant enterprise. Nonetheless, the issue of discounts in the goods category may also be examined as part of exclusive/preferential agreements under Section 3(4) of the Act on a case by case basis.

107. It is pertinent to mention that the study could not identify sources of cost savings that may fully explain the deep discounts. Discounts benefit consumers in the form of lower prices, and can help platforms create network. However, if the same is not a reflection of efficiency gains or cost savings and at the same time it creates distortionary effects on the supply side of the markets, the central question that arises is whether price competition of this form can be seen as competition on the merits.
108. The emphasis of consumer welfare standard is on efficiency-based competition on the merits. It is in this light that the discounting practices have to be seen. We recognise the role of introductory offers that are offered by a new entrant to overcome the incumbency advantage. For e-commerce platforms network externalities may need to be stimulated in the early stages of business development such that scale and demand efficiencies can be promoted. Thus, for getting consumers to adopt the technology and for producers to shift to the distribution channel, discounts act as an incentive on the consumer side of the market. In so much as the continuation of discounts beyond a certain period is on account of the efficiency gains of an online channel, the consumer welfare standard does not frown upon such discounts. It is, however, not clear that these discounts are efficiency-based competition on the merits; and whether or not they are diminishing the competitive efficacy of the sellers/service providers.
109. The competitive assessment of discounts will have to be a fact-intensive exercise done on a case-by-case basis, which was not within the terms of reference of this market study. Nonetheless, the analysis of discounts in the context of e-commerce will be embedded in the aforementioned framework.

Priorities and the Way Forward

110. On the basis of the market study findings, the enforcement and advocacy priorities for the Commission in the e-commerce sector in India are, *inter alia*, the following:
- i) Ensuring competition on the merits to harness efficiencies for consumers
 - ii) Promoting transparency to create incentive for competition and to reduce information asymmetry
 - iii) Fostering sustainable business relationships between all stakeholders

111. The insights gained from the study will inform antitrust enforcement in these markets. Given the economics of platform markets, where the winner takes all or most, eliminating anti-competitive behaviour that further tilts the scales or deters entry assumes utmost importance. Network effects coupled with even small actions by the platforms may exclude and marginalise rivals, and further strengthen these effects that may be difficult to dilute. Hence, any potentially anti-competitive unilateral conduct of platforms or platforms' vertical arrangements with sellers/service providers will receive enforcement attention.
112. Notwithstanding the above, bargaining power imbalance and information asymmetry between e-commerce marketplace platforms and their business users are at the core of many issues that have come up in the market study. Thus, without a formal determination of violation of competition law, the Commission is of the view that improving transparency over certain areas of the platforms' functioning can reduce information asymmetry and can have a positive influence on competition outcomes. The e-commerce marketplace platforms in goods, online travel agencies and food delivery platforms may devise means to govern certain aspects of their functioning and their commercial relations with the business users of the platforms. The platforms in each of these categories, may, put in place a framework for adequate transparency and define basic conditions for platform-to-business contracts. It is appropriate to clarify that the specific conditions inherent to each contract should be the prerogative of the parties involved.
113. On the basis of the study findings, the Commission is of the view that the marketplace platforms should adopt self-regulatory measures as indicated below:

Search ranking

- i) Set out in the platforms' terms and conditions a general description of the main search ranking parameters, drafted in plain and intelligible language and keep that description up to date.
- ii) Where the main parameters include the possibility to influence ranking against any direct or indirect remuneration paid by business users, set out a description of those possibilities and of the effects of such remuneration on ranking.

- iii) Introduction of the above-mentioned features, however, should not entail, disclosure of algorithms or any such information that may enable or facilitate manipulation of search results by third parties.

Collection, use and sharing of data

- i) Set out a clear and transparent policy on data that is collected on the platform, the use of such data by the platform and also the potential and actual sharing of such data with third parties or related entities.

User review and rating mechanism

- i) Adequate transparency over user review and rating mechanisms is necessary for ensuring information symmetry, which is a prerequisite for fair competition. Adequate transparency to be maintained in publishing and sharing user reviews and ratings with the business users. Reviews for only verified purchases to be published and mechanisms to be devised to prevent fraudulent reviews/ratings.³⁷

Revision in contract terms

- i) Notify the business users concerned of any proposed changes in terms and conditions. The proposed changes not to be implemented before the expiry of a notice period, which is reasonable and proportionate to the nature and extent of the envisaged changes and to their consequences for the business user concerned.

Discount policy

- i) Bring out clear and transparent policies on discounts, including *inter alia* the basis of discount rates funded by platforms for different products/suppliers and the implications of participation/non-participation in discount schemes.

³⁷ The Draft National E-commerce Policy, Department for Promotion of Industry and Internal Trade, Ministry of Commerce & Industry, Government of India, in Page 23, Para nos. 3.21 and 3.22, stipulates the requirement of authentic ratings and reviews
https://dipp.gov.in/sites/default/files/DraftNational_e-commerce_Policy_23February2019.pdf