COMPETITION COMMISSION OF INDIA

Case No. 14 of 2019

In re:

Federation of Hotel & Restaurant Associations of India (FHRAI) **Informant No. 1**
B-82, 8th Floor, Himalaya House,
23 Kasturba Gandhi Marg,
New Delhi - 110001

Casa2 Stays Pvt. Ltd. **Informant No. 2**
4th Floor, Rectangle No. 1,
Behind Saket Sheraton Hotel,
Commercial Complex D4,
New Delhi - 110017

And

MakeMyTrip India Pvt. Ltd. (MMT) **Opposite Party No. 1**
DLF Building No. 5, Tower B,
DLF Cyber City, DLF Phase-2,
Sector-25, Gurugram,
Haryana - 122002

Ibibo Group Private Limited (Ibibo) **Opposite Party No. 2**
5th Floor, Good Earth City Centre,
Sector-50, Gurugram,
Haryana - 122002

Oravel Stays Private Limited (OYO) **Opposite Party No. 3**
5th Floor, Spaze Palazo,
Sector-69, Gurugram,
Haryana -122001

With

Case No. 01 of 2020

In re:

Ruptub Solutions Pvt. Ltd. **Informant**
AMR Tech Park-I, 1st Floor,
IT Industry Nagarathpura,
Hosur Road, Bangalore - 560068

And

MakeMyTrip India Pvt. Ltd. (MMT) **Opposite Party No. 1**
B-36, 1st Floor, Pusa Road,
New Delhi - 110005

Also, at:

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

Oravel Stays Private Limited (OYO) **Opposite Party No. 2**
001, Ground Floor, Mauryansh Elanza,
Shyamal Cross Road,
Ahmedabad - 380015

Also, at:

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

CORAM

Mr. Ashok Kumar Gupta
Chairperson

Ms. Sangeeta Verma
Member

Mr. Bhagwant Singh Bishnoi
Member

For Federation of Hotel & Restaurant Association of India (FHRAI):	Ms. Rukhmini Bobde, Advocate Mr. Ishan Nagar, Advocate
For Ruptub Solutions Pvt. Ltd.:	Mr. Abir Roy, Advocate Mr. Vivek Pandey, Advocate
For Casa2 Stays Pvt. Ltd. (FabHotels):	Mr. Karan Singh Chandhiok, Advocate Mr. Tushar Chawla, Advocate Ms. Lagna Panda, Advocate Mr. Vishnu Suresh, Advocate Mr. Vaibhav Aggarwal, FabHotels
For MakeMyTrip India Pvt. Ltd. and GoIbibo (MMT-Go):	Mr. Ramji Srinivasan, Senior Advocate Ms. Megha Dugar, Advocate Mr. Shashank Gautam, External Counsel Ms. Sreemoyee Deb, Advocate Mr. Rajat Moudgil, Advocate Mr. Anand Sree, Advocate Mr. Hitesh Mehra, General Counsel (MMT-Go) Mr. Justin Coombs, Economist Dr. Kadambari Prasad, Economist Mr. Avinash Mehrotra, Director, Economist
For Oravel Stays Pvt. Ltd. (OYO):	Mr. Rajshekhar Rao, Senior Advocate Mr. Harman S Sandhu, Advocate Mr. Rohan Arora, Advocate Mr. Ravi Gangal, Advocate Mr. Rakesh Prusti, General Counsel (OYO) Ms. Urvashi Pathak, Assistant General Counsel (OYO)

Order under Section 27 of the Competition Act, 2002

Information

1. Case No. 14 of 2019 was filed under Section 19(1)(a) of the Competition Act, 2002 (hereinafter, the 'Act') by the Federation of Hotel & Restaurant Associations of India (hereinafter, 'FHRAI') against MakeMyTrip, Goibibo (hereinafter, collectively referred to as 'MMT-Go') and Oravel Stays Private Limited (hereinafter, OYO), alleging contravention of the provisions of Sections 3 and 4 of the Act. The Commission passed an order dated 28.10.2019 under Section 26(1) of the Act, directing the Director General (DG) to cause an investigation into the matter, against MMT-Go under Section 4 of the Act for alleged abuse of its dominant position and against OYO and MMT-Go under Section 3(4) of the Act for their alleged commercial arrangement to de-list competitors of OYO (*namely*, FabHotels and Treebo) from MMT-Go online portals.

2. Subsequently, Casa2 Stays Pvt. Ltd. (FabHotels) filed an application dated 23.01.2020, under Regulation 25 of the Competition Commission of India (General) Regulations, 2009 (hereinafter 'CCI General Regulations'), seeking its impleadment as a party in Case No. 14 of 2019. The Commission, on being satisfied that FabHotels has substantial interest in the outcome of proceedings and that it is necessary to allow it to present its opinion in the matter, decided to permit FabHotels to take part in further proceedings as an Informant, *vide* order dated 05.02.2020.

3. Thereafter, another Information, *namely,* Case No. 01 of 2020, was filed by Ruptub Solutions Pvt. Ltd. (Treebo) under Section 19(1)(a) of the Act, against MMT and OYO raising similar allegations under Sections 3 and 4 of the Act. The Commission, *vide* its order dated 24.02.2020, decided to club it with Case No. 14 of 2019 in terms of proviso to Section 26(1) of the Act, read with Regulation 27(1) of the CCI General Regulations and directed the DG to submit a consolidated investigation report.

Parties to the Matter

4. FHRAI is a representative body of the hospitality industry in India registered as a non-profit

company under the provisions of Section 8 of the Companies Act. FabHotels, a company incorporated in 2014, is engaged in the business of providing franchising services to budget hotels in India under the brand name of FabHotels. Treebo, another company incorporated in May 2015, is also engaged in the business of providing franchising services to budget hotels in India under the brand name of Treebo Hotels.

5. MMT (OP-1) is an Online Travel Agency (‘OTA’) engaged in the business of providing travel and tourism related services in India. It is a part of MakeMyTrip group of companies (MMT Group) under a public holding company MakeMyTrip Ltd. (MMTL), registered in Mauritius. The services offered by MMT include air ticketing, booking of hotels and holiday packages, bus ticketing, rail ticketing and car hire. MMT also provides certain ancillary services such as facilitating access to third party insurance and visa processing. Goibibo (OP-2) is also an OTA engaged in the business of providing travel and tourism related services in India. The Ibibo Group was founded in 2007 and provides online travel services in India through its consumer travel brands. On 31.01.2017, MMTL acquired 100% equity interest in Ibibo Group Holding. Thus, they are part of the same group since then. However, MMT continues to operate its hotels and packages business through MMT India under the brand name MakeMyTrip, and Ibibo India under the brand name Goibibo.

6. OYO (OP-3) was incorporated in 2012, as an unlisted private company. It facilitates and markets budget accommodation/hotels by co-branding with them, on its own platform and the platforms of other OTAs such as MMT-Go, under the brand name ‘OYO Rooms’.

Allegations, as stated in the Information

7. It was alleged that MMT-Go has imposed price parity in its agreement/contract with hotel partners whereby the hotel partners are not allowed to sell their rooms at any other OTA or on its own online portal at a price below which it is being offered on MMT-Go’s platform. However, MMT-Go in its own discretion can fluctuate the prices of such hotel rooms. Further, the hotel partners are mandated to observe room parity whereby they cannot refuse to provide rooms on MMT-Go platform at any given point of time if the rooms are being provided on any other OTA.

8. It was further alleged that MMT-Go has been indulging in predatory pricing by offering the hotel rooms at less than the "average room rate", which is the industry practice for calculating unit basis cost of rooms. Further, MMT-Go has been offering deep discounts to the customers which has further led to expansion of their network and retention of customers. Due to such conduct, the smaller players in the OTA market are being forced to exit. It has also been alleged that MMT-Go is competing on discounts, rather than prices, and thus, their market performance is not based on efficiency, but on deep-pockets.

9. Further, it has been alleged that chain hotels/ hotel aggregators, *namely* Treebo and FabHotels have been denied market access because of their removal from the platform of MMT-Go as they did not agree to pay the exorbitant commission brokerage charged by the latter. Further, it was alleged that MMT-Go and OYO have entered into confidential commercial agreements wherein MMT-Go has agreed to give preferential treatment to OYO on its platform, leading to a denial of market access to Treebo and FabHotels.

10. MMT-Go was also alleged to be charging excessive commissions from hotel partners, which turns out to be around 22% - 40% (from standalone hotels), which is stated to be grossly disproportionate to the commission charged by other OTAs.

11. Besides the aforesaid, there were some other miscellaneous allegations against MMT-Go *e.g.*, MMT-Go charges a service fee from the customers at the time of booking the rooms in the name of the hotels, which is pocketed by it and never passed on to hotels; and the hotel partners, who are once registered with the MMT-Go, have no option to exit the relationship. Even when a hotel makes a request to be removed from their platform/portal, the hotel, instead of being removed from the platform, is shown as "no rooms available" or "sold out", which severely affects the business of the hotels.

<u>Directions for DG's Investigation</u>

12. Based on the material available on record, the Commission, *prima facie*, delineated the relevant market with regard to OYO as the '*market for franchising services for budget hotels in India*' and found OYO to be holding a significant position in the said market, though not dominant. MMT-GO, on the other hand, was found to be dominant in the '*market for online*

intermediation services for booking of hotels in India'.

13. As regards the room and price parity imposition, the Commission observed that broadly defined Across Price Parity Arrangements (APPAs), where an OTA restricts a supplier from charging lower prices or providing better terms on their website, as well as through any other sales channel, including other OTAs, may result in removal of the incentive for platforms to compete on the commission they charge to hoteliers, may inflate the commissions and the final prices paid by consumers and may also prevent entry from new low cost platforms into the market. Though the magnitude of the anticompetitive effects of such agreements, *inter alia,* depend on the market power of the platform, the Commission observed that 'given the *prima facie* dominance of MMT-Go, such parity restriction needs to be investigated to gauge its impact under Section 3(4) as well as Section 4 of the Act'.

14. As regards the allegation regarding denial of market access, the Commission observed that because of the commercial agreement between OYO and MMT, MMT gave preferential treatment to OYO on its portal, whereby the hotels of OYO are given preference and those of FabHotels and Treebo (its closest competitors) were being delisted. The Commission opined that such an agreement between OYO and MMT to not list the closest competitors of OYO on its platform may foreclose an important channel of distribution and potentially contravene the provisions of Section 3(4) of the Act, given that MMT-Go was *prima facie* found to be a dominant player and OYO to be a significant player in their respective spheres.

15. The Commission, apart from the above findings, also ordered investigation in respect of some other allegations which include predatory pricing, misrepresentation due to delayed delisting despite termination of listing arrangement and manipulation of market dynamics and discriminatory charging of service fee by MMT-Go, respectively. The Commission having formed *prima facie* view ordered an investigation against MMT-Go for contravention of Section 4 as well as Section 3(4) of the Act. As regards OYO, investigation under Section 3(4) of the Act was ordered.

Interim Relief

16. While the matter was under investigation, FabHotels and Treebo filed separate applications dated 04.11.2020 and 23.11.2020, respectively, before the Commission seeking grant of interim relief under Section 33 of the Act. FabHotels and Treebo primarily prayed for an order from the Commission directing MMT-Go to relist their properties on all of MMT-Go portals.

17. The Commission, after hearing FabHotels, Treebo and MMT-Go, was satisfied that the conduct of MMT-Go in delisting and continuing to delist franchisee service providers, specifically FabHotels and Treebo as well as the budget hotels, which were availing some logistic support from them, has affected competition in the market by denying access to an important channel of distribution through foreclosure. Thus, under Section 33 of the Act, the Commission allowed interim relief *vide* its order dated 09.03.2021, whereby MMT-Go was directed to allow FabHotels and Treebo to be listed on its online portal.

18. Aggrieved by the aforesaid interim order, OYO filed a Special Civil Application (bearing No. 5085 of 2021) before the Hon'ble High Court of Gujarat under Article 226 of the Constitution of India, primarily alleging that the impugned order, without providing an opportunity of hearing to OYO, has interfered with the commercial contractual arrangement between OYO and MMT-Go by way of a mandatory injunction in the nature of a final order. On 14.06.2021, the Division Bench of the Hon'ble High Court of Gujarat set aside the Commission's order and remanded the matter back to CCI for fresh adjudication.

19. Pursuant to High Court's direction, the Commission called the parties for a hearing. However, on the date of such hearing, *i.e.*, on 13.07.2021, OYO submitted that without prejudice to any of its rights in the final proceedings, it has no objection with the relisting of FabHotels and Treebo on MMT-Go's portals. MMT-Go also consented to relist FabHotels and Treebo within a period of 3-4 weeks from the date of said hearing, in order to complete the formalities related to relisting. In view of the said submissions, the Commission, with the consent of the parties, decided to dispose of the interim relief applications filed by FabHotels and Treebo.

Observations and Findings of the DG

20. Pursuant to the directions given by the Commission *vide* orders passed under Section 26(1) of the Act, the DG carried out a detailed investigation and submitted confidential version of the joint Investigation Report on 02.07.2021. After dealing with confidentiality requests, non-confidential version was filed by the DG on 24.09.2021. The brief observations and findings of the DG are elucidated in the following paras.

21. The DG noted that the Commission had *prima facie* delineated the relevant market for MMT-Go to be 'market for online intermediation services for booking of hotels in India'. With regard to the relevant product market, the DG analysed that OTAs offer increased visibility and discoverability of hotels. OTAs enable the customers a rapid, targeted search for the desired services independently. Further, OTAs offer one stop solution, *i.e.*, "search, compare and booking" bundle of services to the customers without any monetary consideration. Also, the price of booking of a hotel on OTAs is significantly lower as compared to offline mode of booking because of significant additional discounts offered by OTAs by incurring very high consumer inducement costs such as cash back incentives, upfront cash incentives, loyalty program, *etc*. To examine the substitutability of online hotel booking channels with offline channels, the DG collected responses from 16 hotels and 5 hotel chains, out of which 76% were found to be not considering online hotel booking channels as substitute of offline channels. Further, as per the DG report, offline travel agents such as MSS, GDS, corporate booking, IRCTC, MICE and meta/search platforms such as Google, Tiktok, Facebook and Instagram do not form part of the OTA market. The DG also analysed the agreement between MMT-Go and Treebo [redacted]. Further, the DG considered the geographic area of India as the relevant geographic market in this matter. Based on the above, as regards MMT-Go, the DG defined the relevant market as '*market for online*

intermediation services for booking of hotels in India'.

22. As regards OYO, the DG examined the features of a "Franchise", as identified in the Black's law dictionary as well as by the European Commission, and observed that franchising agreement involves licensing of trademark. The DG reported that OYO enters into a Marketing and Consulting Agreement (MCA) with its hotel partners, which sets out the terms on which OYO and its hotel partners will operate such as hotels of OYO network have OYO branded toiletries, OYO carried out periodical training of the employees of its hotel partners and provide them with technology support, *etc*. Based on above, with regard to OYO, the DG defined the relevant market as '*Market for franchising services for budget hotels in India*'.

23. The DG thereafter assessed the position of dominance MMT-Go in the '*market for online intermediation services for booking of hotels in India*', based on the various factors listed under Section 19(4) of the Act. Based on the submission of Treebo, FabHotels, MMT-Go and other hotel chains, the DG observed that the OTAs offer distinct bundle of services, which other platforms do not provide. Consumers prefer to multi-home for two reasons, for better prices and better rooms. The price parity and room parity practised by all OTAs reduces the incentive to multi-home. Further, the discounts provided by MMT-Go attracts consumers. Huge customer base in terms of number of properties listed as well as number of bookings made through MMT-Go website and discounts offered by MMT-Go reduces the customer's incentive to multi-home.

24. Further, the DG examined the market shares of all the players in the relevant market based on total room nights booked through their portals, as per the information provided by OTAs. It was observed that MMT-Go's market share has increased from [redacted] in the year 2015-16 to [redacted] in the year 2017-18 and further to [redacted] in the year 2018-19. In the year 2019-20, its market share has declined slightly to [redacted]. Bookings.com which imposed competitive constraints on MMT-Go in the initial years became marginalised after 2016-17. Total market shares of other competitors *viz.* Expedia, Yatra and Cleartrip is below [redacted] during the period under scrutiny, Further, market shares of new entrants *viz.* Easemytrip and Paytm is below [redacted] during the period under scrutiny. Considering the market share, the DG

reported that MMT-Go is the dominant player in the relevant market and other competitors such as Yatra, Cleartrip, Easemytrip, Paytm, Expedia do not seem to impose any competitive constraints on MMT-Go.

25. Additionally, the DG analysed size and resources of the MMT-Go which shows that turnover of the MMT-Go has been increasing continuously over the years. It has increased from Rs. 3646 crores in the year 2016-17 to RS. 4729 crores in the year 2019-20. In terms of comparative size and resources, Booking.com and its subsidiary Agoda were found to be having larger turnover followed by MMT-Go but the turnover of MMT-Go was INR 3646 crore in 2016-17 which increased to INR 4596 crore in 2018-19.

26. Out of the 16 hotels and 5 hotel chains from where the DG collected responses, it was seen that most of the hotels placed reliance on the offline mode of booking. However, within the online mode, the hotels give preference to MMT-Go over other OTAs because of their wider reach and popularity, greater visibility, higher bookings and more traffic. With regard to the budget hotel chain segment, while certain chains focus on the offline channel, chains like [redacted] place much more reliance on the online channel for reasons such as large volume of business, large customer base and high conversion ratio. Moreover, out of 21 hotels and hotel chains, from where the DG collected responses, 16 (76%) have submitted that they prefer to list their hotels on MMT-Go's websites for the reasons that it has pan India presence, covers wider areas of local market, increases visibility of their properties and attract more business.

27. The DG reported that with the increase in the internet penetration and current pandemic situation, more and more people are likely to shift towards online mode of booking. Thus, the dependence of consumers, *i.e.*, hotels as well as travelers on OTAs is likely to increase in the coming years. Further, as per Treebo, its average online booking constituted almost [redacted] of its total bookings during 2016, which declined to [redacted] in 2017 and further to [redacted] in the year 2020. Additionally, bookings made through MMT-Go by FabHotels as a proportion of total online booking was [redacted] in the year 2016-17 and [redacted] in the year 2017-18. It indicated that reliance of FabHotels on MMT-Go increased during 2016-17 and 2017-18. In 2018-19, after the termination of contract with MMT-Go, the proportion of

bookings through MMT-Go declined substantially to [redacted] and became [redacted] in 2019-20.

28. The DG also reported that MMT-Go has more than 45,000 properties listed on its platform, due to which the customers also prefer MMT-Go over other OTAs. Further, MMT-Go offers several benefits and features, which coupled with its market position has resulted in network effects. Further, due to large number of visits by customers on the site of MMT-Go, more hotels choose MMT-Go as their preferred OTAs leading to network effect.

29. Further, the DG examined that MMT-Go and OYO entered into vertical commercial agreement and pursuant to the said agreement, the number of properties listed on OYO increased to [redacted] in 2019 from [redacted] in 2018. Vertical integration between MMT-Go and OYO on account of this commercial arrangement has resulted in increase in the number of consumers who book hotels on MMT -Go website and consequent influx of hotel owners to list their hotels on MMT-Go platform.

30. The DG also analysed about the ability of MMT to offer deep discounts, which creates distortion in the supply side of the market. New entrants or small competitors are unable to diminish the value of their services at the same level as MMT because of their lack of financial standing and limited initial user base. The statement of third party OTAs show that the key to the dominant position held by MMT was its ability to offer discounts to customers with which many OTA could not compete. Further, MMT's conduct lessened the competition in the market by restraining new competitors and harmed consumer welfare as well by virtue of limiting the choice of customers. MMT-Go possesses large inventory data along with high consumer outreach, which creates network effect and thus, provides it with competitive advantage. Thus, by virtue of vertical integration causing exclusion of key players and network effects, MMT -Go has been able to create entry barriers in the market.

31. As per the DG's report, after the merger of MMT with GoIbibo in 2017, the market share of MMT-Go has increased. Further, vertical integration between MMT-Go and OYO which led to exclusion of FabHotels and Treebo from the MMT-Go's platform reduced the bargaining power of chain hotels as well as independent hotels. This was evident from the numerous attempts made by FabHotels and Treebo to reinitiate their business with MMT-

Go. Therefore, the argument of MMT-Go that FabHotels and Treebo had bargaining power according to the DG was not substantiated in the current scenario. Rather failed attempts of FabHotels and Treebo to resurrect their businesses on MMT-Go strengthened the argument that MMT-Go has the countervailing buying power, according to the DG.

32. Based on the above-mentioned observations, the DG reported that MMT is a dominant player in the relevant market for "*online intermediation services of hotel bookings in India.*"

33. To examine the alleged abusive conduct of MMT-Go, the DG reviewed the impugned clauses of the [redacted] entered into between MMT-Go and FabHotels and Treebo. It was seen that Clause 2.3 of the [redacted] dated 21.09.2017 required FabHotels to [redacted]. Similarly, Clause 2.3 of the [redacted] dated 18.10.2017 required Treebo to [redacted]

34. Further, the DG examined the agreement between other OTAs and hotel partners and observed that rate parity clauses are imposed by all the OTAs in India and it is an industry practice. While Booking.com, Agoda, Expedia and Cleartrip have imposed room as well as rate parity, other OTAs such as Yatra, EaseMyTrip and Paytm have imposed only rate parity.

35. In order to assess impact of rate parity on hotel's businesses, the DG collected information from independent hotels/hotel chains. Out of 21 respondent hotels/hotel chains, seven hotels submitted that price parity affected their business adversely. The reasons cited by these hotels include adverse effect on offline rate, erosion of customer base, *etc.* It was also stated that rate parity reduces competition between OTAs. Further, it was observed that the

practices of OTAs of giving deep discounts after maintaining price parity affects direct bookings of hotels.

36. The DG also examined the cases related to price parity clauses in international jurisprudence and observed that wide price/rate parity has been found to be anti-competitive. However, in India, price and room parity clauses are implemented widely by all OTAs in hotel industry.

37. The DG observed that FabHotels entered into agreement with MMT-Go on 21.09.2017 however, MMT-Go has imposed room and price parity obligation before entering into the [redacted]. This is evident from the email evidences provided by FabHotels.

38. The DG also examined the evidence submitted by FabHotels and FHRAI which showed that MMT-Go was not only monitoring the price parity but also ensured that price parity is maintained. MMT-Go also threatened that the visibility of the property would be reduced if there is continuous disparity in rate and inventory with respect to competitors of MMT-Go. The DG also observed that though evidences indicate other OTAs indulgence in maintaining rate parity, however, due to the dominant position enjoyed by MMT-Go, anti-competitive impact of such clauses is exacerbated.

39. Such imposition by MMT-Go was found to be creating barriers to new entrants in the market, besides driving existing competitors out of the market. Competition between OTAs will reduce commission rate for hotels. Further, the DG observed that on one hand, MMT-Go demands price parity, on the other hand, they themselves sell rooms at lower prices and gain loyalty of hotel's original customers. In the long run, such conduct may lead to erosion of client base of hotels. Rate parity was also found to be having the impact of restricting choices available to customers. The DG noted that Paytm first launched the hotel booking services in 2016, but these services were then shut down and relaunched in April 2019. Also, HappyEasyGo entered the travel industry in 2017. Thus, the DG was of the view that after the merger of MMT with GoIbibo, which led to dominance of MMT-Go in the relevant market of online intermediations services of hotel booking in India, no new player has entered into the market. Further, imposition of rate parity and deep discounting practices of MMT-Go were observed to be affecting global players like Expedia and Booking.com, as

was evident from their declining market shares. Additionally, such practices were not found to be leading to any improvements in production or distribution of goods or provision of services; or promotion of technical, scientific and economic development by means of production or distribution of goods or provision of services. Considering the above, the DG found the rate parity and room parity clause to be in contravention of Section 4(2)(a)(i) read with Section 4(1) of the Act.

40. As regards predatory pricing, the DG noted that expenses incurred by MMT-Go in relation to the bookings mainly include payment gateway costs, call centre costs, personnel costs, brand and other platform level marketing costs and other fixed costs, losses incurred by MMT-Go for hotel dishonoured bookings, losses incurred for compensating unsatisfied consumers, *etc*. In addition to these expenses, MMT-Go also provides various types of discounts to the customers such as e-coupon, cash back on various cards used by consumers for booking hotels/ accommodations. The DG collected the financial data from MMT-Go including audited financials and trial balance for the FY 2015-16 to 2020-21 and reorganised it to arrive at average variable cost. Based on this, the DG found that the average room revenue is less than the average variable cost during the period under investigation *i.e.* during 2017-18 to 2019-20. During the said period, MMT-Go has incurred a net loss on per room night basis. Moreover, the DG noted that MMT-Go has been in business since the year 2000 and hence this practice cannot be termed as introductory or aiming at building the network. Further, the SEC filings (filed annually by a publicly-traded company about its financial performance and is required by U.S. Securities and Exchange Commission) made by MMT-Go show that the significant investments were made in the past years in customer acquisition programs, expansion of hotels and packages offerings *etc.*, which are part of its long-term strategy to increase the net revenue contribution of its hotels and packages business. Also, MMT-Go merger took place in the year 2017 after which the market share of MMT-Go increased substantially making MMT-Go a dominant player in the relevant market.

41. MMT-Go has submitted before the DG that its discounts (and final sell rates to customers) have no impact on the amount paid to the hotel as it solely depends on the Best Available

Rate (BAR) and the commission agreed and that the discounts given to the consumers are solely borne by MMT-Go. However, the DG noticed from the responses of the hotels that there is a negative effect of promotions in the form of discounts and cash backs on their business. The hotels have incurred losses in the form of loss of future revenue from their own online/offline business at those basic rates, and it also led to harm to their reputation. Further, though MMT-Go has stated that the Hotels had the option to exercise the 'Do Not Discount' (DND) option, some hotels specified the difficulty in exercising the DND option which required multiple efforts to effectuate.

42. The DG also noted that MMT-Go mentioned that they enter into a standard clickwrap agreement with all hotel partners, as per which a 'Sell Rate' is notified by Hotel to MMT-Go as the listing price of the Hotel room, including any applicable government taxes and Goods and Services Tax ('GST') unless otherwise stated, at which the customer would confirm the room through MMT-Go. However, the Agreement enables MMT-Go to offer certain promotions to the customers. Thus, the agreement gives MMT-Go the sole discretion to offer promotions in the form of discounted prices.

43. The DG also compared the discounts provided by MMT-Go with the global OTAs like Expedia and Booking.com and observed that the largest number of room nights on which more than 30% discount was provided during the relevant period were booked through MMT-Go. The DG, thus, concluded that MMT-Go has engaged in deep discounting and predatory pricing thereby contravening Section 4(2)(a)(ii) of the Act.

44. The DG next examined the commercial arrangement/agreement between MMT-Go and OYO, *vide* which MMT-Go delisted the hotels partners of FabHotels and Treebo from its platforms, to assess whether the same has led to denial of market access by way of refusal to deal under Section 3(4)(d) of the Act. FabHotels and Treebo submitted that the unfair and arbitrary termination of the Agreements resulted in sudden loss of the most significant revenue stream and access to a wide customer base. Further, Treebo submitted that MMT-Go refused to list any of the independent hotels which were live on Treebo's platform even under the Superhero program on MMT altogether.

45. Neither MMT-Go nor OYO refused the existence of the commercial arrangement before the DG. They rather sought to justify the said arrangement being a commercially negotiated arrangement. MMT-Go stated that OYO was an unavoidable trading partner as in terms of size and geographic spread, OYO's inventories were exponentially larger than that of FabHotels and Treebo (combined or otherwise) and due to the OYO agreement, MMT-Go was able to secure a larger selection of competitively priced inventory for its customers, thus, there were clear benefits that were accruing to the consumers from the said agreement. It was also submitted that the clause relating to the delisting obligation does not constitute an abuse of dominance by MMT-Go as it is on account of the restriction imposed by OYO on MMT-Go.

46. OYO also stated that in order to enable independent hotels to improve occupancies and earnings, it needed the widest distribution channels for providing greatest visibility to its hotel partners. From OYO's perspective, given the experience with MMT-Go, OYO wanted deeper relationships with its OTAs as the listing on additional OTAs required engagement of fulltime resources on both sides, as well as ongoing technical interface. Therefore, OYO wanted to have the commitment and longer-term stability from MMT-Go, as OYO was offering a large inventory of hotels for visibility on MMT-Go, which ultimately offered significant benefits to users/customers at large. OYO stated that MMT-Go publicly acknowledged that in light of a massive surge in budget hotels category igniting the growth in the hospitality sector, it saw the commercial arrangement with OYO as a means to help build synergies in the fragmented hotels segment and serve MMT-Go's customers by giving an even wider spread of quality hotels to choose from, while continuing to drive growth in online booking of hotels. In addition, OYO has submitted that MMT-Go is not a significant channel of booking for OYO as out of OYO's total revenue in FY2020, its revenue generated from bookings on MMT-Go was minimal.

47. The DG noted that MMT-Go and OYO entered numerous agreements, the first agreement was entered into on [redacted]. This agreement specified [redacted]

Fair Competition For Greater Good

[redacted] This agreement was valid for one year. Second agreement was signed on [redacted]. As per this agreement, [redacted].

48. Further, in October 2015, MMT and Ibibo de-listed hotel partners associated with OYO from their platforms citing quality related issues. OYO stated that nearly three years later, in 2018, that MMT-Go re-listed OYO's hotel partners on its portals through the [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

50. Thereafter also, certain amendments were introduced in the contractual arrangement between OYO and MMT-Go. However, the exclusivity that OYO enjoyed to the exclusion of FabHotels and Treebo seemed to exist.

51. Based on the submissions of FabHotels, the DG observed that though the number of properties live at the end of the month has increased even after the termination of the agreement, when MMT-Go terminated the [redacted] with FabHotels in March, 2018, the number of room nights booked through OTAs declined substantially. Further, there was a significant drop in revenue earnings after the termination of agreement by MMT-Go. As regards Treebo, the DG noted that the number of live Treebo properties have declined

pursuant to delisting by MMT-Go. Further, the gross booking value, value of booking from OTA declined marginally after delisting of Treebo from MMT-Go's platform. It recovered six months leading to Covid-19 outbreak. However, the gross booking value, OTA booking value as well as revenue had declined substantially after Covid-19 outbreak. In addition, it was observed that number of superhero properties live on MMT-Go has declined substantially after delisting of Treebo from MMT-Go's platform and became zero from April 2020 onwards.

52. The DG also noted that since the other OTAs did not pose much of a competitive constraint on MMT-Go, the ability of FabHotels and Treebo to list on other platforms would not sufficiently offer a competition to OYO which would be able to ensure the widest outreach and better visibility over these players by reason of the delisting clause.

53. Based on the analysis, the DG concluded that as a consequence of the delisting from the MMT-Go platform due to the OYO and MMT-Go agreement, FabHotels and Treebo were driven out of the business of franchising budget category hotels in India. Moreover, in order to effectively compete with OYO, its competitors needed to ensure that its hotels were able to be viewed by maximum customers and thus attract more hotels to partner with them. Subsequent to the delisting from MMT-Go platform, both FabHotels and Treebo were unable to ensure these services to the hotels and thus, no longer match the level of viewership ensured by OYO. Thus, the commercial arrangement/agreement between MMT-Go and OYO restricted the access to the MMT-Go portals, thereby preventing OYO's competitors FabHotels and Treebo from being able to effectively compete with OYO. Therefore, the said agreement resulted in a foreclosure of competition by hindering entry into the market.

54. From the consumers' perspective, the DG observed that the choice of inventory was narrowed down to the properties offered by OYO. In the absence of this agreement, FabHotels and Treebo would have been able to list their properties on MMT-Go and give a wider choice in terms of brands whose services they could choose to avail. Further, unbranded hotels managed by these Informants were also deprived of the opportunity to be viewed by a large selection of consumers. The availability of wider choice of branded and

unbranded hotels would be beneficial to the consumers. Thus, consumers were not able to draw much benefit from the OYO Agreement.

55. Further, MMT-Go's engagement with other players in the market would improve their ability to compete with OYO on a level playing field and the competition amongst these players in the market to gain more attention from consumers would have also resulted in improved service quality and better pricing.

56. Thus, the DG concluded that the agreement between MMT-Go and OYO resulted in an appreciable adverse effect on competition in terms of the factors provided under Section 19(3) of the Act. Hence, the DG concluded that the commercial agreement/arrangement between OYO and MMT-Go was in contravention of Section 3(4)(d) read with Sec 3(1) of the Act.

57. As regards misrepresentation of information, the DG observed that the hotels which are shown closed at the portals of MMT-Go have suffered due to the fact these hotels were actually active during this period and consumers were misled to believe that these hotels are closed. The DG opined that if any consumer makes any search for any properties on MMT-Go's platform and finds the same to 'sold out', there is a little possibility that such consumer will try to find the same property on other OTAs which can not only have adverse impact on the business of the concerned hotel but it will also restrict consumer's fair choice to choose hotels. Finally, the DG concluded that by showing such misleading information and creating information asymmetry in the market, the conduct of MMT-Go has the potential to deny market access to the concerned hotels.

58. Besides the aforesaid, the Informants had also alleged that MMT-Go is charging exorbitant commission, much higher than the industry average which was not found substantiated during investigation. Similarly, allegation related to hotel service fees was also not found to be contravention of the provisions of the Act by the DG.

Objections/Suggestions/Submissions of the Parties to the Investigation Report

59. The non-confidential version Investigation Report was forwarded to the parties *vide* order

dated 26.10.2021, with directions to file their respective suggestions/objections to the Investigation Report. Further, on a request made by OYO and MMT-Go, seeking access to the unredacted version of the Investigation Report and records, the Commission decided to set up a confidentiality ring *vide* order dated 15.12.2021, further modified *vide* order dated 04.01.2022.

60. Subsequently, on 10.03.2022, MMT-Go filed an application, identifying 10 witnesses who had deposed before the DG through statements and affidavits and sought cross-examination with respect to them. *Vide* order dated 16.03.2022, the Commission considered the cross-examination application filed by MMT-Go and decided to grant an opportunity of cross-examination to it, with regard to six witnesses whose depositions were recorded by the DG during investigation. The DG was accordingly directed to conduct cross-examination of the individuals/witnesses, as allowed by the Commission in the said order, and submit a report on the same within 45 days.

61. After seeking extension of time, the DG submitted the Cross-Examination Report on 10.06.2022 and 14.06.2022, in confidential and non-confidential version, respectively. This report was considered by the Commission on 22.06.2022. the Commission observed that the Cross-Examination Report submitted by the DG contains cross-examination of three individuals, out of the six allowed by the Commission. As regards remaining three individuals/witnesses, two individuals, *namely*, Ms. Ritu Mehrotra, Booking.com and Mr. Balu Ramachandran, Clear Trip Pvt. Ltd., could not be cross-examined at all, while one witness (*namely*, Nishant Pitti, Easy Trip Planner Ltd.) has been partially cross-examined. In the interest of expediency, however, the Commission decided to forward the non-confidential version of the Cross-Examination Report, containing cross-examination of three individuals to the parties. As regards the remaining three individuals who could not be cross-examined, *namely*, Nishant Pitti, Easy Trip Planner Ltd., Ms. Ritu Mehrotra, Booking.com and Mr. Balu Ramachandran, Clear Trip Pvt. Ltd., the Commission decided not to rely on their statements given before the DG during investigation. The parties were directed to file their suggestions/objections to the Investigation Report including the Cross-Examination Report, if any, latest by 22.07.2022 and exchange a copy thereof *inter se*, in

advance. The parties were also given liberty to file rejoinder to each other's objections/ suggestions, if any, latest by 01.08.2022 and provide a copy thereof in advance to the other parties. The hearing in the matter was scheduled on 17.08.2022 and 18.08.2022, which dates were later changed to 12.09.2022 and 13.09.2022, respectively. The parties were extensively heard on these dates. The submissions made by the parties during the proceedings, has been briefly reproduced in the ensuing paras.

MMT-Go

62. MMT-Go filed a common response to the Investigation Report, including the Cross-Examination Report, whereby they have raised certain preliminary issues along with their objections on the merits of the matter.

63. At the outset, MMT-Go has argued that the cross-examination conducted by the DG was incomplete and ineffectual in many respects. It is submitted that despite their express request to hold cross-examinations in physical modes, the DG decided to conduct the cross-examination through Virtual Conferencing ('VC') mode. This undermined the effectiveness of the cross-examination. Further, the unwillingness on part of the witnesses to cooperate in the cross-examination proceedings, as well as material procedural irregularities, also caused serious prejudice to MMT-Go. The witnesses were not allowed to be confronted with their own documents or previous submission and several important questions were disallowed by the DG without any reason. Despite repeated requests by MMT-Go, the demeanor of the witnesses was not recorded by the DG.

64. MMT-Go further submitted that out of six witnesses allowed by the Commission to be cross-examined, only one witness, *i.e.*, Mr. Ang Choo Pin (Expedia) was effectively cross examined. As regards the other witnesses, either they did not appear before the DG or their cross-examination was incomplete as they failed to provide the additional information and clarifications despite undertaking to respond to the outstanding questions. With regard to the queries posed to Mr. Vaibhav Aggarwal (FabHotels), it was stated that though FabHotels filed its response on 27.06.2022, and the confidential version of this response was only received by MMT-Go on 29.07.2022.

65. MMT-Go then submitted that though the Commission decided, *vide* its order dated 22.06.2022, not to rely on the statements of 3 out of the 6 witnesses who were allowed to be cross-examined but whose cross-examination could not take place, the Commission did not direct the DG to submit a fresh Investigation Report reviewing its findings in light of the order dated 22.06.2022. Further, it has also been submitted that the cross-examination report ought to have analysed the new material which has come on record instead of only annexing the cross-examination transcripts. Such review, as per MMT-Go, is necessary, in the absence of which the right of MMT-Go to have a fair investigation is severely prejudiced. Also, such review would have assisted the Commission in arriving at a fair and accurate decision.

66. MMT-Go have also alleged that FabHotels and Treebo approached the Commission for their own ulterior motives. As regards Treebo, it has been alleged that it is purely driven by commercial business interest and that the statements of its founder during cross-examination contradict the submissions made in the Treebo's Information and its subsequent filings. As regards FabHotels, it has been alleged that though its entire claim is based on the huge losses it has suffered in terms of growth post the delisting from MMT-Go platforms, response filed by it pursuant to the questions asked during the cross examination reveal that its revenue from operations doubled in FY 2019-2020 from the FY 2018-2019.

67. MMT-Go also argued that the Investigation is devoid of any useful economic analysis and several concepts have been wrongly applied. MMT-Go has annexed an expert economist report prepared by Mr. Justin Coombs of Compass Lexecon (hereinafter, 'MMT-Go Economist Report') which as per MMT-Go captures the economic realities and competitive conditions in a better manner.

68. Besides the aforesaid preliminary objections, MMT-Go has also challenged the DG's delineation of relevant market, assessment of dominance and findings on conduct.

69. As regards the relevant market, MMT-Go has criticised the DG's conclusion stating that the said conclusion is based on (i) an erroneous analysis of "substitutability" between the

online and offline hotel booking channels; and (ii) an incorrect assumption that OTAs offer a unique service *i.e.*, the "search, compare, book" ("SCB") functionality.

70. The DG's "substitutability" analysis has been termed erroneous on the ground that it relies on a survey of twenty-one (21) hotels *i.e.*, sixteen (16) standalone and five (5) chain hotels, and incorrect understanding of the statements made by OYO and other OTAs. This is stated to be an insignificant sample size out of the vast universe of hotels in India which is not geographically representative. Further, it is stated that the survey results are biased as all the chain hotel respondents who were surveyed by the DG were proposed by Treebo and some of the hotels, especially the respondents who have raised issues against MMT-Go business practices, were members of FHRAI. Therefore, there is a high likelihood of strategic bias in the responses provided by these respondents/hotels which were cherry-picked by the DG.

71. In the MMT-Go Economist Report, which has been relied upon by MMT-Go, a survey carried out by Kadence, a market research agency, has been annexed. MMT-Go has submitted that the Kadence Survey is based on information from a more statistically representative sample of hotels comprising five hundred and twenty-four (524) hotels located across fifty (50) cities. The SCB functionality test, relied upon by the DG, is erroneous as it is based on old decisions by competition law authorities in foreign jurisdictions. It is submitted that the DG has not undertaken any consumer facing survey in support of the proposed relevant market and the DG has only undertaken a hotel survey in an unscientific manner, which has not been analysed correctly. The statements of OYO and OTA's have also been quoted out of context, without due verification.

72. Further, MMT-Go has stated that the DG has not properly analysed the responses of these respondent/hotels. Out of 21 hotels, only 18 were responsive on the question of substitutability and out of those 18 hotels, only 4 conclusively said that they would not shift in the event of a five per cent (5%) rise in commissions which constitute merely twenty-two percent (22%). The DG however, considered the inconclusive or qualified responses of the parties also and reached a conclusion that 76% of the respondent hotels stated that they will not shift to offline mode even if the OTAs increase their commission by 5%.

73. MMT-Go has further argued that the framing of question by the DG to assess substitutability of OTAs with offline channels of distribution has been done erroneously to assume that OTAs is the only form of online distribution. It is submitted that a particular room can be offered by a hotel/accommodation and booked by a consumer through one or more online and offline distribution channels. DG has either failed to understand, or intentionally ignored that online distribution channels comprises various other distribution channels such as 'online direct' (where a booking is made online on a hotel's website) as well as bookings made through other online intermediaries such as hotel aggregators, marketplaces offering accommodation services, social media sites and super apps and bookings made through social media.

74. Further, to counter DG's conclusion on the complementarity of online and offline modes, MMT-Go submitted that the multi-channel distribution strategy adopted by hotel partners shows *inter se* competition between distribution channels and not complementarity and it is being utilized by hotels to maximize revenue, in light of the daily perishable nature of the end product *i.e.*, room night. Depending on various price and non-price factors, hotels may completely switch or partially skew their allocation or distribution in favour of one or more channels. Notably, booking a hotel room on one channel leads to a reduction of inventory across all channels. Therefore, the distribution channels cannot be said to be 'complementary', merely because a hotel is using various booking distribution channels at the same time. On the other hand, the mere fact that a hotels' preference for a particular channel is at the cost of another, demonstrates that the different distribution channels compete with each other.

75. MMT-Go further criticised DG's approach of not conducting a market survey to assess consumer preference which is relevant considering the two-sided nature of the markets, as in the present case. While the DG has attempted to conduct a survey *vis-à-vis* hotels on this issue, it has made no such attempt in relation to consumers in India. Consequently, there is no SNNIP analysis, or even secondary market data (by way of market reports) to assess whether consumers switch between offline and online channels while booking their hotels in India. This, as per MMT-Go, was imperative as an OTA platform does not operate in

isolation, catering exclusively to either the hotel side of the platform, or the customer side of the platform. It operates as an intermediary "matching" or "facilitating" transactions between two different user groups with interdependent demand.

76. MMT-Go has further criticised DG's reliance on German Bundeskartellamt's HRS decision, and the Priceline/Momonda case while distinguishing OTAs from other online distribution channels such as Google, meta search service providers *etc*. stating that market analysis contained in EU's regulatory decisions cannot be supplanted into the Indian context due to differences in market structure and realities. It is submitted that 92% of hotels in India fall within the unorganised segment of the overall market for hotels rooms and the unorganised sector generates only 11% of its bookings through online channels. This shows that, unlike matured markets such as EU and USA, the supply side conditions in the Indian hospitality sector are not mature enough to support a distinct online market for booking of hotels in India. Placing reliance on Google-Bain Report (published in April 2019), MMT-Go has submitted that the bookings are predominantly made through offline channels in India. The said Report shows that in terms of consumer spends, only 26% of the hotel bookings were made online (which apart from the OTAs include the bookings made directly through the portals of the hotels/accommodations, websites, super apps, payment apps *etc.*), as of 2018. Further, it is submitted that in terms of consumer spends, walk-ins and phone booking (directly with the hotels) accounted for a total of fifty-one percent (51%) of the hotel bookings; while the remaining twenty-three percent (23%), in terms of consumer spends, were made through offline travel agents and unorganised intermediaries. To further substantiate its claim, MMT-Go has relied upon Kadence Survey which forms the basis of MMT-Go Economist Report annexed with MMT-Go's response, which indicates a sizeable share of walk-ins (*i.e.*, 28%) in India, as Indian consumers are more likely to: (i) inspect the property in person; and (ii) plan last-minute trips. This can be directly compared to Europe where only 3.7% of hotel overnight bookings in 2019 were through the walk-in channel.

77. MMT-Go has also made other claims like comparatively low internet penetration in India and Indian consumers being more price-sensitive. While European consumers are stated to be far less price-sensitive with respect to leisure travel, Indian consumers are stated to make

their bookings through the cheapest available channel. This is done to counter DG's reliance on European case laws for delineating relevant product market.

78. MMT-Go has further stated that DG's conclusion on relevant market is based on the incorrect interpretation of the statements given by certain individuals, which have since been excluded from the record, *vide* order of the Commission dated 22.06.2022.

79. In view of the above, it is stated that DG's analysis on the issue of relevant market is fraught with inconsistencies and evidences a clear bias towards rejecting the substitutability between OTAs and other online and offline booking channels and is, therefore, liable to be set aside. In addition to the above, MMT-Go has also placed on record its Economist Report to present the economic rebuttals to DG's analysis of the Investigation Report.

80. The MMT-Go Economist Report, *inter-alia*, relies on the publicly available information; surveys performed by Kadence International commissioned by Compass Lexecon ("Kadence Hotel Survey" and "Kadence Consumer Survey", together referred to as the "Kadence Survey") as well as a market report prepared by Mordor Intelligence commissioned by the economist firm which also prepared the MMT-Go Expert Economists Report *i.e.* Compass Lexecon ("Mordor Intelligence Report"). The Kadence survey was performed on the basis of face-to-face interviews with consumers and hotels; whereby 2002 adults who had made an online hotel or travel package booking in the last four years, covering a range of age and income groups and 524 hotels which sell hotel rooms through OTAs, covering both independent and chain hotels, and budget, mid-range and luxury hotels, were surveyed. The survey included questions on how hotels decide to apportion their inventory across the various distribution channels, and how those consumers who have booked using OTAs use the alternate distribution channels. The main contentions/assertions made in the report are captured briefly in the following paras. Hotel rooms can be distributed *via* a number of channels, including (i) directly by hotels (*via* their websites, phone calls, walk-ins, corporate tie-ups, and social media), and (ii) indirectly *via* intermediaries (for example online travel agents, offline travel agents, and informal mediums). Some of these channels operate online (such as hotel websites, social media and online travel agents) while others operate offline (such as phone calls, walk-ins and offline travel agents). It is stated

that the primary distribution channel of hotel rooms in India are offline channels, which account for approximately 74% of the spends on hotel room bookings. The online segment of the hotel industry is in its nascency and undergoing rapid changes. In particular, it is growing rapidly and is witness to a change in business models and the development of franchise chains.

81. As regards the relevant market, the MMT-Go Economist Report argues that the relevant market defined by the DG is too narrow. When defined correctly, the relevant product market is not wider than the overall hotel booking market and not narrower than online hotel booking market. Consumers substitute between OTAs and other channels, and hotels also substitute between OTAs and other channels.

82. MMT-Go operates a platform which provides two distinct sets of services to two distinct sets of users: consumers and hotels. The DG has ignored the demand-side substitutability of the consumer side of the market in its assessment of the relevant product market, which ought to have been taken into consideration given the two-sided nature of the market.

83. Typically, two-sided platforms will make pricing decisions in a way that increases the volume of transactions on their platform and attract more and more hotels and consumers. In addition, when two-sided markets are nascent, the pricing policy is typically also designed to induce potential users to adopt the platform. This could imply that prices are lower in the early stages, and only increase to their long run equilibrium when sufficient users have adopted the platform. Given that prices on the two-sides of the platform are linked, any market definition exercise should account for both sides of the market. Further, though the SSNIP question remains the same, the assessment of profitability changes for two-sided platform markets. If sufficient hotels move away a sufficient part of their inventory to other channels in response to a SSNIP, this also has an impact on the consumers' incentives to adopt the platform. If the consumers find that the inventory of the OTA platform is insufficient for their liking, they may choose to use alternative channels. In addition, when hotels pay the higher commissions, they may choose to pass-on some of these increased commissions to consumers. The increase in consumer prices and the decrease in choice may, in turn, reduce the rate at which consumers make use of or book

through OTAs. This could result in a vicious cycle where, as a result of the increase in commissions, some consumers may reduce their use of the platform, which further reduces the hotels' incentives to keep inventory on the OTAs, which makes the platform even less attractive to consumers, and so on. Therefore, the loss to the hypothetical monopolist from an increase in commissions can be much greater than it would be in a one-sided market, and a SSNIP that was profitable in a one-sided market may not be profitable in a two-sided market. Therefore, it is important to account for both sides of the market, including consumers, while defining the relevant market in the present case.

84. Thus, the MMT-Go Economist Report argues that the relevant market is wider than that defined by the DG, while also submitting that it is not necessary to conclude on a precise delineation of the market because MMT-Go's market position is not indicative of dominance under either of the market definitions proposed in the said Report.

85. The MMT-Go Economist Report primarily relies on *four* grounds to suggest this wider market.

    a. *Firstly*, the evidence suggests that consumers that book on OTAs substitute sufficiently between OTAs and other distribution channels. There is evidence that consumers multi-home across several channels. Applying different parameters to the data collected through the Kadence Survey, the Report argues that 55% of consumers had used more than one channel to book hotel rooms over the past four years, including OTAs, walking in, and calling the hotel directly. Further, 89% of consumers were found to have considered more than one channel to search for the right hotel over the past four years. This included searching for hotels *via* price comparison websites (which was used by 47% of consumers), calling the hotel directly (which was used by 47% of consumers) and visiting hotels' websites (which was used by 45% of consumers). Further, the Kadence Survey found that when a booking that was ultimately made on the OTA, 74% of consumers checked at least one more channel before making that booking, while 47% checked more than one channel before making the booking. This includes price comparison websites (which were considered by 42% of OTA consumers), calling the hotel directly (which was considered by 38% of OTA consumers) and booking on the hotel's website (which was considered by 33% of OTA consumers). Thus, MMT-Go criticised DG's claims that consumers have limited incentives to substitute across channels because of room and price parity arrangements. The variation in effective prices of rooms across distribution channels because of *ad hoc* discounts in the form of special bank rates and credits to the mobile wallet as well as differences in services offered (for example free breakfast) incentivise the consumers to look for a better deal by considering a range of channels before making their booking. Further, even at the same price, consumers may choose to substitute depending on other factors like convenience, for example with a travel agent they have an existing relationship with. This is also consistent with the evidence from the Kadence survey where 44% of consumers considered ease or convenience of use and 40% considered convenient payment options as one of the top three factors when deciding a distribution channel. Lastly, it is claimed that consumers face little to no costs when switching between distribution channels, especially online channels. Lastly, the MMT-Go Economists report also found flaw with the DG's reliance on SCB functionality test stating that online direct channels can offer seamless SCB functionality *via* search engines/metasearch engines; and also, that online direct channels of franchise chains like FabHotels and Treebo already allow consumers to search and compare a range of hotels, much like OTAs.

b. *Secondly*, the evidence suggests that hotels that sell their rooms *via* OTAs substitute sufficiently between OTAs and other distribution channels, such that if there was a small but significant increase in the commission charged by the OTA, a sufficient number of them would move their inventory to alternative distribution channels. It is stated that there is evidence that hotels that sell their rooms *via* OTAs multi-home across several channels. The Kadence survey found that 100% of hotels that sell their rooms *via* OTAs use another channel to distribute their rooms. This included booking directly *via* a phone call (which was offered by 92% of hotels), booking *via* corporate tie-ups (which was offered by 62% of hotels) and booking directly *via* their website (which was offered by 60% of hotels). To check whether hotels genuinely consider these channels as substitutable in their ordinary course of business, the Report assessed whether the consumers substitute away from OTAs during changes in demand. These include periods of peak holiday seasons, peak days like weekends and event days, for example conferences, sporting events or weddings. During periods of high demand, a hotel will likely find it easier to sell room nights directly and may make less use of intermediaries (whether they be online or offline). This substitution allows it to distribute its rooms but at the same time save on the commission it would need to pay to the intermediaries. Further, the inventory and booking data of MMT-Go for a sample of cities, days and events, show that there are discernible patterns that suggest that hotels substitute away from OTAs over peak seasons, peak days and event days. As per MMT-Go, all this suggests that the hotels consider various channels as substitutes in their ordinary course of business.

c. *Thirdly*, it is argued that the European precedents the DG relies on do not apply in this case because the Indian market is fundamentally different from the European market. There is much higher substitution between online and offline channels in India. Further, the Indian consumers have very different preferences to European consumers. Indian consumers tend to be more price sensitive, and prefer 'walk in' to book hotels only after they inspect the property, suggesting that they would be more likely to substitute between the channels. Further, the online market is not as well developed in India as it is in Europe.

d. *Fourthly*, the survey results the DG relies on are fraught with errors. The survey question does not make sense for hotels that use non-OTA online distribution channels (such as their own website). These hotels would certainly not remove booking functionality from their own website in response to an increase in commissions on an OTA, and this is clear from some of the qualitative responses. Further, the DG's question does not account for scenarios in which hotel's may reduce their allocation in response to a SSNIP. It only asks whether hotels would completely delist from a distribution channel in response to a SSNIP, which is unlikely in a market where hotels multi-home. Lastly, the sample includes only 21 hotels, which is too small a sample from which to draw any meaningful conclusions (in comparison the Kadence survey covered 524 hotels).

86. MMT-Go has agreed with the DG's delineation of the relevant geographic market, *i.e.* the whole of India.

87. On dominance, MMT-Go has argued that it cannot be considered dominant in the online hotel booking market for the following reasons:
    a. the market position of MMT-Go and its competitors does not indicate dominance;
    b. barriers to entry are limited and there is potential for competition from other players; and
    c. hotels exercise significant countervailing buyer power.

88. With regard to dominance, MMT-Go stated that the DG's 'Theory of Gatekeeper', as mentioned in the Investigation Report, is devoid of any legal basis. The "digital gatekeeper" construct does not have any legal basis in India or in other jurisdictions. Even in the EU, the Digital Markets Act ("DMA") would only be applied on an *ex-ante* basis from April 2023 onwards.

89. There is no evidence to suggest lack of multi-homing as concluded by the DG. The Kadence Survey indicates that there is prevalence of multi-homing in the market. The economic evidence also indicates that consumers begin their search for a hotel room on a search engine (such as Google), or a price comparison website such as TripAdvisor. MMT-Go's own look to book ratio is only 10% *i.e.*, only 1 out of 10 visits on the MMT-Go platform results in an actual booking.

90. The DG's market share estimates are incorrect: *Firstly*, Booking.com's room nights for FY 2018-19 are shown to have declined considerably, whereas the turnover records a 15 % increase. *Secondly*, the DG has not included room nights sold through OYO, FabHotels and Treebo, although they also operate in the online hotel booking market and act as intermediaries for their franchised hotels. *Thirdly*, the DG does not include GoIbibo's room nights sold for the FY 2016-17 in the overall market, which leads to the [redacted]

[redacted]

91. [redacted]

92. It was further stated that MMT-Go's competitors (even in OTA segment) exceed MMT-Go in terms of size, importance and resources. DG Report itself notes that Booking.com-Agoda and Expedia's turnovers are much bigger than MMT-Go's turnover which goes against the DG's finding about MMT-Go's dominance. It was further stated that the DG record also reveals that Booking.com International (based out of Netherlands) and Expedia Inc. (based out of United States of America) directly provide online travel agent services in India. Their Indian subsidiaries merely provide "support services" and do not provide OTA services in

India. Therefore, Booking.com International and Expedia Inc., which are much larger than MMT-Go in terms of revenues, financial strength, and workforce, are MMT-Go's competitors in the narrow OTA segment for the purposes of Section 19(4)(c) of the Act.

93. It was further stated that there is no consumer dependence on the MMT-Go platform as neither hotels nor consumers are dependent on MMT-Go. There are sufficient alternatives in the market; consumers can easily shift between the alternatives in the market; OTA is merely one of the several channels for distribution/booking of hotels/accommodation; and economic performance of Treebo and FabHotels post-delisting demonstrates that they were not dependent on the MMT-Go platform. Moreover, OYO registered exponential growth, which is completely independent of the MMT-Go platform. The DG has put leading questions to the hotel respondents to conclude consumer dependence, which is impermissible under law.

94. MMT-Go further stated that contrary to what the DG has recorded, OYO and MMT-Go are not vertically integrated. Contractual links between independent enterprises, not having an "unity of interest" in the market cannot constitute "vertical integration" in terms of the Act. The listing agreement does not confer MMT-Go with control over the allocation of OYO's inventory, price of such inventory, or the discounts provided on such inventory. Moreover, OYO itself is listed on multiple channels, including on multiple OTAs.

95. MMT-Go also criticised the DG's entry barrier analysis stating that the DG's finding ignores the entry of new players, and the exponential growth of existing players in the OTA market. Recently, even e-commerce platforms such as Amazon and Flipkart (through acquisition of Cleartrip) have entered the OTA market. Publicly available information also indicates that Google plans to enter the OTA market and compete directly with OTAs.

96. It was further contended that chain and independent hotels exercise countervailing buyer power. It was submitted that the DG incorrectly considered MMT-Go as a "buyer" for the "countervailing buyer power" analysis. Hotels are not "dependent" on MMT-Go to generate hotel bookings. The Kadence Survey, which targeted only hotels that use OTAs, indicated that only 33% of their bookings were made through OTAs, out of which MMT-Go's share

is even lower. FabHotels, Treebo and OYO are well funded and exercise strong countervailing buying power.

97. As regards the Parity Obligations, MMT-Go submitted that these are a standard industry practice in the OTA market and since such commercial clauses are commonly used by all market participants, it would not contravene Section 4(2)(a)(i) of the Act, in terms of the Hon'ble Delhi High Court's decision in *Saurabh Tripathi v. Great Eastern Energy Corporation Ltd*. It was stated that none of the respondents of the DG's hotel survey claimed that MMT-Go has "imposed" the parity obligation. In fact, even the Informants never objected or indicated any concern with the parity obligation with MMT-Go at the time of entering into the agreement in 2017. The allegation that MMT-Go had imposed the parity obligations were made for the first time before the Commission as an afterthought only in 2020. The DG's investigation also reveals that hotels themselves insist on parity clauses. Hence, it cannot amount to an unfair "imposition" by MMT-Go. MMT-Go argued that the DG exclusively relied on foreign jurisprudence to hold that wide parity clauses are anti-competitive in India which is legally unsustainable.

98. Further, the DG's conclusion of implementation of the parity obligation is stated to be unsupported by evidence on record. It is stated that due to the dynamic pricing strategy employed by hotels, it is virtually impossible to monitor or enforce the parity obligations. The DG was unable to find any evidence of "monitoring" or "enforcement" of the parity obligations and instead relies on two instances (that too provided by FabHotels) where [redacted] A single instance of MMT-Go requesting the hotel partner to rectify rate disparity cannot be construed as evidence of any systemic monitoring, enforcement, or imposition of the parity obligation by it. MMT-

Go has never imposed or enforced the parity obligations by way of levy of any monetary penalty on the hotel partners, termination of the listing agreement, or suspension of the hotels/accommodation from its platform.

99. Further, the DG's finding that parity obligations resulted in entry barriers is unsubstantiated. MMT-Go further submitted that parity obligations are necessary and objectively justified given market conditions in India. Parity obligations are necessary in India due to the price sensitivity of the Indian consumer and to prevent freeriding since unlike in a mature market, in a nascent market such as India. Also, MMT-Go had to undertake significant promotional and marketing expenses to encourage consumers to book online. Lastly, it was argued that regulatory intervention aimed only at MMT-Go would not address the competition concerns in the market.

100. As regards the finding of the DG on predatory pricing, MMT-Go has submitted that certain cost items which the DG treats as variable are considered as fixed in nature by MMT-Go, either because they are not incurred at the transaction level or are investments made by the company to acquire customers. These include, for example, expenses for customer loyalty program, and other platform marketing and administrative expenses. Further, there are certain cost items under 'other direct cost' which should not be apportioned between the hotels and packages businesses but the DG has apportioned it. For example, certain 'advertising and business promotion expenses' accrue entirely to the hotel business, while certain 'direct costs' accrue only to the packages business. MMT-Go *vide* submission dated 29.07.2022 have objected to the DG's calculation of average variable cost and has stated that DG's treatment of cost is not appropriate and has submitted updated calculations through its own estimation of cost by reclassifying certain costs as variable that has been taken as fixed by DG with assumptions and explanations based on financial statements, and trial balances submitted to the DG by MMT-Go. Basis this, MMT-Go has submitted that the its contribution margins were positive from FY2018 to FY2020.

101. MMT has objected the DG's cost treatment, and has summarised the DG's treatment and MMT-Go's view of cost heads as follows:

Table B-1: DG's and MMT-Go's view of its own cost items

[redacted]	[redacted]	[redacted]
[redacted]		
[redacted]	[redacted]	[redacted]
[redacted]		[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
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[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]

[redacted]

[*Source: MMT reply dated 29.07.2022: Response to Investigation Report of DG*]

102. As regards the exclusivity clauses, MMT-Go submitted that the [redacted].

103. MMT-Go further submitted that [redacted]

[redacted] MMT-Go also relied upon the European Court of Justice's decision in *Intel Corp Inc. v. European Commission*, wherein it was held that exclusive arrangements are considered abusive only if forecloses equally efficient competitors and does not have an objective justification. MMT-Go also tried to justify the exclusivity clauses stating that they are required to incentivise MMT-Go to undertake additional promotional activities on behalf of the chain hotels, and to increase efficiencies.

104. As regards the denial of market access allegation, MMT-Go submitted that under competition law, a duty to deal (even in case of dominant enterprises) can only be imposed in exceptional circumstances because freedom of contract (including freedom to choose business partners) is fundamental. The exceptional circumstances are: (i) the refusal relates to a product or service that is objectively necessary to be able to compete effectively in the downstream market; (ii) the refusal is likely to lead to the elimination of effective competition in the downstream market; and (iii) the refusal is likely to lead to consumer harm. It was argued that these circumstances do not exist in the present case. MMT-Go does not provide any unique facility that is not provided by alternate hotel booking channels. Apart from direct online channels, such as their own websites, apps *etc.*, hotels/chains distribute their inventories through several third-party distribution channels, *namely*, OTAs, Metasearch (Trivago Tripadvisor etc.), general search engine (Google), and super apps such as Just Dial, Sulekha, *etc*. Even in the OTA segment itself, MMT-Go's platform is just one amongst the 20 odd OTAs operating in the market. The refusal has not resulted in any elimination of competition as the delisting of FabHotels and Treebo did not lead to any adverse long-term effect on their market performance. Rather, any effect on the market performance was temporary. MMT-Go also sought to objectively justify the delisting stating that MMT-Go had no incentive to delist FabHotels and Treebo from its platform. Such delisting was pursuant to a condition imposed by OYO and since OYO was an indispensable partner, it was commercially expedient for MMT-Go to forge a commercial relationship with OYO.

105. It was further submitted that though the exclusivity clause and the delisting obligation under

the OYO Agreement was examined by the DG under Section 3(4) of the Act, the DG has viewed the exclusivity as a *per se* violation, which is inconsistent with the statutory framework.

106. It is submitted that there are [redacted] Further, no entry barriers were created in the upstream franchising market as the delisting obligation only applies to [redacted] MMT-Go also claimed that the Agreement had net consumer benefit as, absent the OYO Agreement, OYO's inventory would be absent from MMT-Go's platform. The customer traction received by MMT-Go platform because of the OYO inventory, ultimately lent better visibility to the independent hotels listed on the MMT-Go platforms. The delisting event also resulted in FabHotels and Treebo developing its own distribution channel.

107. Besides the aforesaid, MMT-Go, in its post-hearing submission, also submitted brief responses to some of the queries raised by the Commission during the hearing. Responding to the Commission's query on non-substitutability of online and offline mode of booking at the level of end-consumers, MMT-Go- stated that it operates as a platform which provides two distinct services to two distinct sets of users and the DG failed to conduct a survey to understand the extent of demand-side substitutability on the consumer-side of the platform. As regards Commission's observation on alleged dependence of budget hotels on OTAs, MMT-Go submitted that market reports suggest that 92% of the hotels in India fall within the unorganised segment of the overall market for hotels rooms, and this unorganised sector generates only 11% of its bookings through online channels. Thus, the market of hotel booking in India is predominantly offline, particularly budge hotels and they do not depend upon OTAs for visibility or survival. It was further stated that the lesser known or budget hotels can easily avail services of price comparison websites, meta search engines *etc.* for expanding their reach. Further, they can set up their own websites with the option of

booking, which entails a cost as low as INR 1500.

108. As regards Commission's query on discounts, MMT-Go submitted that discounts on hotel booking is not a unique feature on MMT-Go portal. All OTAs, Franchise Chains, Hotels were and continue to offer discounts on hotel bookings. In fact, hotels prefer to offer more discounts on their direct channels as they do not have to pay any commissions for such bookings.

109. MMT-Go also stated that the hotel partners can exercise the Do Not Discount ("DND") option if they do not wish MMT-Go to offer discounts and MMT-Go implement the DND requests on the same or next day.

110. As regards, Commission's query on misrepresentation (Hotels being shown sold out may be an issue if it happens for a long period of time), MMT-Go stated that till date more than 2000 hotels have delisted themselves from the MMT-Go platforms and only two hotel chains have raised this issue. This demonstrates that MMT-Go promptly delists properties when requested and does not display 'sold out' for prolonged period. It was also stated that MMT-Go has no incentive to indulge into any such practice since if a property is shown to be unavailable on the MMT-Go platforms on a given date; but is available for booking on a competing distribution channel, it would adversely affect the customers' perception of the selection of properties available on the MMT-Go platforms. It was further stated that the issue was faced on GoIbibo only due to a technical difficulty arising out of the manual Search Engine Optimization ("SEO") process followed by GoIbibo till December 2020. Since MMT and GoIbibo are under the same management, had there been an intent to misrepresent, the same information would have been displayed on MMT portals as well.

111. Lastly, MMT-Go argued that in case the Commission returns a finding of contravention against it, its submissions on penalty may also be considered. MMT-Go submitted that its relevant turnover for the purposes of the present case would be the commission charged by Go- MMT for rendering online hotel booking services to hotels during the period 2017 to 2020. Additionally, MMT-Go urged that the Commission should give due regard to the mitigating circumstances which exists in favor of MMT-Go while calculating penalty. Even

before the Commission has rendered its decision, MMT-Go has already voluntarily addressed the allegations: (a) parity obligation has not been imposed and no coercive action has been ever undertaken; (b) FabHotels and Treebo Hotels are already listed and they can continue to list after entering into new agreements; (c) 'Sold Out' issue arose because of technical issue and same has been addressed through automation; (d) 'D Minus' exclusivity is only with chain hotels and none of the independent hotels were subjected to it; (e) DG itself has not found any violation in respect of the commission and Service fees levied by the DG; (f) the commission and service fees have fallen over the years. It was further submitted that MMT's business and operation has been affected by the Covid-19 pandemic; in the first quarter (April-June) of FY21, MMT's year-on-year revenue slumped by 95.5 percent. In the next quarter revenues slumped 82.2 percent year on year. The industry has just started recovering post Covid. Furthermore, MMT-Go stated that because of the MMT/Ibibo combination order, MMT-Go was acting under a bonafide belief that it was acting in compliance of Section 4 of the Act at the time of executing the contracts with the Informants in 2017. It was also stated that there is no allegation or even a whisper against MMT-Go having any supply side leaning or allegation of self-preferencing which has been the subject matter of the Commission's investigation against almost all of the platform companies. Lastly, it was submitted that MMT is an Indian company competing against large global conglomerates and any finding of dominance against MMT may have a chilling effect on MMT's ability to compete with large global entrenched players.

OYO

112. At the outset, OYO denied all the allegations raised by the Informants. OYO stated that the main allegation of the Informants against it is with regard to the commercial agreements which OYO had with MMT-Go, pursuant to which allegedly FabHotels and Treebo were driven out of the market. OYO refuted the said claim stating that MMT-Go is not essential for hotels in any market in India and thus the contention of FabHotels and Treebo that MMT-Go is essential for their survival is not made out. It was argued that majority hotel bookings are still offline. OYO submitted that [redacted] of its revenue generation in relation to hotel room bookings in India is from offline distribution channels. It was also

stated that out of all the hotels that partnered with OYO, [redacted] did not have any online presence before they partnered with OYO. Further, even the hotels queried by the Hon'ble DG have disclosed a high offline presence.

113. Specifically, with respect to the FabHotels and Treebo's allegations and the corresponding findings of the DG, OYO submitted that neither FabHotels nor Treebo have produced any evidence to prove that they were "driven out of the market" as a result of the delisting. Rather, the data on record demonstrates that Treebo and FabHotels were hardly impacted by the delisting. Further, the data relied upon by the DG shows a consistent increase in FabHotels' number of live properties post delisting, except in January 2020 that can be mainly on account of the covid-19 pandemic. Also, there had been no impact on FabHotel's revenue which initially peaked in [redacted], and already started decreasing in [redacted] (when FabHotels was still listed on MMT-Go). Further, any impact of delisting was immediately recovered by [redacted], and then increased to a new high [redacted]. It then decreased only due to pandemic. OYO further stated that while making an observation regarding substantial decline in FabHotels room nights' bookings post desilting, the DG wrongly took into account only the booking received through OTAs.

114. OYO has also refuted FabHotels' claim that it was an effective competitor of OYO and that its growth was significantly impaired because of MMT-Go's discriminatory conduct which foreclosed competition. OYO stated that the comparison drawn by FabHotels is misleading because during all three years FYs 2016, 2017 and 2017, FabHotels' properties were listed on MMT-Go's platforms, while OYO's hotel partners were delisted. Thus, any comparison would be misleading. Further, it is stated that the data for FYs 2016, 2017, and 2018 shows that OYO could grow and flourish even when it was not listed on MMT-Go, having invested in its own platform and innovated in the market, while the inefficient FabHotels could not effectively compete, even when it was listed on MMT-Go. Further, it has been submitted that regardless of whether OYO's hotel partners were listed on MMT-Go's portals or not, its revenue from online bookings continued to be between [redacted] with MMT-Go making minimal/no difference to the percentage of its revenue from online channels. And out of the

total revenue from online booking, [redacted] of online sales are from OYO's own app (including walk-ins). Further, OYO has submitted that MMT-Go's relationship with OYO is also not significant, given that it contributes only [redacted] of OYO's total revenues and room nights and OYO's share of MMT's revenues is only [redacted]

115. Refuting Treebo's claim, OYO has submitted that delisting from MMT-Go did not have any impact on Treebo's bookings given that it has always been significantly dependent on offline bookings. It has been submitted that Treebo's revenue initially increased to INR 4.9 Crore in May 2018, from INR 4.6 Crore in April 2018 (*i.e.*, at the time of delisting) and then marginally decreased till it was INR 3.8 Crore in October 2018. Accordingly, any alleged impact of delisting was, by Treebo's own data, recovered entirely within 3 months of delisting and new heights were reached as early as August 2018. The recovery continued with Treebo recording an increased revenue of INR 6.1 Crore in December 2019. Treebo's revenues continued to climb absent being listed on MMT-Go's platform and any later reduction in revenue was on account of the Covid-19 pandemic and not anti-competitive conduct. It is also submitted that there was no impact of delisting on Treebo's network of properties. The data/graph relied on by the DG demonstrates that post its delisting in June 2018, Treebo's properties reduced to 339 in August 2018 (the lowest). However, it quickly reached 364 properties by October 2018. Thereafter, it hit 466 properties in September 2019, leading to an upward trend, with 613 properties in February 2020. It was only with the advent of the COVID-19 pandemic, that Treebo saw a downward trend. However, it had 511 properties by August 2020, *i.e.*, more than its total properties prior to the delisting (in June 2018). Further, claims related to decline in Superhero properties was also refuted stating that Treebo's Superhero properties increased from 50 in August 2019 to 433 in January 2020 (*i.e.*, even after its delisting which happened in June 2018). It is lastly submitted that Treebo has been attracting significant investments which shows that it is still an attractive investment option.

116. OYO countered FHRAI's submissions regarding it being a Franchisee service provider and DG's conclusion on the same. It stated that DG's conclusions are devoid of any factual basis, and in fact are in complete disregard to the evidence gathered by it, during the

investigation.

FHRAI

117. The main thrust of FHRAI's submission was that both MMT-Go and OYO are strong players and their *inter-se* exclusive arrangement is furthering their strength to the exclusion of other players in the markets in other segments.

118. It was argued that OYO held a dominant position in the market which the DG has failed to look into. DG ought to have appreciated that OYO has a significant market power in the vertical chain, due to the dominant position of the MMT-Go. The exclusionary and mutually beneficial agreement between OYO and MMT-Go empowers OYO to have a control and dominance over the market as compared to other franchising service providers. It was submitted that the DG failed to consider that due to the exclusive arrangement between MMT-Go and OYO, it is difficult for any other OTA to get sufficient traction to be able to become an effective competitor of MMT-Go.

119. It was further submitted that MMT-Go's agreement with OYO discriminates in terms of the access granted to other competitors in the respective market segments of MMT-Go and OYO. This further suppresses the ability of other OTAs as well as franchise service providers to grow. The same has also been acknowledged by the DG in its report where the DG has held that the agreement between OYO and MMT denies access to other players in the market.

120. OYO's massive presence on the biggest OTA platform in Indiaputs OYO in a position to abuse the small standalone hotels. Due to the aforesaid agreement, any future entrants not planning to list on MMT-Go, will not be able to compete with OYO given its exclusivity under this agreement. Moreover, vertical integration between MMT-Go and OYO has been able to create entry barriers in the market and thus shows, that OYO is also a dominant player in the market.

121. DG had failed to consider that OYO does not allow the Hotels to exit the platform or delist themselves as OYO Rooms, moreover hotels are disabled to operate on their own as they

are continued to be shown on the platform as 'sold out' on all OTAs by OYO.

122. FHRAI further submitted that OYO has admitted that hotels are required to put up OYO brand on their properties. OYO enters into a Marketing and Consulting Agreement (MCA) with the hotels, which sets out the terms on which its hotel partners will operate. OYO also enters into lease agreement with these hotel partners. Pursuant to the MCA, OYO provides innovative technology enabled solutions which facilitates the hotel partners to better/ efficiently manage their properties. OYO also lends them the 'OYO' mask. In addition to the above, OYO offers multiple VAS (all opt-in) for the benefit of its hotel partners. In return, OYO charges a portion of revenue from these hotel operators as a service fee.

123. FHRAI submitted that the investigation with respect to OYO stands premature and the Commission should refer the matter back to the DG under Section 26(7) of the Act for re-investigation on the issue of dominance of OYO in the relevant market.

124. As regards the observations and findings of the DG with regard to excessive and unfair commissions, it was submitted that though the DG found MMT-Go to be dominant player and observed that MMT-Go had charged the highest bracket of commissions, *i.e.* 30% or more, to the highest number of room nights from 2015-16 to 2019-20, the DG has incorrectly held that the commissions charged by it is not high and is commensurate with the industry practice.

125. It is submitted that the DG also failed to take into consideration the data submitted by Treebo which evidences the exorbitant commissions charged by MMT-Go exceeding 30% in October-December 2016. The DG further failed to consider the data submitted by several private hotels which clearly shows that MMT-Go was charging the highest commissions across its competitors, amounting to 28% in certain periods, apart from their additional charges through other schemes.

126. It was further argued that in view of the dominant position held by MMT-Go, it is an obligation on MMT-Go to discharge a 'special responsibility' to not abuse its position and ensure fairness towards its competitors.

127. FHRAI also stated that the conclusions drawn by the DG are inconsistent as on the one hand, the DG has observed that there does not seem to be any scope for negotiations between MMT-Go and hotels but on the other hand the DG has wrongly held that the terms of Performance Linked Bonus (PLB) schemes were mutually agreed.

128. FHRAI also submitted that though its competitors like Expedia might be running similar schemes like the PLB/ VDI, the percentages charged by MMT-Go to the hotels are far in excess as compared to its competitors and are thus, violating the provisions of the Act.

129. As regards the Hotel Service Fees, FHRAI submitted that the DG has erred in observing that the impact of service fee imposed by MMT-Go on the competition between hotels could not be ascertained and thus, the DG's conclusion that the imposition of service fee charged to customers does not attract the provisions of the Act cannot be accepted. It was submitted that the DG has also failed to consider the submission of hotels which clearly reveal that though the Hotel Service Fee was taken under the name of the hotel, the same was not passed on to them.

130. FHRAI also claimed that the DG failed to consider that there is meeting of mind between MMT-Go and OYO with respect to charging exorbitant commission from the hotels on its platform. It is pertinent to note that the rate of the commissions levied by MMT-Go and OYO on the hotels are similar which ranges from 40-45% and thus it can be safely concluded that there is an overt act on two different levels which has led to an appreciable adverse impact to the competition in the relevant market. It was further submitted that MMT-Go and OYO are working in alignment with each other and are converting open competitive market of providing hotel rooms into monopolistic market. MMT-Go entered into agreements with OYO in 2018, and within a year OYO had 15,569 properties (in 2019). The vertical arrangement between MMT-Go and OYO resulted in influx in a large number of customers, which also means large number of hotels willing to list hotels on MMT-Go. Such vertical integration has further strengthened the position of MMT-Go in the market.

FabHotels/ Casa2 Stays Pvt. Ltd.

131. FabHotels endorsed the findings of the DG as regards relevant market, dominance and abuse

o dominant position by MMT-Go. It was stated that FabHotels operates in the market for franchising budget hotels in India where it competes with Treebo and OYO and releies heavily on the services of MMT-Go which is an OTA. It was further stated that online bookings cannot be considered substitutes of offline bookings. Yatra and EaseMyTrip in their responses to the DG have supported such assertion. OTAs provide bundled SCB services unlike direct websites and specialised portals. The statement of Mr. Rajesh Magow during 2022 Earnings Call, CEO of MakeMyTrip and MMT-Go's contractual obligations with FabHotels and OYO also indicate OTAs form a distinct relevant product market from the perspective of end-consumers and budget hotel franchisors.

132. FabHotels relied upon order dated 20.08.2019 in C-2019/05/664, involving acquisition by Ctrip of additional 42.52% (approx.) outstanding voting securities of MakeMyTrip Limited (MMT/Target) from MIH Internet Sea Private Limited to argue that OTAs constitute a distinct market. It further relied upon the DG Comp's decision in Case No. M.9005, involving acquisition by Booking Holdings Inc. USA., of sole control over HotelsCombined Pty Ltd, Australia, to submit that OTAs form a distinct relevant market. Transition from MSS to direct websites is not seamless since they do not offer booking functionality and provide lower choice than OTAs. Other distribution channels also cannot be considered substitutes for various factors such as direct websites do not offer compare function; budget hotels do not have direct websites to offer real-time booking; retail consumers/end-consumers cannot access corporate booking channel of OTAs; retail consumers/end-consumers cannot access MICE channels; packaged holidays are not substitutes of hotels booking services offered by OTAs; demand for alternate accommodation is distinct from the demand for hotels by end-consumers/retail consumers due to OTAs operating separate verticals for home stays and alternate accommodation; end-consumers and budget hotels cannot access the Global Distribution System and social media websites and apps do not offer compare and book functions. Further, MMT-Go has not placed on record any demonstrable evidence to support its assertion that end-consumers consider alternate accommodation to be substitutable with hotels.

133. FabHotels also raised several objections with regard to the Kadence Survey and the MMT-Go Economist Report. FabHotels also relied upon an economist report, i.e. Saatvic Report, which highlighted allegedly wrong inferences and conclusions drawn in MMT-Go Economist Report. It was submitted that the MMT-Go Economist Report ought to have considered the market for online intermediation services for booking budget hotels as the narrowest candidate market. MMT-Go Economist Report does not state the percentage of respondents who were sampled using snowball technique. In sum and substance, FabHotels stated that the MMT-Go Economist Report is not reflective of end-consumers' behaviour between 2017-2021, answers suffered from response bias rendering them unreliable and inaccurate. Saatvic Report has explained how Kadence hotel survey actually indicates complementarity. FabHotels also stated that though internet penetration is lower in India than Germany yet proportion of online booking is nearly at par with Germany.

134. Bookings for peak seasons are planned bookings / planned travel that take place much in advance. Similarly, allocation of inventory on OTAs during weekends will be lower than weekdays given that planned bookings/ planned travel are generally during weekends and holidays. Further, if inventory is booking through MICE or corporate booking channels, the inventory will not be available for OTAs. Significant portion of last-minute bookings take place through OTAs and MMT-Go imposed exclusivity conditions on FabHotels, Treebo, OYO and several hotels during that period only to reap commercial gains.

135. As regards dominance of MMT-Go, it was submitted that its market share as per the MMT-Go Economist report in the online hotel booking market over the 2017-2019 period is stated to be [redacted] using a top-down approach and [redacted] using a bottom-up approach. However, in MMT's investor presentation for May 2019, it is stated that MMT-Go's market share in 'domestic online hotel' market was 63% in 2017.

136. FabHotels stated that the correct metric to determine dominance of MMT-Go is stayed room nights which reflects actual fulfilment of the SCB services. MMT-Go's stayed room nights are significantly higher than its competitors. MMT-Go in its reply to the DG accepted that booking.com and Expedia were not significant competitors during 2017-20. Further, MMT-

Go's marketing and promotion expenses are also significantly higher than other OTAs aligned with its size, resources and economic advantage over other OTAs.

137. FabHotels further submitted that MMT-Go imposed wide MFN obligations (MFNs) on FabHotels which were in the form of rate and room parity clauses. [[redacted]]. FabHotels stated that 'best efforts' standard as used in the [redacted] is the most aggressive and stringent of all standards of performance which ensures that parties do not inadvertently act in breach of agreements. FabHotels was required to take all reasonable steps available to ensure the parity of rooms and rates offered to MMT-Go which enforced through constant communication with FabHotels' representatives during the period of the said agreements. Non-compliance affected ranking of hotel properties as corroborated by the submission of Hotel Lalit, Chandigarh before the DG. These MFN obligations prejudicially affected FabHotels, other OTAs and end-consumers.

138. [redacted] Thus, imposition of MFN obligations contravened Sections 4(2)(a) and 4(2)(d) of the Act.

139. MMT-Go restricted FabHotels from offering its properties for bookings on any OTAs other than MMT-Go [redacted]. The last minute bookings form a significant part of hotel bookings through OTAs. MMT-Go Economist Report relies on Hotelivate Report and states that around two-third of OTAs users claim to start searching for a hotel not before 15 days from check-in. The imposition of such exclusivity obligation on hotels/chains has harmed competitors and end-consumers. Competing OTAs namely booking.com and PayTM have stated that this has had a severe detrimental effect resulting in loss of business. Thus, the imposition of exclusivity obligations by MMT-Go contravened Section 3(4)(d), Section 4(2)(a) and Section 4(2)(c) of the Act.

140. FabHotels stated that MMT-Go discriminated between similarly placed players by arbitrarily delisting FabHotels from MMT-Go portals. It assumes importance when MMT-Go is an essential partner for FabHotels. Post-delisting, FabHotels shifted its focus to B2B business since there was a significant drop in revenue and drastic rise in expenses in B2C model. While there was increase in inventory on account of increased focus on B2B business, stayed room nights of FabHotels through B2C channel remained low.

141. FabHotels has stated that MMT-Go is a dominant player in the market for hotel bookings through OTAs in India and functions as "the gateway" for online services to "search, compare and book" hotel rooms. Existing market participants in the market for franchising budget hotels in India cannot compete effectively without having access to MMT-Go Portals. FabHotels has also submitted that dependence of players engaged in hotel franchising business can be seen from the growth that OYO experienced after its properties got listed on MMT-Go portals. Further, the preferential treatment extended to OYO by MMT-Go has foreclosed competition in the market as FabHotels and other similarly placed players do not have access to portals of the largest OTA in the country. There has also not been any new entry in the market for franchising services for budget hotels in India in the last two–three years. Eventually, existing competitors would also be forced to exit the market for franchising services for budget hotels in India.

142. FabHotels further submitted that they suffered exceptional circumstances resulting from limitations posed by the Covid-19 pandemic which has badly affected the hotel industry. [redacted]

143. FabHotels stated that preferential treatment was given to OYO and OYO's competitors were excluded from MMT-Go portals which restricted the choice of hotels to OYO. The delisting was without any objective justification. OYO has stated that the exclusion of FabHotels was negotiated to ensure better visibility for OYO's hotel partners on MMT-Go portals. It further stated that MMT-Go acts as a gatekeeper and has a special responsibility to act fair

and responsibly in the market. The market access was denied by a dominant online intermediation which was lethal to the functioning of businesses which rely on such intermediaries to reach end-consumers. Thus, arbitrary delisting of FabHotels by MMT-Go contravened Section 4(2)(a) and Section 4(2)(c) of the Act till September 2021.

144. FabHotels further stated that even though MMT-Go has relisted it pursuant to the orders of the Commission, there is material on record which demonstrates that FabHotels was not given constructive and effective relisting by MMT-Go. For example, in February 2018 (before delisting) FabHotels' stayed nights booked on MMT-Go was [redacted] times FabHotels' stayed nights booked on other OTAs. However, in February 2022 (after re-listing) FabHotels' stayed nights booked on MMT-Go was only [redacted] times FabHotels' stayed nights booked on other OTAs. Further, FabHotels' re-listing has also not been on fair and non-discriminatory terms in view of the lack of visibility of FabHotels' properties and high commissions charged by MMT-Go.

145. Further, FabHotels also filed an application dated 26.08.2022 objecting to the revenue data furnished by MMT-Go stating that such data only includes the revenue earned by MakeMyTrip (India) Private Limited and Ibibo Group Private Limited from online intermediation service for booking domestic hotels and alternate accommodations in India; and that it does not include the revenue of the overall MakeMyTrip Limited which is listed on the NASDAQ and of which the former two entities are the wholly owned subsidiaries. It is thus, prayed, the overall MakeMyTrip Limited's revenue data be considered for the imposition of penalty.

<u>Treebo/ Ruptub Solutions Pvt. Ltd.</u>

146. Treebo made similar submissions as offered by FabHotels with regard to relevant market and dominance of MMT-Go in the said market. Treebo agreed with the delineation of relevant market by DG for MMT-Go since its intermediation services concern two different but interdependent consumers *i.e.* end-consumers and hotels on the basis of end-use of the service, price, consumer preference. The European precedents such as German *HRS* case and *Booking.com* case are applicable in the Indian context as well since, as noted by DG as

well, internet penetration in India has reached 50% in 2020 due to pandemic to indicate increased reliance of both hotels and consumers on OTA. There is no substitutability between online and offline as general consumer behaviour shows that customers do not switch from online to offline. Treebo denied the assertion of the MMT-Go that any of the channels such as Hotel's own websites, corporate customers, offline channels, MSS, GDS are substitutes since one or the other misses out from comprehensive SCB bundle (Search, Compare and Book). MMT-Go is not used just for browsing over the prices. Even the data relied upon by MMT-Go in its reply, both from hotel's perspective and end-consumer's perspective, OTAs have been given the preference. The fact that OTAs are considered as an essential trading partner from the hotel's perspective is confirmed by the data presented by MMT-Go.

147. As regards OYO, it was submitted that OYO operates in the market for franchising services for budget hotels, as noted by the Commission in Case No. 03 of 2019 *In Re: RKG Hospitalities Pvt. Ltd. and Oravel Stays Pvt. Ltd* as well which has been admitted by OYO in their written submissions as well. The DG has correctly assessed the market. MMT-Go as well as the expert have also categorically referred OYO as franchise chain.

148. As a preliminary submission, Treebo stated that there is an agreement entered into by a dominant player, in this case, MMT-Go to oust two competitors of OYO, (who is in the vertical relationship with MMT leads to denial of market access and no express requirement is needed for an analysis of Section 19(3) of the Act.

149. MMT-Go has incorrectly argued that it is not the largest player by using the alleged higher inventory of Yatra.com and global funds of Booking.com and Expedia, which is based on misleading figures.

150. Treebo has relied upon Table 15 of DG Report to buttress its averment. Treebo stated that Yatra's market presence is comparatively insignificant compared to MMT-Go despite having larger inventory. Even booking.com is an insignificant player as compared to that of MMT-Go. Despite having low inventory, MMT-Go secures more bookings. The fact that OTAs with such big inventories and global resources have not been able to effectively

penetrate the market, is itself evidence that MMT-Go had blocked growth of these platforms by imposing restrictions through its agreements with the hotels such as D minus 3 and D minus 30 clause, price parity clauses etc. For instance, OYO would not list on Paytm and Booking.com and other OTAs for last 5 days before check-in.

151. During the course of the arguments, MMT-Go relied on a newspaper report of 2018 which shows that booking.com is looking to expand aggressively in the Indian market through discounts *etc*. However, booking.com has not been able to make much dent into MMT-Go's dominant position which has only increased from 63% (as per MMT's own investor presentation) to 72% (as per the DG Report). The strength of MMT-Go is supported by the documents such as Red herring prospectuses filed by its competitors.

152. MMT-Go reaps the benefits of network effects, vertical integration and restrictions through its 'D minus 3' and 'D minus 30' imposed on FabHotels and Treebo and condition on OYO for exclusion of Paytm and booking.com. There is presence of barriers to entry at multiple levels on MMT-Go's competitors and OYO's competitors in the downstream market. Despite imposing the highest commission rate, MMT-GO is the dominant player in the market.

153. Vertical integration between MMT-Go and OYO which led to exclusion of FabHotels and Treebo from the MMT-Go's platform also resulted in reducing the bargaining power of chain hotels as well as independent hotels. Despite the increase in commission/other charges, hotels stick to MMT-Go as it is an essential distribution channel. Therefore, there is limited countervailing buyer power.

154. As regards the MMT-Go and OYO's commercial arrangement, it was submitted that OYO holds market share of 89% and MMT-Go is a dominant player, and thus, their arrangement is bound to adversely impact the competition.

155. As regards, impact of delisting, it was submitted that due to delisting, 57.12% OTA bookings on MMT-Go were immediately lost. Treebo's superhero properties on MMT-Go declined to nil and the scheme got completely derailed. Treebo submitted that the independent hotels were actively delisted by MMT-Go as result of which they ended their

partnership with Treebo.

156. Treebo stated that due to delisting of FabHotels and Treebo, independent hotels, considering loss of access to dominant OTA platform and intending to avail franchisee were left with no option but to necessarily engage with OYO. The exclusion of Treebo was a case of denial of market access by MMT-Go under Section 4(2)(c) of the Act.

157. Treebo submitted that the allocation of OYO inventory to MMT was 30% which was subsequently increased to 40% post 2018 and the agreement was valid for 5 years.

158. It is evident from the submissions of OYO and MMT-Go that MMT-Go was forced by OYO to delist Treebo. There was no justification for delisting Treebo from the platform except for eliminating a potential competitor. Treebo submitted that OYO switched to a full franchisee model in early 2018 and the said delisting was done to eliminate the other effective competitors of OYO.

159. Treebo submitted that DG Report clearly establishes the harm caused to Treebo and FabHotels in the downstream market; and to competing OTAs such as Booking.com and Paytm, which could not effectively penetrate the market. It is inconsequential that Treebo survived the market since it is not sufficient to conclude that there was no denial of market access. It was further stated that the delisting of Treebo from MMT-Go platform was not on account of any fault of Treebo but solely attributable to the agreement between MMT-Go and OYO. Treebo distinguished the Commission's cases relied upon by MMT-Go, *namely Muralya* case and *Asian Paint* case, and stated that these cases have no application to the present case.

160. Treebo submitted about the negative effects of D minus clauses by highlighting the submissions made by Booking.com and Paytm before the DG, on account of which OYO rooms were unavailable for booking on these platforms. Treebo further submitted that D minus clause is not about inventory allocation but inventory blocking. The DG made effects-based analysis of D minus clauses. The OTAs such as booking.com and Paytm pointed out the detrimental effect of the restrictions faced.

161. Treebo submitted that agreement between OYO and MMT-Go was anticompetitive under Section 3(4) of the Act having cause AAEC such as Treebo faced loss of 52% loss of its business; number of Treebo live properties got reduced; Treebo's superhero properties declined to nil and growth of Treebo has been more than 100% since relisting in August 2021 as it grew from 372 hotels to 731 hotels. MMT-Go recorded highest number of room nights which shows the effect of such clauses since most of the booking is done in the last minute and consequently, reliance on OTA increases. On the other hand, Treebo has no exclusivity agreements with any other OTA except with MMT at the time when it was listed on MMT-Go's platform.

162. Treebo also submitted that it is an admitted position on the part of OYO that it has no objection to the properties of FabHotels and Treebo or any other entity being listed on MMT-Go's platform. It stated that since relisting, the access to Treebo on MMT-Go's portal has been unfair and discriminatory. There must be parity with other comparable hotels/hotel chains on visibility, terms of ranking and placement, access to booking, market, customer data, functionality on the platform. Therefore, it prayed that the access must be given by MMT-Go on a fair and non-discriminatory basis.

163. Price parity clauses prevented other OTAs from offering better prices (commission rates). The DG Report clearly indicates instances where price parity clauses were imposed such as statement of Mr. Deep Kalra and several written communications to hotel partners to abide by parity clauses. The overall effect of the parity clauses is evident from the fact that despite allegedly having lower inventory than Yatra.com, and in Delhi even lower than Cleartrip and Expedia, MMT-Go has the largest market share in the market ([redacted]), compared to Yatra ([redacted]), Cleartrip ([redacted]) and Expedia ([redacted]). Further, it denied the assertion of MMT-Go that adoption of parity clauses is as per the industry practice.

164. Treebo also objected to the reliance of MMT-Go on the Expert Economist Report and satted that the same is inadmissible since it is contrary to the provisions of the Act and the Competition Commission of India (General) Regulations, 2009 for the reasons detailed in its Application dated 19.08.2022. Besides, it does not adhere to several legal standards and be declared inadmissible. The Expert Report is biased, contains inherent contradictions and

seeks to serve the interest of MMT-Go. It was submitted that the Expert Report presents a completely distorted and incorrect picture of the market dynamics by incorrectly considering hotel websites, phone calls and walk-ins as substitutes to OTAs, which is a two-sided market and thus, included a one-sided market in a two-sided market. Inclusion of 'friends and family' as a part of market is inherently absurd. Further, on comparing Yatra's, EaseMyTrip's figures with that of MMT-Go, it is evident that MMT-Go is way ahead. These figures are conspicuously absent from the analysis in the main Expert Report but only form a part of the annexures of the Expert Report. The Expert Report itself reveals that how a major part of OTA's business is driven by independent hotels, however, relied upon screenshots taken for luxury/premium hotels. In sum and substance, Treebo stated that the Expert Report is divorced from market realities and ignores the observation of the DG. Based on this, Treebo submitted that Expert Report cannot be relied upon and be set aside.

Observations and Findings of the Commission

165. The Commission has examined the material available on record, including the Information filed by the Informants, Investigation Report of the DG, Cross-Examination Report of the DG, written submissions filed by the parties and the oral submissions made by their respective counsel on 12.09.2022 and 13.09.2022.

166. The allegations in the matter are with regard to abuse of dominant position by MMT-Go under Section 4 of the Act and also with regard to a vertical commercial agreement between MMT-Go and OYO under Section 3(4) read with Section 3(1) of the Act, which, as per the Informants, has led to denial of market access to the hotel chains (*namely*, FabHotels and Treebo) and independent hotels which were associated with such hotel chains. For examining allegations pertaining to Section 4 of the Act, delineation of the relevant market is essential to ascertain dominance and for otherwise analysing the alleged conduct of MMT-Go in the present case.

Relevant Market

167. Delineation of relevant market, for the purposes of ascertaining MMT-Go's market

position, has been the most contentious issue throughout the proceedings in this matter. This is evident from the sheer volume of time devoted by the parties to this aspect in their written responses as well as their oral submissions. The Commission has given thoughtful consideration to the data and material placed on record, including the expert reports relied upon by MMT-Go and FabHotels and the detailed submissions made by the parties during the course of hearing on this aspect.

168. The DG has delineated the relevant market as '*market for online intermediation services for booking of hotels in India*'. For arriving at this market definition, the DG *inter alia* examined the substitutability between online hotel booking channels with offline channels of hotel booking based on the information gathered from 21 hotels, and then carried out a SSNIP test to verify and reach a conclusion. Further, the DG evaluated whether other channels of distribution, *e.g.*, offline travel agents, MSS, GDS, corporate booking, IRCTC, MICE, and meta/search platforms Google, Tiktok, Facebook and Instagram form part of the OTA market. Moreover, the DG looked at Clause 1.1.10 of the agreement entered between MMT-Go and Treebo, according to which [redacted] The services offered by OTAs are homogenous throughout the country and consumers can access it from any part of the country. In view of the above, the DG defined the relevant market as "*market for online intermediation services for booking of hotels in India*".

169. MMT-Go has *inter alia* criticised the DG's conclusion stating that the said conclusion is based on (i) an erroneous analysis of substitutability between the online and offline hotel booking channels; and (ii) an incorrect assumption that OTAs offer a unique service *i.e.*, the 'search, compare, book' (SCB) functionality.

170. It has been averred that DG's "substitutability" analysis is erroneous as it relies on a survey of twenty-one (21) hotels *i.e.*, sixteen (16) standalone and five (5) chain hotels, and incorrect understanding of the statements made by OYO and other OTAs. This is stated to be an

insignificant sample size out of the vast universe of hotels in India which is not geographically representative, besides being biased. Further, to counter DG's conclusion on the complementarity of online and offline modes, MMT-Go submitted that the multi-channel distribution strategy adopted by hotel partners shows *inter se* competition between distribution channels and not complementarity and it is being utilised by hotels to maximize revenue, in light of the daily perishable nature of the end product *i.e.*, room night. Depending on various price and non-price factors, hotels may completely switch or partially skew their allocation or distribution in favour of one or more channels. Notably, booking a hotel room on one channel leads to a reduction of inventory across all channels. Therefore, the distribution channels cannot be said to be 'complementary', merely because a hotel is using various booking distribution channels at the same time.

171. MMT-Go has also criticised DG's reliance on German Bundeskartellamt's *HRS* decision, and the *Priceline/Momonda* case stating that market analysis contained in EU's regulatory decisions cannot be supplanted into the Indian context due to differences in market structure and realities. MMT-Go has also made other claims like comparatively low internet penetration in India and Indian consumers being more price-sensitive than European consumers to support its contentions.

172. As per MMT-Go, DG's determination of the relevant product market is fraught with inconsistencies and evidences a clear bias. Further, MMT-Go has also placed on record the MMT-Go Economist Report to propose a wider relevant product market, which should not be narrower than the online hotel booking market (including OTAs, direct online booking at hotel's website, other online modes). In the alternative, the overall hotel booking market has been proposed which is stated to include all online and offline channels of distribution. Such propositions have been made based on Kadence Consumer Survey which are performed by Kadence International, commissioned by MMT's expert economist (Compass Lexecon) on behalf of MMT-Go along with the Mordor Intelligence Report.

173. The Informants (FHRAI, FabHotels and Treebo) have strongly countered the submissions made by MMT-Go and have submitted that the relevant market is not broader than the market for online intermediation services for hotel booking.

174. FabHotels has provided the following limitations of the Kaydence Survey and the MMT-Go Economist Report, with regard to delineation of the relevant market:

a. The MMT-Go Economist Report applies the SSNIP test incorrectly as it starts with the "market for online intermediation services for booking hotels", or OTA services, as its first candidate market. However, this is not the narrowest possible candidate market. A more appropriate starting candidate market would have been the "market for online intermediation services for booking budget hotels". Competitive dynamics may be different for online intermediation for budget hotel bookings than for the booking of higher end hotels.

b. The Kadence Consumer Report contains several design flaws, its sampling methodology is unclear and involves snowballing, a technique where new respondents are recruited using referrals from existing respondents, which leads to non-representativeness. It fails to distinguish between the type of hotel respondents booked, which could lead to misleading results given the likely non-representativeness of the sample. Its results are irrelevant to the period of the alleged infringement since the survey was conducted between 18.01.2022 and 06.02.2022, but the DG investigates conduct that took place between January 2017 and March 2021. There are several reasons why the results of a survey carried out in early 2022 may not be reflective of consumer behaviour in 2017-21 and Metasearch is a relatively new phenomenon – Google Hotels was only launched in March 2019 and was simply not an option for a significant part of the alleged infringement period. Finally, several questions are framed to exploit acquiescence bias, a psychological bias towards agreeing to statements in surveys. For instance, the Kadence consumer survey's question B9.1 "*I keep switching between offline and online modes for hotel bookings*" could be reformulated as "how often do you switch between offline and online modes for hotel bookings". Similarly, Question B2 asks: *"(p)lease tell me, which of the following modes did you check before making this booking?*" The wording of the question is extremely vague and could lead to misleading responses and it does not specify whether the consumer checked the alternative modes in relation to the current booking, or whether the consumer had checked alternative modes at some time in the past in relation to another booking. It also does not specify whether the consumer checked the alternative modes specifically to compare price, or to gather other information. The responses are entirely consistent with, for instance, consumers looking at websites or social media for additional pictures before making the booking.

c. Kadence Survey states that, "*seventy-five (75%) of the hotels having their own website also advertised on search engines like Google, Tripadvisor etc.*" However, the reply does not clarify (a) what % of the hotels who have their own website are budget hotels, (b) what % of the 75% are budget hotels, (c) whether search engines like Google, TripAdvisor, Trivago *etc.* redirect end-consumers to OTAs or to direct websites of the hotels, (d) what % of budget hotels have their own websites, and (e) what % of the hotels directly listed on search engines as against those shown by virtue of their listing on OTAs that have contractual arrangements with search engines.

d. Even if the Kadence consumer survey is taken at face value, the MMT-Go Economist Report interprets them incorrectly. That *consumers have considered and used multiple booking channels in the last four years does not imply that they considered them substitutable for the same booking*. Consumers consulting other channels before ultimately booking on OTAs is also consistent with consumers gathering non-price information from other channels before booking on OTAs. Consumers being price sensitive does not mean they do not consider other factors while choosing between alternatives that are priced similarly. Lastly, consumers preferring to visit hotels in person may be irrelevant for the vast majority of OTA bookings.

e. The MMT-Go Economist Report's other arguments on consumers substituting between various channels are also flawed. Consumers are not incentivised to multi-home across booking channels by *ad-hoc* discounts as these only apply to OTAs in the presence of parity clauses. Contacting hotels directly for a lower price is not viable in the case of most budget hotels; many of whom also do not offer real-time online booking. Consumers also face potentially large switching costs arising from OTAs' loyalty programs and the time and effort customers put in before making a booking. Neither metasearch engines nor hotel websites provide the entire search-compare-book (SCB) functionality on their own, and franchise chains sufficiently differ from OTAs on several dimensions for them not being substitutable with other channels.

f. Lastly, the MMT-Go Economist Report's analysis of whether hotels regard distribution channels as substitutable is flawed. That hotels are often present on various channels does not imply substitutability and is also consistent with complementary use to target different consumer groups. Hotels filling fewer rooms through OTAs during periods of high demand does not indicate substitutability between channels, but rather that direct channels are preferred to OTAs (due to higher margins), which are used to fill inventory, hotels are unable to sell directly. Consequently, the different channels should be seen as complements rather than substitutes.

175. Further, it is also noted that FabHotels, in its rejoinder dated 18.08.2022, in response to MMT-Go's comments and objections to the DG Report, has stated that Mr. Rajesh Magow, Co-founder and Chief Executive Officer of MMT has accepted that OTA channel is unique and direct hotel supply channel does not impose any competitive constraints. FabHotels also submitted that search sites such as Trivago and TripAdvisor only show options offered by OTAs and redirect end consumers to OTAs' websites.

176. FabHotels has also provided several reasons for the online OTA market being distinct from other online channels and offline channels for booking of hotels. First, budget hotel franchisors have to enter into separate agreements with a search engine/ search site to get their properties listed on the portal of the search engine/ search site, which serve as marketing tools rather than a distribution channel. This is because search engine/ sites do not offer booking functionality and simply redirect users to the websites of the franchisors. OTAs, on the other hand, charge hotels only when a booking is made. Therefore, search engines and search sites serve as marketing tools rather than distribution channel for hotel inventory. Second, even if search engines/ search sites are to be considered as alternate distribution channels, the same is not a viable option for budget hotel franchisors. The cost per-click can be prohibitive. FabHotels' cost-per-click and the per transaction cost on Trivago for the 3-month period of July 2018 to September 2018, immediately following delisting from MMT-Go portals, demonstrates the very high transaction cost for hotels/

chains of hotels regardless of whether the visiting consumer ended up booking or not. Therefore, listing on search sites is not a viable alternative. Lastly, search results are likely to be overestimations since several of the properties may not be "bookable" on the search engines, because hotels might list on a search engine to receive reviews from consumers and visibility but will not list its inventory for booking. Therefore, when a consumer searches for a hotel in a locality, the hotel and its reviews will appear, however, the hotel will not be bookable *via* the search engine.

177. FabHotels have also pointed out that MMT-Go's reliance on the Google-Bain Report is also flawed because the report looks at the entire hotel booking ecosystem as one market and fails to consider that demand for luxury and mid-market hotels is different and distinct from demand for budget hotels. Further, benefits such as priority check-in, free room nights (RNs), personalised experiences, complimentary meals and access to special services are not provided by the budget hotels. Mostly, budget hotels do not even have websites to offer direct booking. Therefore, MMT-Go's argument that these benefits sway consumers towards direct websites, is untenable.

178. Treebo has submitted that the imagined market difference alleged by MMT-Go to say that European precedents such as German HRS case and Booking.com case are inapplicable in Indian context cannot be accepted. Contrary to the MMT-Go Economist opinion and argument of MMT, these precedents are squarely applicable in the instant case. In the HRS case, while internet penetration in Germany was as high as 82% in 2012, the online booking was 30.10%. Yet, the competition authorities considered online and offline as separate markets. In 2020, internet penetration in India was merely 42%, yet the online hotel booking was already around 30%, in fact more than 30% based on the results of surveys of MMT. Therefore, European precedents are applicable in the Indian context as well, where the online booking is likely to grow far more than Germany with the increase in internet penetration.

179. Additionally, Treebo has submitted that the alternates suggested by MMT-Go are contrary to consumer behaviour in the app market. MMT-Go's assertion that consumers use MMT portal to find out the rates and then book from alternate channel where the customer gets

the best rate is opposed to market realities and how consumers in digital markets operate. It is submitted that relevant market has to be seen holistically and cannot be defined seasonally. The fact still remains that even during the peak holiday seasons and other events, OTAs are essential distribution channels, which are used by hotels for distribution.

180. The Commission has given thoughtful consideration to all the arguments made by the parties, both in their oral as well as written submission, despite such submissions not being explicitly mentioned herein for the sake of brevity. At the outset, the Commission notes that the parties agree on relevant geographic market being India. It will, thus, now examine the submissions made by the parties to support their rival propositions with regard to relevant product market, in the ensuing paragraphs.

181. Before delving into the complexities of the assertions made with regard to market definition, it is important to discuss and appreciate the purpose and context of relevant market delineation. Relevant market definition provides a framework for the ultimate inquiry of whether a particular conduct is anti-competitive. The main objective of defining the relevant market is to determine systematically the competitive pressures facing the entity/firm under investigation. The purpose is to identify the set of competitors, in both its product and geographical dimension, that are capable of posing competitive constraints on each-others' behavior within the so defined market. Such delineation, therefore, plays a crucial role in identifying the players in the market, assessing their comparative strength, setting the limits of the market for assessing barriers to entry/expansion, whether effective substitutes exist in the market, identifying the buyers to examine the scope and extent of countervailing power they may be able to exert on the sellers/suppliers *etc.*

182. While there is no dearth of literature and case law on delineation of relevant product market, assessment in competition cases cannot be bereft of facts specific to a matter. In every case, it is necessary to examine the particular circumstances in order to answer a basic straightforward question: which products or services sufficiently 'compete' with each other to be sensibly regarded as being substitutable in the same market? The basic purpose is to gauge competitive constraints *i.e.*, do the products alleged to form part of the same market, act as a competitive constraint on the impugned conduct of the allegedly dominant firm? To

answer these questions, it is imperative to consider demand-side substitutability by essentially looking at why a given good or service is being bought. Market definition provides a tool to draw the boundaries within which to asses a particular question, most prominently concerning the conduct, theory of harm, and anti-competitive effects alleged. This will inform the extent to which customers/consumers are able to switch to alternative products/services, in the event of an increase in price, which will help in identifying all those products/services that constitute the most immediate constraint on suppliers of a given product/service.

183. The Commission notes that MMT-Go's Economist Report contain surveys carried out by a market research agency, *Kadence*. MMT-Go has submitted that the Kadence Survey is based on information from a more statistically representative sample of two thousand and two (2002) adults who had made an online hotel or travel package booking in the last four years, covering a range of age and income groups and five hundred and twenty-four (524) hotels located across fifty (50) cities which sell hotel rooms through OTAs, covering both independent and chain hotels, and budget, mid-range and luxury hotels. The Kadence surveys are stated to have been performed on the basis of face-to-face interviews with consumers and hotels adopting methodology which can ensure impartiality and accuracy. The survey included questions on how hotels decide to apportion their inventory across the various distribution channels, and how those consumers who have booked using OTAs use the alternate distribution channels.

184. Based, *inter alia*, on the survey results and a market report prepared by Mordor Intelligence relying on publicly available information, and also the information provided by parties during investigation, the MMT-Go's Economist Report argues that the relevant product market is not wider than the overall hotel booking market and not narrower than online hotel booking market.

185. MMT-Go, and also OYO, has argued that online and offline are part of the same relevant market as both these channels are used by the end-consumers alternatively to make hotel bookings. Further, a lot of emphasis has been laid on the price sensitive nature of the Indian consumers and low level of internet penetration to suggest that consumers may prefer to

directly walk-in at a hotel if the prices are slightly higher at the OTAs or may even choose to stay with friends and family in the alternative.

186. Some of these arguments are misconceived and self-serving, despite the degree of sophistication with which they have been presented, with an earnest attempt to supplement them with data, third-party reports and surveys.

187. Interchangeability or substitutability lies at the heart of relevant product market assessment. Will the consumers or business users, using the services of MMT-Go move to alternatives in the event of the price being charged to it being increased by a small but significant amount? The precise boundaries of markets, which are after all merely the result of an intellectual exercise, will change depending on the context in which they are 'drawn'. Market Definition, therefore cannot be *dehors* of the context and facts and circumstances of the case at hand as antitrust markets are defined around the competitive constraints on particular economic entities in the context of a specific legal enquiry. To contextualize the discussion, the first thing to be considered here is who is this 'user' that should be the focus of assessment. If this starting point is not done correctly, the assessment that follows is bound to suffer from infirmities. The instant case relates to the conduct of an enterprise that operates an online platform, which connects users with various travel/tour related service providers, such as hotels, airlines, trains, buses *etc.* As the alleged conduct under scrutiny is *vis-à-vis* hotels and franchise hotel service providers, assessment of dominance and relevant market delineation will have to be necessarily carried out from their standpoint. Thus, the starting point for defining the scope of relevant market would be the service that the enterprise under scrutiny, *i.e.* MMT-Go, offers to hotels. The next step will be to identify such alternate services that in terms of price, characteristics and intended use could be considered substitutable from the hotels' perspective.

188. The Commission at the outset observes that MMT-Go offers intermediation service that enables users to search hotels, make a comparison between hotels in terms of price and other relevant factors and book a hotel on the same platform. As a corollary, it enables hotels to list their inventory, get visibility to potential customers and sell inventory on the same platform. All such platforms, or online travel agencies (OTAs), that offer these services as

a one-stop-shop, are substitutable from the hotels' perspective and, thus, form part of the relevant market.

189. MMT-Go has argued that since an OTA is an intermediation platform between consumers and hotels, while defining relevant market, it is appropriate to consider the extent of demand-side substitutability on the consumer-side as well as on the hotel-side of the platform.

190. In case of two-sided or multi-sided markets, a platform caters to different user groups. Such sides may be interlinked and interdependent. It is important to understand the nature of the interaction between the different sides of a multi-sided platform so as to ascertain the impact of such interaction or interlinkages in the analysis. This may be truer for intermediation platforms, since the user-groups are linked by the presence of positive indirect network effects. In the instant case, the intermediation service is provided through a two-sided platform, which connects two distinct user groups, *i.e.*, consumers and hotels/hoteliers. Both these user groups positively value the presence of more users on the other side of the platform, as it creates higher visibility and potential sales (for hotels) and wider variety and options (for consumers). While there are obvious interdependencies between the two sides that transact on the platform provided by OTAs, the substitutability analysis for one side cannot be automatically transposed to the other side. Multihoming by business users may not always indicate a broader relevant market. For instance, multi-homing by app developers may only be indicative of the market power held by different app stores, since developers cannot afford to ignore the entire user base of a given operating system.

191. The advent of technology has given rise to newer forms of transactions and ever evolving nature of the platforms. While some platforms operate as transaction platforms where buyers and sellers use the intermediation services of the platform to consummate their transactions, others operate as non-transaction platforms, where there are multiple sides, not necessarily directly transacting with each other. In the latter platforms, the platform is concerned essentially with user attention which can then be monetised in different ways *e.g.* targeted advertising. Even within these sub-segments, the platforms may have different features, *e.g.*, the transaction platforms can be purely 'matching-making platforms' where

users on different sides of the platform are brought together to effectuate one to one transaction, *e.g.*, cab aggregators like Uber/Ola, or they can be like OTAs where multiple users can see the various options available and decide whether to effectuate a transaction or not. Given the diversity of platform markets, and their different network effects and pricing strategies, it is imperative that the specificities of each platform are appropriately factored in while weighing different approaches and alternatives to market definition. One size fit all approach may lead to absurd outcomes in such markets. Further, the timing is also a crucial factor. The assessment in rapidly changing digital markets cannot have a static approach. The vehement reliance placed by MMT-Go upon the Commission's order in Combination Registration No. C-2016/10/451 (acquisition of 100% of Ibibo Group Holdings by MMT Ltd) dated 18.01.2017, is also found to be misplaced. In the said matter, the Commission carried out the substitutability assessment between online travel agents with other distribution channels from the consumers' point of view. In the present case, given that the impugned practices relate to the contractual arrangements between hotels and online booking platforms, the prime focus ought to be on the hotels' side of the market, though the consumer side perspective can supplement this treading.

192. Undoubtedly, an OTA is an intermediation platform, bringing together end-consumers and hotel partners. But it does not necessarily follow that such categorisation, in itself is sufficient to impel a process and a conclusion that involves only one exercise with regard to substitutability. There are two 'distinct user groups' using the platform for 'distinct set of services/products' and any assessment of substitutability without factoring in such distinction may lead to incorrect identification of competitive constraints faced by an enterprise/entity in the market.

193. At the cost of repetition, the question that should guide the assessment is 'why' a given good or service is being bought by a particular user group. Though the primary purpose of the platform is to intermediate transaction between these user groups, the answer to this question 'why' may differ for each user group. To put it simply, in case of an OTA, the intermediation services are offered to two different but interdependent consumers—end-consumers and the hotel partners. However, the end-consumers use the platform to 'search,

compare and book' the hotels available on an OTA, while the hotel partners may be using the OTAs for higher visibility and to avail other attractive features incentivising potential travelers to use the OTA for bookings. Towards that overall objective, from the point of view of the hotel partners, even if the bookings are finally made through another distribution channel, the traffic may still be attributable to the visibility and brand recognition such hotels have attained merely by being on the OTAs. What follows from the discussion is that when apparently there are two distinct products/services which are being supplied (by the same seller *i.e.*, the OTA) to two distinct set of buyers (end-consumers and hotel partners), ascertaining substitutability only from the perspective of one user group (*i.e.* the end-consumer in the present case) may erroneously conflate the competitive constraints that exist separately and distinctly in relation to each user side.

194. Undoubtedly, the interdependencies and interlinkages that arise out of interactions between two or more user groups should not be disregarded. The role of such interdependencies at the time of delineating relevant market should, however, be limited to understanding the impact of such interactions on the substitutability analyzed primarily from the aggrieved user side. It is important that incorporation of complexities arising out of network effects and interlinkages at the stage of market definition should not perplex what is essentially intended to be a relatively straightforward assessment.

195. Notwithstanding, the Commission, for the sake of completeness and also for dissecting certain arguments made during the hearing, finds no harm in examining substitutability from the stand point of the end-consumers as well while using the services of an OTA. From the end-consumers perspective, the seamless integration of 'search, compare and book' functionality of an OTA is a unique feature. MMT-Go has argued that unlike in the European markets, Indian consumers being particularly price-sensitive, are driven by the need to find comparable hotel rooms at the lowest price point and they multi-home extensively and switch across multiple channels for booking of hotel rooms. Also, as per MMT-Go, the seamlessness of the 'Search, Compare and Booking' (SCB) functionality has been over-emphasized by the DG, given the fact that the two-step functionality of a meta-search engine (like Google) allows 'search and compare' plus direct website of the hotel

which allows the 'booking' functionality is substitutable, and often undiscoverable, from the end-consumer's perspective. It is argued that '*[o]ften, a user does not realise that they are making the booking on a different webpage and therefore, the booking functionality is seamlessly associated with the search and compare functionalities*.' There are other claims also with regard to the price sensitivity of the Indian consumer, which have already been elaborated earlier.

196. Assertions of MMT-Go that an Indian consumer is comparatively more price sensitive than those in Europe, can at best be termed as opinions which even if assumed to be true, are not sufficient in itself to render the 'Search, Compare and Booking' (SCB) functionality test redundant. In an ideal world, a consumer would always wish to make optimal decisions that provide him/her with the greatest benefits and satisfaction. In the case of digital platforms, consumers are flooded with innumerous heterogenous options to choose from, coupled with distinct features of those options which may hinder simplistic decision-making based purely on 'monetary price'. In an attempt to reduce this anxiety, consumers tend to simplify the process by selecting some criteria to determine the best value for money. However, to say that such benefit or best value is only derived from a lower price of a product would be an overstatement. Even for a price sensitive consumer, a slightly higher price of product A over a competing product B would be tradeable for a better quality or additional features without a noticeable/pinchable loss of benefit or satisfaction. At this stage, it is important to understand what product/service MMT-Go or an OTA offers to consumers (who are looking for booking a hotel option) on one side and a hotel partner (that list its property on an OTA) on the other. Besides the booking functionality, OTAs provide a wide functionality of comparing highly differentiated heterogenous hotel options on various parameters such as amenities, quality of stay and customer ratings are provided which affects decision making. Further, it provides various options to run a customised search to narrow down the vast populations of hotels present on an OTAs using some objective parameters like price range, location and distance from some reference point, type of property, star rating, customer ratings, meal options available *etc.* All these objective criteria cumulatively assist the consumers to narrow down the available options to a considerably smaller pool of options to choose from. Thereafter, the consumer can apply further subjective criteria *e.g.*,

comparing pictures of the hotel rooms, facilities available at each hotel, additional assortment of products/services offered by each hotel, qualitative customer reviews about the hotels *etc.* to further narrow down the available options. There is also an option to sort the narrowed down search results on the basis of various parameters (*e.g.* popularity, price, user ratings, relevance *etc.*), of which 'price' is just one of the criteria. For a given property/hotel, a consumer may multi-home to see what prices are being offered by different distribution channels such as options available on meta search engines, direct hotel website and OTAs. However, for enabling a consumer to arrive at a decision to choose a particular property, presence of such a hotel/property on the OTA plays a vital role. Even a price sensitive consumer, who multi-homes to compare prices offered by different avenues for a given option of hotel/property before finally effectuating a booking, would first search and compare the innumerous options available within his/her price budget/range.

197. MMT-Go has vehemently argued that consumers in India use a wide range of distribution channels. It is stated that there is a strong substitutability between online and offline channels within India. In the *Kadence* survey, when consumers were asked whether they agree with the statement "*I keep switching between offline and online modes for hotel bookings*", 63% agreed or strongly agreed with the statement. Further, it is stated that offline channels (including walk-ins) are the primary channel for distribution of hotel rooms in India, accounting for 75% of bookings in the 2017- 2019 period which is less than the percentage in Europe in 2019 (*i.e.*, 50%). The significantly lower share of offline sales in Europe, as per the MMT-Go's Economist Report, suggests a weaker substitutability between offline and online channels in Europe and, therefore, it is suggested that the market definition in the Bundeskartellamt's decision is not directly applicable in the present case, as Indian consumers see offline channels as a viable alternative to online bookings. It is also stated that 69% of consumers cite 'better price' as a top three factor in choosing a distribution channel and 37% rank it as the top factor, as per the Kadence survey. Further, the MMT-Go's Economist Report argues that *'[a]s a result, Indian consumers are more likely to shop around for the best available price compared to European consumers. In the Kadence survey, 71% of consumers agreed that they get a 'lower rate and/or additional facilities when they book hotels offline'. This shows that Indian consumers are more likely*

to turn to the cheaper offline channel, highlighting the structural differences between the Indian and European market.'

198. There is a fundamental fallacy in these arguments. When it comes to internet penetration in India, there is a huge divide between those using online channels and those still relying on traditional modes of concluding their transactions. End-consumers, who use online mode of transacting and making payments, those having a preference towards online channels, constitute a set of end-consumers distinct from those who prefer direct walk-in or those having a preference for offline channels. There may be a section of society which may still be using traditional modes of booking hotels such as talking to a coolie or auto-rickshaw/taxi driver to suggest hotels; but consumers belonging to this class appear to be mutually exclusive from those using online channels of booking having a preference to pre-decide and book. Or at the very least, even if there are consumers who use both these modes (online as well as offline), such consumers do not appear to be using these channels of booking interchangeably for the same booking, given the characteristically different offering that online and offline modes offer. Multi-homing even by the same class of customers may not necessarily imply substitution in the sense used for the purpose of defining markets. Even if, most customers use multiple methods to book hotels (customers can choose more than 1 option for booking hotels as per the Kadence survey) this in itself implies that these methods/channels are complementary and not substitutable even from a customer's perspective**.** Thus, notwithstanding the relatively low level of internet penetration in India, it may not be true to say that consumers using internet for booking hotels are interchangeably also using offline mode. Online and offline modes being characteristically different from each other do not appear to be catering to the same set of consumers and thus, even from their perspective may not be considered to be interchangeable. Moreover, as the Economist Report submitted by FabHotels mentions, with which the Commission concurs, that consumers having considered and used multiple booking channels in the last four years does not necessarily imply that they considered them substitutable for the same booking. This non-interchangeability at the end-consumer side also explains the criticality of discoverability for the hotel-side on each such different channel of distribution where the end-consumer is likely to search and thus online and

offline modes can no longer be considered substitute.

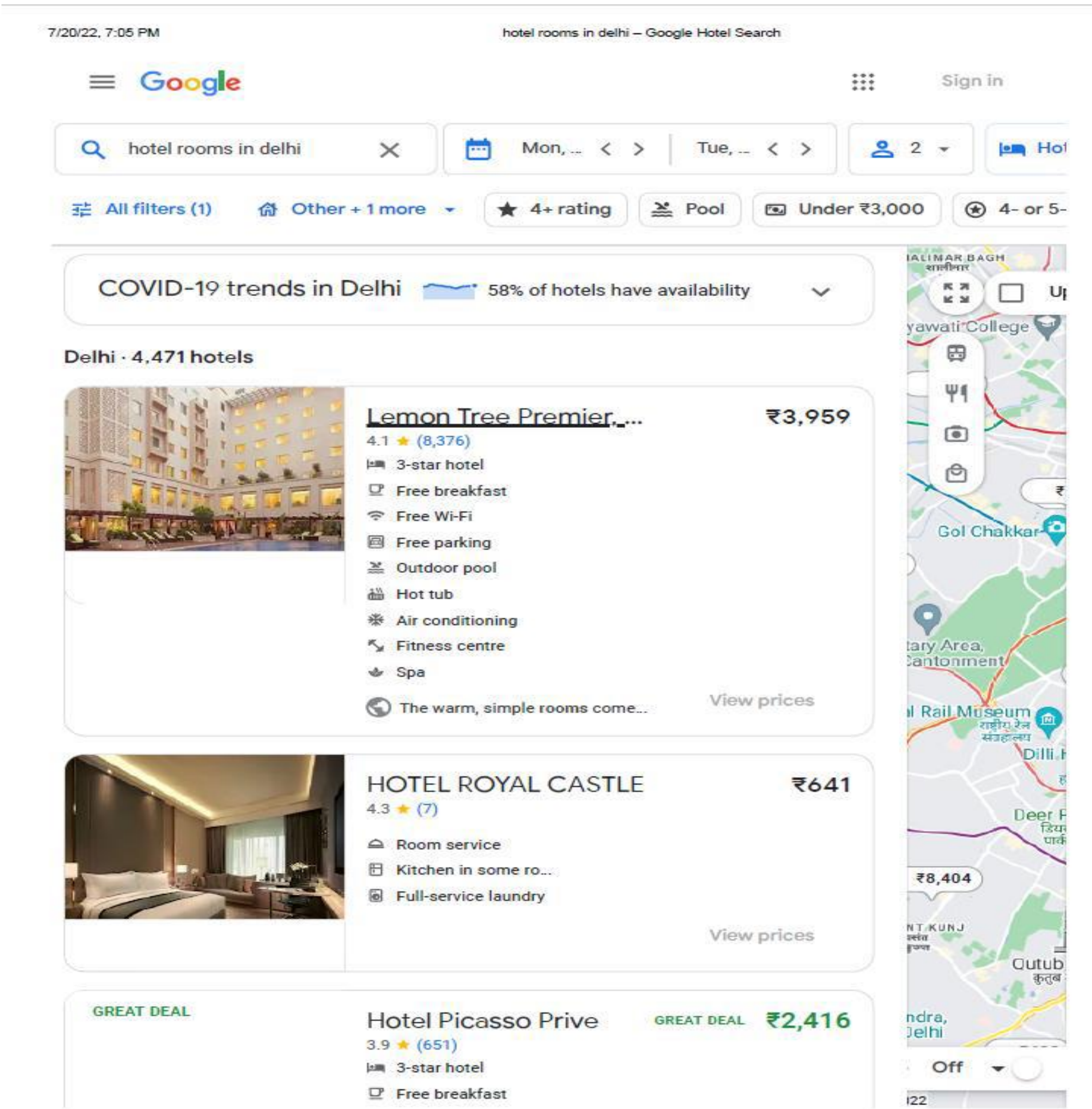
199. Further, the characteristic features of the OTAs, *namely*, convenience and ease of use in terms of the time and effort required, including navigating the website, the collection of data, speed of search and ability to compare the results, along with ability to book on the same page may not be comparable with other online modes.

200. As regards the substitutability between OTAs and online meta/search platforms that offer search and compare facilities to users, a key difference that exists is that the latter typically do not allow selling of inventory on the platform. For instance, Google *inter-alia* advertises property listing of various kinds including hotels, but it does not have a booking facility. Therefore, when a consumer searches for a hotel in a locality, the hotel and its reviews will appear, however, the hotel will not be bookable *via* the search engine. While it may be possible to view and compare hotel prices in Trivago, booking a hotel room cannot be done through it. Further, the Commission notes the argument of the Informant that since online transactions require sharing of personal details as well as financial details related to credit/debit cards, consumers *firstly*, find it more convenient using same channels for booking for ease of pre-filled/auto-filled personal and financial details and *secondly*, find it more secure not to use their credit/debit card or net-banking details on various web portals.

201. More so, the screenshots used in the MMT-Go Economist Report [at *Figure 5-1: Option to compare hotels available on Google* and *Figure 5-2: Various booking options available to the user*], which are reproduced below, provides some interesting observations as to why this combination of meta search engines plus the direct hotel website may not pose any effective or significant competitive constraints to OTAs:

[space intentionally left blank]

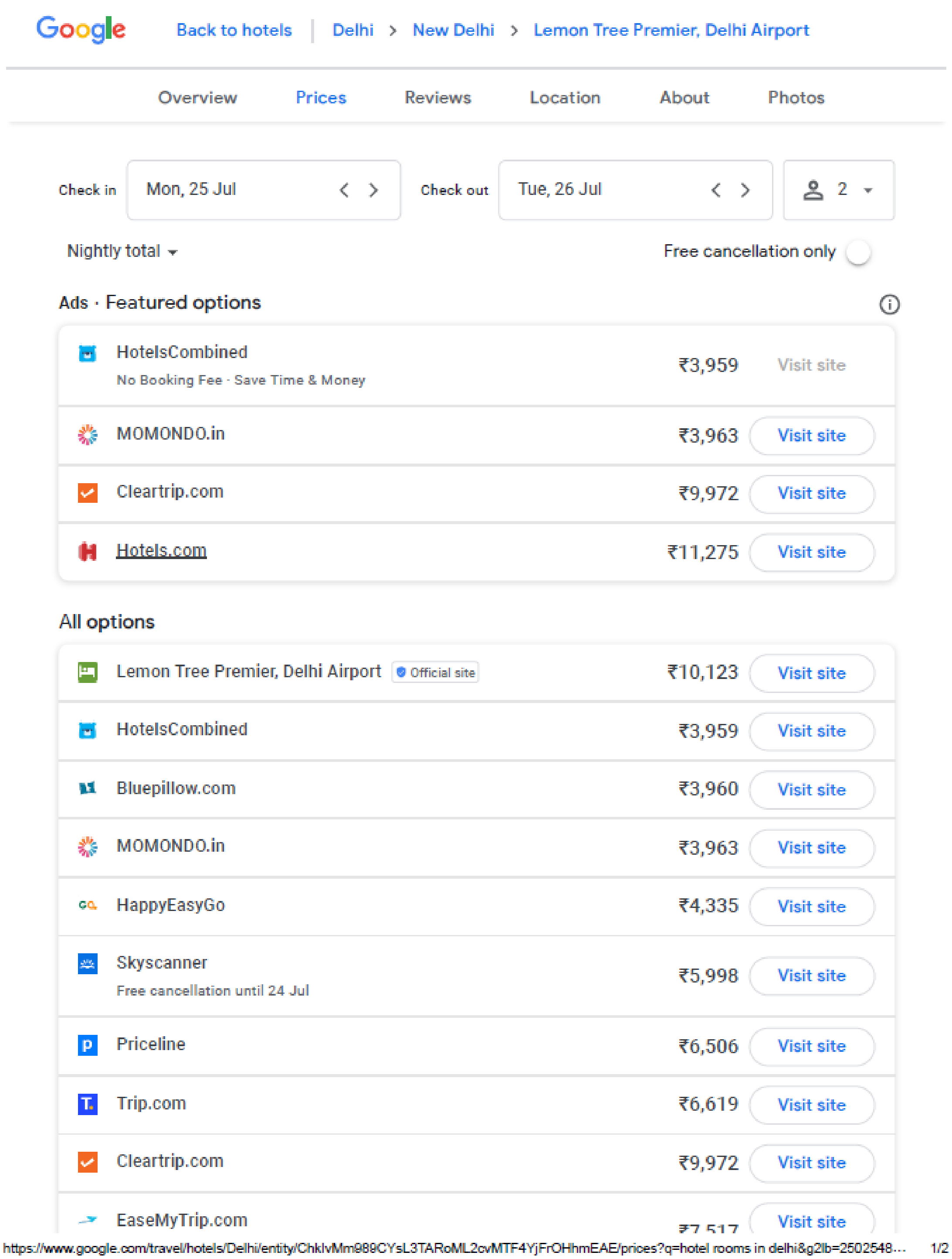
Figure 5-1: Option to compare hotels available on Google [MMT-Go's Economist Report][1]



[space intentionally left blank]

[1] The tables are numbered as they appear in the MMT-Go Economist Report.

Figure 5-2: Various booking options available to the user [MMT-Go's Economist Report]



202. The search results shown in Figure 5-1 and 5-2, reproduced above (as taken from the MMT Economist Report), provides links which as per MMT-Go provides a seamless option to book. However, most of these links to 'visit site' are also mainly from different OTAs appearing under the head 'Ads-featured options' displayed before the other 'All Options' containing the direct link to the hotel's website.

203. This brings us to the more pertinent substitutability assessment for the purposes of the present matter *i.e.*, substitutability from the point of view of the hotels, including the franchise hotel service providers, who use or avail the services of the OTAs to list their inventory so as to have better visibility and accessibility to the end-consumers. The aforesaid screenshots not only indicate the purpose but also show the necessity and significance of having a presence on OTAs for a hotel partner. Metasearch engines like Google are primarily advertising/marketing channels where hotels or OTAs can display their properties.

204. This is further clear from the submissions made in the MMT-Go's Economist Report which mentions the role of Google and other metasearch engines by various OTAs in their annual reports. In its FY 2021 annual report, Yatra stated:

> "*we rely heavily on Internet search engines, such as Google, Bing and Yahoo! India, to generate traffic to our websites, principally through the purchase of travel-related keywords*".

205. Similarly, MMT-Go in its FY2019 annual report stated:

> "*…a significant portion of the traffic to our websites is driven by Google, and, to a lesser extent, we use other search and metasearch websites and social websites to generate traffic to our websites, principally through payper- click advertising campaigns*".

206. To quote from the MMT-Go's Economist Report '*[b]ased on my review of Go-MMT's data, I find that, in FY2019, 42% of its overall traffic originated from search engines such as Google, metasearch engines and other digital display advertisements. Of this, 28% of the*

traffic was directed from search engines such as Google via their SEO, SEM and meta services, and another 6% of traffic came from metasearch engines Trivago and TripAdvisor'.

207. These assertions further reiterate the relevance and need for a hotel or franchisee service provider to be present on an OTA which can amplify its visibility to the other user side, not only directly to the users present on the OTA but also those searching through meta search engines and then booking through modes other than OTAs.

208. Arguably, a hotel can also list itself on Google 'without paying any cost'. However, presence and visibility are two different things. When a hotel partner opts for a channel of distribution like an OTA, it is more for visibility (and discoverability) and not just for mere online presence. Presence may be sufficient for those hotel chains or hotels that have a loyal customer base or already have a reputation, but for most hotels, it is the visibility that matters. Visibility is focused to ensure that the target market can discover the hotels, as opposed to merely being present on the online portal. And the visibility on search engines like Google or Trivago may not come without a cost. The submissions made by FabHotels are relevant in this context. It has been submitted that the portals of the search engine/ search site serve as marketing tools rather than a distribution channel. They further submitted that even if search engines/ search sites are to be considered as alternate distribution channels, the cost is prohibitive and is not a viable option for budget hotel franchisors. FabHotels' cost-per-click and the per transaction cost on Trivago for the 3-month period of July 2018 to September 2018, immediately following delisting from MMT-Go portals, has been stated to be very high, regardless of whether the visiting consumer ended up booking or not. Therefore, the Commission is of the view that listing on search sites is not a viable alternative to OTA listing. Rather their presence on OTAs also ensures their visibility on other search engines and social networking sites where such OTAs are targeting their respective advertisements. For an OTA, because of the large network of properties that it hosts, it makes economic sense to incur such marketing cost, to divert traffic to its intermediation platform where it is not only intermediating hotels room nights but also flights, packages, buses, trains *etc.* The strength and ability of an OTA to incur such

marketing costs which can ensure better visibility to all its listing partners from different verticals is also an important feature that reinforces the necessity for a hotel partner to list itself on an OTA. This is further accentuated by the fact that the results shown on metasearch engines like Google also depend on the presence of such hotels on the OTAs which appears to be the prominent source of data regarding presence of hotels in different geographic locations. Thus, from the hotel partners perspective, the main reasons for listing on an OTA is higher visibility and to avail other attractive features incentivising potential travelers to use the OTA for bookings. Even if the bookings come from offline channels or other online channels (other than OTAs), many of these bookings are incentivised through OTAs.

209. Several times during the hearing, the learned Senior Counsel for MMT-Go argued that the end-consumers as well as hotel partners multi-home and thus, rely on different distribution channels for bookings. It was also argued that the bookings through OTAs constitute a minuscule percentage of the total bookings for a hotel and thus, for a hotel, it is only one of the modes of reaching the end-consumer. Though this argument may seem attractive at first instance; however, to the Commission's mind, multi-homing does not necessarily imply a single relevant market encompassing all options used by end-users to consummate their bookings. Presence of hotels on multiple channels does not necessarily mean substitutability and can also be consistent with complementary use to target different consumer groups. As also stated in FabHotel's response, hotels filling fewer rooms through OTAs during periods of high demand does not indicate substitutability between channels, but rather that direct channels are preferred to OTAs (due to higher margins), which are used to fill inventory that hotels are unable to sell directly. Mere presence for multi-homing is not likely to be decisive on its own regarding the contours of the market and the consequent market power. Consequently, the different channels should be seen as complements rather than substitutes.

210. Furthermore, even in cases where one user side can multi-home (end users in the present case), considering that markets are characterised by users using these distribution channels to consummate their transactions at any given point of time, the other side (*i.e.*, hotels) may not see these channels as substitutes. For the hotels, these platforms are complementary ways of reaching the end consumers. The table [namely Table 3-1] relied upon by MMT-

Go in its Economist Report, reproduced below, is quite illustrative to explain this point.

Table 3-1: Hotel respondents' answers to question: *"What is the approximate share of the bookings received at your hotel via the modes given below, in a year"* in the Kadence Hotel Survey

Modes	**Independent/ Standalone Hotel**	**Large Hotel Chain**	**Franchise Chain**	**Budget/ Mid Segment Chain**	**Overall**
Online Travel Agents like Yatra, Booking.com, MakeMyTrip, etc.	29%	38%	36%	38%	33%
Direct-Hotel *Via* Phone call	14%	11%	15%	15%	14%
Direct-Hotel *Via* Website	6%	10%	5%	8%	6%
Direct-Hotel *Via* Walk-in	21%	7%	20%	16%	19%
Corporate Tie-up *i.e.*, direct tie-ups of your company/employer with the hotel	8%	14%	6%	13%	9%
Offline large travel agents/ services like Thomas Cook, SOTC, *etc.*	4%	6%	4%	4%	4%
Offline small travel agents or local travel agents	7%	5%	4%	3%	6%
Other mediums like local touts *etc.*	6%	3%	5%	3%	5%
Direct-WhatsApp/ Instagram *etc.*	4%	4%0	3%	1%	4%
Others	0%	0%	1%	0%	0%
Total	**100%**	**100%**	**100%**	**100%**	**100%**
Of which online	39%	53%	45%	47%	43%
Of which offline	61%	47%	55%	53%	57%
Of which direct	53%	47%	50%	53%	52%
Of which indirect	46%	53%	49%	47%	48%

Notes: [1] Based on a sample of 524 hotels. [2] In the summary rows at the end of the table, *online includes **'Online Travel Agents', 'Direct – Via Website' and 'Direct** – Whatsapp / Instagram etc. [3] In the summary rows at the end of the table, **Direct includes 'Direct hotel – Via Phone Call,' 'Direct hotel – Via Websites,' 'Direct – hotel – Via Walk-in,' Corporate Tie-Up i.e., direct tie-up of your company/employer with the hotel' and 'Direct – Whatsapp / Instagram etc.' [4]** the summary rows at the end of the table do not include Others' [5] I[2] have re-based the response to question BO of the Kadence Hotel Survey to account for the sample size for each of the categories above.*

[Source: Exhibit CL-2(c): Kadence Hotel Survey, question number BO]

211. The aforesaid table, reproduced from the MMT-Go's Economist Report, captures the response from the 524 hotel respondents on the approximate share of bookings received at their respective hotels *via* modes stated above, in a year. These modes comprises of all possible online and offline modes, which according to MMT-Go pose competitive constraints on each other. Apparently, the share of bookings received from online and offline mode is 43% and 57%, respectively. In the overall scenario (offline online channels taken together), OTAs contribute the highest share of bookings (33%). This is much higher than other modes of distribution, with the next highest being direct-hotel via walk-in at 19%. Further, of the total bookings (43%) coming from online channels of distribution, OTAs contribute 33%. Also, as mentioned earlier, bookings through other online modes may also be dependent upon the presence of a hotel on an OTA and to some extent, even if the booking is not directly done through the OTA, the booking received by the hotel through other online channels is attributable to its presence on OTA. An important question which then needs to be answered is whether the hotels or franchisee service providers (like FabHotels and Treebo) view any of these channels as substitutes to OTAs and whether any hotel can afford to delist from the OTAs for a small but significant increase in price charged by such OTAs (*i.e.* commission) in substitution to other channels? From a perusal of the survey results reproduced *supra*, the answer to the question is seemingly negative. Moreover, the online mode of distribution through third party platforms, which provide the facility to search, compare and book at the same place, is characteristically distinct from the services that the offline mode such as travel agents provide. It is also noted that as per MMT-Go's own submission, independent or unbranded hotels forms the largest share of hotel

[2] Refers to the Economist in the MMT-Go Economist Report.

inventory at 72% as of 2018 (as provided in page 271 of the MMT-Go Economist Report) and economy or budget hotels (offering lodging at relatively low prices and usually priced below INR 3,000 per night) account for 70% of the total room inventory in India (*Source: MMT-Go Economist Report*). Thus, in carrying out the substitutability assessment, considerations/factors that are relevant for its largest constituency, *i.e*. the budget hotels, cannot be ignored.

212. Besides the OTAs being functionally and characteristically different from other channels of distribution from the perspective of end-consumer as they provide a seamless 'search, compare and booking' functionality; the presence on the OTAs from the perspective of hotel user-side is more necessitated to develop overall demand for the product which these hotel partners are trying to sell, as termed by MMT-Go, 'perishable room nights'. Even if all the bookings are not consummated through the OTAs and are ultimately booked through other channels, the other functionalities present on OTAs help in developing the overall demand by better visibility and discoverability which is most important for a hotel partner.

213. MMT-Go has extensively argued on why direct booking made on hotels' own websites should also be included in the relevant market. At the outset, it is noted that there is no 'intermediation' involved in direct booking, and thus by no logical reasoning can it be even considered for a putative substitutability analysis. Hotels and OTAs are in a vertical relationship and not horizontally placed competitors providing the same services. While a consumer does indeed have the option of booking a hotel from a hotel's website or on an OTA, that does not suggest substitutability between hotel websites and OTA, nor does it obviate the necessity for a hotel to be listed on OTAs. Budget hotels, which form the majority of the hotels market in India, commonly do not have brand recognition working in their favour, which could attract consumers directly to their websites. In fact, many budget hotels do not even have websites to offer real time online booking. FabHotels estimates that over 95% of its members do not have websites that offer real-time direct booking.

214. Even the franchise budget hotel chains, which may have relatively better brand recognition compared to standalone budget hotels, need to list their inventories on OTAs for visibility and for consumers to know that they have franchise hotels in a particular location, which is

critical for *inter-se* competition between the franchise chains themselves. Even when looked at from the users/customers' perspective, as the Economist Report submitted by FabHotels points out, there are important differences between websites of franchise chains and OTAs that prevent them being substitutes. Franchise chains have limited variety, since they only list their franchisees, whereas OTAs list a much wider variety of properties spanning several franchise chains, hotel chains, and independent hotels.

215. Further, the Commission also does not find much merit in the claimed market differences in India and Europe to argue that the European precedents are inapplicable in the present case. It is noted that during the *HRS* case, while internet penetration in Germany was as high as 82% in 2012, online booking was 30.10%. Yet, the competition authorities considered online and offline separate markets. In 2020, internet penetration in India was merely 42%, yet the online hotel booking was already around 30%, in fact more than 30% based on the results of surveys of MMT.

216. For the foregoing reasons, in the facts and circumstances of the specific market under consideration, the Commission is of the considered view that, *firstly*, online and offline are not part of the same market and *secondly*, even within the online segment, OTAs constitute a separate relevant product market. Viewed from the competition lens, the Commission does not find that the various distribution channels argued by MMT-Go (*e.g.* direct bookings made through the hotel's own website; corporate sales; offline travel agents; unorganised intermediaries such as coolies, taxi drivers, *etc.*; metasearch services such as Trivago, Trip Advisor *etc.*) to be constraining MMT-Go. The relevant market in the present case, thus, is "*market for online intermediation services for booking of hotels in India*".

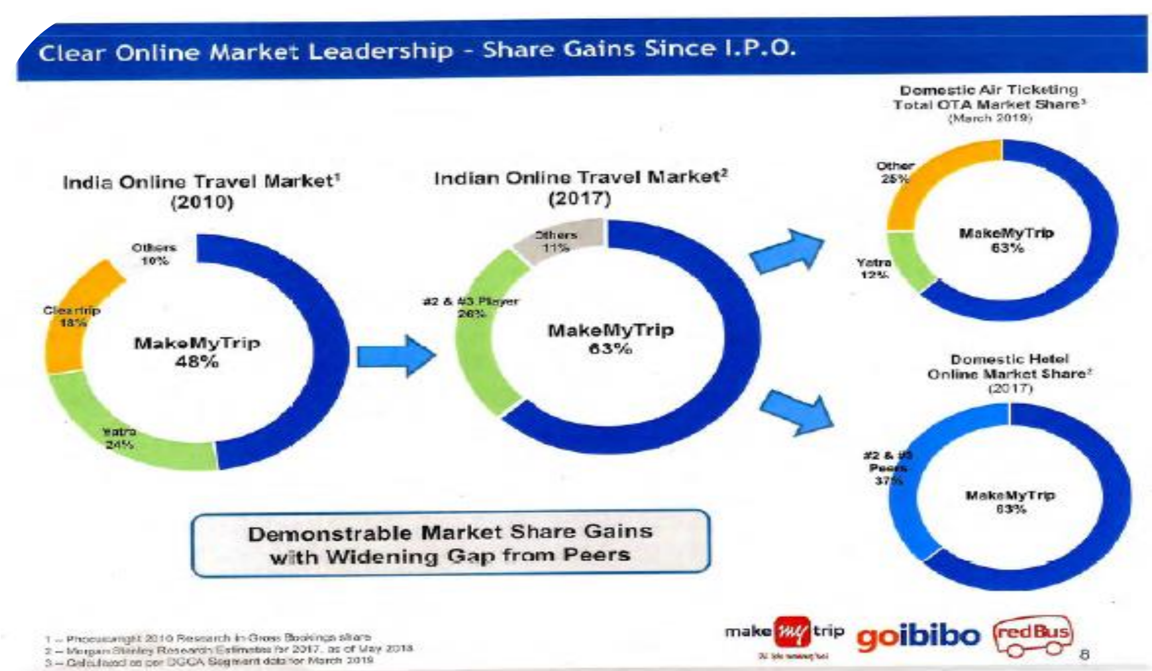
<u>Dominance</u>

217. In the relevant market delineated above, MMT-Go is alleged to be engaging in abusive conduct within the meaning of Section 4 of the Act. The scheme of the Act is such that provisions of Section 4 are only attracted when the entity under scrutiny holds a dominant position in the relevant market. Thus, whether MMT-Go holds a dominant position in the relevant market, *i.e.* "*market for online intermediation services for booking of hotels in*

India”, is a key issue for determination.

218. The Act explains dominant position as a position of economic strength enjoyed by the 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, with due consideration to the inherent characteristics of the market, the market structure, the 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, the assessment of a case would be unique to its own facts and the market under consideration.

219. In the online intermediation services for hotel booking, MMT-Go as a group is stated to be the market leader with 63% of domestic hotel online market share in 2017 as per the investor presentation of MMT-Go, snapshot provided below.



Source: *MakeMyTrip Investor Presentation May 2019 annexed in Annexure 32 (Reply dated 24.10.2020 submitted by FabHotels) at Page 3930 of the Investigation Report*

220. MMT-Go has submitted that it is not dominant in any relevant market, though majority of its arguments were made in light of the wider market definition proposed by it. Even in the market defined by the DG, which has been accepted by the Commission *supra* to be the correct relevant market for ascertaining MMT-Go's position, MMT-Go has submitted that it does not hold a position whereby it can act independent of the market forces. MMT-Go has *inter-alia* stated that the DG has adopted incorrect parameter to calculate market shares, has ignored the size and resources of the competitors, over-estimated the entry barriers which do not exist in reality and assumed dependence of consumers on MMT-Go without any basis.

221. The Informants have vehemently opposed the arguments made by MMT-Go which according to them is the biggest and most prominent OTA for reaching the end-consumers. FabHotels has submitted that the stayed Room Nights (RNs) is the right metric to assess market position because it reflects the actual fulfilment of 'SCB services' that end-consumers/ retail consumers avail of. Further, MMT-Go's submission as recorded in the DG Report also supports that any other metric will not accurately portray the market position. MMT-Go has stated that *app downloads does not necessarily mean booking or termed as a metric of strength of an enterprise as such download does not necessarily indicate a converted or successful transaction through the said application.* Comparison of MMT-Go's stayed RNs (as available in its publicly available financial statements) with booked RNs/ stayed RNs of some of the other OTAs demonstrates that MMT-Go does not have any effective competitor in the relevant market. Further, despite incurring nearly USD 4.3 million in marketing and advertising expenses, EaseMyTrip generated negative revenue from the hotels and packages segment in FY 2022. Fabhotels also relied upon the following (comparison of MMT-Go's stayed RNs, as available in its publicly available financial statements, with booked RNs/ stayed RNs of Yatra and Cleartrip), to argue that MMT-Go does not have any effective competitor in the relevant market.

	MMT-Go (stayed RNs) – (A)	**Yatra (booked RNs) – (B)**	**(B) as a % of (A)**
FY 2017	91,02,000	n/a	n/a
FY 2018	2,09,98,000	~2,000,000	9.5%

FY 2019	2,59,11,000	~2,300,000	8.8%
FY 2020	2,90,43,000	~1,200,000	4.13%
FY 2021	84,35,000	~500,000	5.9%
FY 2022	1,52,79,000	~1,020,000	6.7%

	MMT-Go (stayed RNs) – (A)	Cleartrip (stayed RNs) – (B)	(B) as a % of (A)
FY 2017	91,02,000	[redacted]	[redacted]
FY 2018	2,09,98,000	[redacted]	[redacted]
FY 2019	2,59,11,000	[redacted]	[redacted]

222. Booking.com's growth has been in the alternative accommodation market. As per data provided by Booking.com for November 2019, FabHotels sold [redacted] room nights on Booking.com, which is [redacted] of total room nights sold on Booking.com in India in the same month, implying that the total number of room nights sold on Booking.com in India per day is [redacted]. As per MMT-Go's quarterly report for the quarter ended 31 December 2019, MMT-Go sold 84,72,000 room nights in three (3) months ended 31 December 2019 which would be approx. 92,087 room nights per day for the period October 2019 to December 2019. In other words, Booking.com which is reportedly the third largest OTA operating in India sold only 13.4% of the room nights sold by MMT-Go during the same period.

223. Treebo has argued that even though the commission charged by MMT-Go ([redacted]) is significantly higher than Booking.com ([redacted]), the stayed RNs for MMT-Go was significantly higher than any other OTA. Further, the fact that global OTAs with big inventories and large resources have not been able to effectively penetrate the market, is itself evidence that MMT-Go had blocked growth of these platforms by imposing restrictions through its agreements with the hotels *vide* clauses such as D minus 3 and D minus 30, price parity *etc*. For instance, OYO is restricted from listing on Paytm and Booking.com and other OTAs for last 5 days before check-in.

224. Further, Treebo has also argued that MMT-Go's assertion that value is a more appropriate proxy of dominance in the relevant market is incorrect and even if their argument is to be admitted, it still shows MMT-Go to be unquestionably dominant. Red Herring Prospectuses

and Draft Red Herring Prospectuses filed by competitors with the Securities & Exchange Board in India reveal that for the financial year 2019-2020, MMT-Go's gross revenue from bookings was INR 432 billion, while Yatra's was INR 85.3 billion and for the financial year 2019-2020, MMT-Go's gross booking volume from hotels was 59 million, and Yatra's was INR 1 million.

225. Treebo has submitted that MMT-Go has the largest consumer base of 51 million and network effect kicks in owing to the largest user base. Owing to such a wide range, more consumers prefer MMT-Go over other OTAs. Further, hotels also prefer MMT Portal over other OTA portals due to presence of high number of consumers on MMT portal, which is evident by the higher room night booked. MMT-Go imposed restrictions through its 'D minus 3' and 'D minus 30' clauses on FabHotels and Treebo and condition on OYO for exclusion of Paytm and Booking.com. Resultantly, MMT-Go has a large inventory by virtue of such vertical integration which creates network effect and thus provides it with competitive advantage. MMT-Go has unparalleled position of strength giving it ability to provide discounts and new entrants do not have the user base to compete with the network effect created by MMT-Go in its favour. The same clubbed with the restricted clauses creates barrier to entry. There has been no effective new entrant in the market. Players like Paytm were blocked by MMT-Go through their restrictive clauses. Further, global players like Booking.com also has not been able to put any competitive constraint on MMT-Go. Despite imposing the highest commission rate of [redacted], MMT-Go is the dominant player in the market. Vertical integration between MMT-Go and OYO which led to exclusion of FabHotels and Treebo from the MMT-Go's platform also resulted in reducing the bargaining power of chain hotels as well as independent hotels. Treebo after being delisted lost its several hotel partners and subsequently, after being relisted on MMT-Go, Treebo's hotel partners has grown significantly from 372 hotels in August 2021 to 731 hotels in August 2022, thereby registering an approximate 100% growth. Contrary to the claims of the Expert Economist that hotels can pass the cost to consumers, due to price parity clause, it is not even possible for hotels to pass on the cost to the consumers. Despite the increase in commission/ other charges, hotels stick to MMT-Go as it is an essential distribution channel. Therefore, there is limited countervailing buyer power and hotels have limited

ability to switch to alternative suppliers or self-supply.

226. The Commission has given a thoughtful consideration to the aforesaid submissions. At the outset, the Commission observes that many of the factors and aspects discussed while delineating the relevant product market have a bearing on the dominance assessment as well. For example, the reliance of hotel partners on OTAs for having better accessibility and discoverability, multi-homing not being a sufficient factor for expanding the scope of the relevant product market to non-OTAs, role of network effect *etc.* may need to be considered in order to segregate the players and then assess the position of the entity within the correct framework. During the *prima facie* assessment, the Commission had observed that as per MMT's investor presentation, which was annexed to the Information, MMT-Go together held 63% of domestic hotel online market share in 2017. Further, during investigation, the DG also found that MMT-Go has the highest market share in the OTA segment. Though MMT-Go has tried to discredit the stayed RNs metric relied upon by the DG, the Commission is of the view that given the nature of the market, that metric indeed is the appropriate parameter. An OTA is primarily an intermediation channel, i.e. transaction platform, that connects hotels and end-consumers. Such hotels list their heterogenous hotel rooms on OTAs which are sold on a per night basis. The per night tariff for a night stay in a hotel available on an OTA may vary from as low as INR 500 to as high as INR 50,000 or even more. Thus, taking revenue as the basis may give absurd conclusions as regards the strength of their network. To explain with the help of an illustration, consider that, for a given time period, 1000 room nights are booked through a hypothetical OTA X where each room night is priced at INR 500 and 50 room nights are booked through another hypothetical OTA Y where each room night is priced at INR 10000. The gross booking value (GBV), which has been suggested by MMT-Go as the more appropriate metric, made by OTA X and OTA Y for the said time period would be equal (*i.e.*, 500000), thus showing equal market strength based on market shares, despite OTA X having intermediated bookings for 1000 room nights as compared to 50 room nights booked through OTA Y. This, to the Commission's mind, grossly underestimates the network created by OTA X through a large volume of transactions which was 20 times the transactions intermediated through OTA Y. In the case of an OTA, the user-groups are linked by the presence of

positive indirect network effects. In the present case, both hotels and consumers positively value the presence of more users on the other side of the platform, as it creates higher visibility and potential sales (for hotels) and wider variety and options (for consumers). Further, these user sides also benefit the OTAs in monetising the user attention in form of various other verticals *e.g.*, most of these OTAs also have verticals in the form of flight bookings, trains and bus bookings, package deals, alternative accommodations *etc.*, besides opportunities to earn revenue through targeted advertisements. Towards that end, OTAs also benefit from those consumers who visit their portal, reveal their search preferences and leave it without consummating that particular transaction. Even if the consumer does not consummate that transaction, to say that it is a loss for an OTA is to undermine the value of data in the form of revealed consumer preferences which is monetisable through other verticals and targeted advertisement. Thus, the Commission finds that from the data available at record, stayed RNs may provide the most appropriate metric to gauge the comparative strength of MMT-Go based on markets shares.

227. The following table [Table 15] from the Investigation Report of the DG calculates the market shares on the basis of number of room night booked through the OTA on the basis of information provided by respective OTAs:

[redacted]

[redacted]		[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]		
	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]		
	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

[redacted]

228. From the aforesaid table, it is observed that while MMT-Go's market share has increased consistently during the period under investigation, except a slight decline in 2019-20 from [redacted] to [redacted]. However, the same was above [redacted] during 2017-18, 2018-19 and 2019-20. Booking.com which has been stated by MMT-Go to be posing significant competitive constraints to it became marginalised after 2016-17. The decline in the market share of Booking.com was matched by a commensurate increase in MMT-Go's market share during 2017-18 and 2018-19. Further, market shares of other competitors such as Expedia, Yatra and Cleartrip were visibly below 10% and were on a decline during the period under scrutiny. Further, market shares of new entrants such as Easemytrip and Paytm was below 1% during the period under scrutiny. Considering the comparative market shares, it appears very unlikely that any of these players were posing any effective competitive constraints on MMT-Go in the relevant market. Further, the comparative assessment presented by FabHotels showing stayed RNs booked through Yatra and Cleartrip as a percentage of those booked through MMT-Go supports this conclusion.

229. The Commission is fully cognizant that market share is only one of the indicators enshrined in Section 19(4) of the Act for assessing dominance, and the same cannot be seen in isolation to give a conclusive finding. Further, this assumes all the more importance in case of platform/digital markets, where high market shares may not be durable and where the platforms derive their strength from factors other than market shares. However, in the present case, none of those other factors are presenting any different conclusion with regard to the strength of MMT-Go in the relevant market.

230. Dependence of consumers on the enterprise is an important parameter under Section 19(4) to gauge the strength of an enterprise. For the purposes of the present discussion, MMT-Go

is primarily intermediating between two distinct user groups who are both in some sense the consumers of the services offered by MMT-Go. Both hotels and consumers positively value the presence of more users on the other side of the platform, as it creates higher visibility and potential sales (for hotels) and wider variety and options (for consumers). While delineating the relevant product market, the Commission has already elaborated in details on the dependence of hotels on the OTAs. Given that MMT-Go was the biggest OTA having the highest market share during the period under investigation, the dependence of hotel side on MMT-Go for their survival and growth, requires no further elaboration.

231. The Commission further notes that the barriers to entry and expansion also informs the state of competitiveness in a market. As is apparent from the facts before us, the last entry in the market was in 2017 by HappyEasyGo. Apparently, its market share was merely 0.2% in 2019-20 of the aggregate stayed RNs in the OTA segment. Thereafter, despite the market size growing manifold, there has not been a new entry. While MMT-Go has argued that the publicly available information indicates that Google plans to enter the OTA market and compete directly with OTAs, this factor may not be relevant in respect of the period under investigation/inquiry.

232. Network effects play a pivotal role in dominance assessment. As the DG has pointed out, MMT-Go has more than 45,000 properties listed on its platform. Due to such wide choice available on MMT-Go's portal, consumers also prefer MMT-Go to other portals, which in turn incentivises hotels/franchisee service providers to list on it. Further, MMT-Go offers several benefits and features, which coupled with its market position has resulted in network effects. In the kind of market under consideration, such network effects also create insurmountable entry barriers for existing as well as potential market participants.

233. Besides the aforesaid factors, the Commission agrees with the assertion made by the Informants that the commercial arrangement between MMT and OYO has further fortified the position of MMT-Go in the market. Such commercial arrangement resulted in the fact that a large number of consumers also book hotels on the said website which then leads to a great influx of hotel owners who are willing to list their hotels on MMT-Go.

234. In view of the foregoing, thus, the Commission concludes that MMT-Go held a dominant position in the market for online intermediation services for booking of hotels in India during the period of inquiry, *i.e.* 2017-2020.

Abuse of Dominant Position

235. The Commission observes that the Informants have alleged various practices/conduct on the part of MMT-Go which have been termed to be abusive. Some of these were *prima facie* found to be abusive and the Commission had asked the DG to investigate the same. The DG has returned a finding of contravention specifically with regard to parity obligations (price parity as well as room parity), predation, misrepresentation and exclusivity conditions (D minus 5 restriction) to be abusive on the part of MMT-Go. In addition, the commercial arrangement between MMT-Go and OYO, *vide* which MMT-Go delisted the competitors of OYO (FabHotels and Treebo) from its portals was also found to be in contravention of Section 3(4) read with Section 3(1) of the Act. The Commission will deal with each of these allegations in the following part of this order.

Parity Obligations [Price/Rate Parity and Room Availability Parity]

236. The Commission, in its *prima facie* order, had noted that the Across Platform Parity Agreements (APPAs), popularly referred to as 'retail Most-Favoured Nation (MFN) clauses', are stipulations where the sellers guarantee an online selling platform terms, price and/or non-price, that are at least as favourable as those granted to any other platform, thus ensuring the former a competitive advantage over its competitors. By securing such favourable terms, the platforms attempt to guarantee the best available price and/or terms for a given product to its final consumers.

237. The Commission also noted that APPAs may result in removal of the incentive for platforms to compete on commissions they charge from hoteliers, may inflate the commissions and the final prices paid to the consumers and may also prevent entry of new low-cost platforms. Though the magnitude of the anti-competitive effects of these agreements, *inter alia,* will depend on the market power of the platform, given the *prima facie* dominance of MMT-Go, such parity restriction was directed to be investigated to gauge its impact under Section

3(4) as well as Section 4 of the Act.

238. The DG has investigated the relevant clauses of agreement dated [redacted] between MMT and FabHotels and also the agreement dated [redacted] between MMT-Go and Treebo. Both the agreements contained clauses which required these franchisors to ensure that there shall [redacted].

239. The DG reviewed the cases in other matured jurisdicitons on price parity impositions and found that internationally wide rate parity arrangements are considered to be anti-competitive. The DG then examined the agreements of different OTAs with hotel partners and observed that all the OTAs were imposing similar conditions on their hotel partners. The investigation revealed that while Booking.com, Agoda, Expedia and Cleartrip has imposed room as well as rate parity, other OTAs such as Yatra, EaseMyTrip and Paytm has imposed only rate parity. Further, OTAs like Yatra have included penal provisions for non-compliance.

240. The DG also sought information from certain hotels and observed that out of 21 respondent hotels, seven hotels had submitted that price parity affect their business adversely. The reasons cited by hotels include adverse effect on offline rate and erosion of customer base. It was also stated that rate parity reduces competition between OTAs and the practices of OTAs of giving deep discounts after maintaining price parity was affecting hotel's direct bookings. Further, the DG observed that the said abusive act of MMT-Go not only created barriers to new entrants in the market but also drove existing competitors out of the market. The DG noted that Paytm first launched the hotel booking services in 2016, but these services were then shut down and relaunched in April 2019. Further, HappyEasyGo entered the travel industry in 2017. Further, imposition of rate parity and deep discounting practices of MMT-Go was found to be affecting global players like Expedia and Booking.com, as was evident from their declining market shares. In view of the above, the DG is of the view that the imposition of the parity clause by MMT-Go is in contravention of the provisions of Section 4(2)(a)(i) of the Act.

241. During the hearing, MMT-Go objected to the findings of the DG. It was argued that these clauses are not impositions and the hotels are only required to put in their best efforts to maintain price and room parity. It was also submitted that these clauses are widely accepted industry norm forming part of the commercial arrangement between every OTA and the hotels. Further, it was averred that these clauses were never implemented strictly as MMT-Go had no mechanism to monitor even if the hotels deviated from their contractually agreed terms. Further, it was stated that the DG has not shown any impact of these clauses, and the DG's finding that parity obligations resulted in entry barriers was unsubstantiated. MMT-Go further submitted that parity obligations were objectively justified given price sensitivity of the Indian consumer and to prevent free riding. Lastly, it was argued that given that all other OTAs are also having similar commitments from the hotels, regulatory intervention aimed only at MMT-Go would not address the competition concerns identified by the Commission.

242. Treebo stated that the price parity imposed by MMT-Go on Treebo prevented it from offering lower prices to any other OTA. If some other OTAs such as Cleartrip, Yatra, *etc.* had better prices than MMT-Go for Treebo properties, they could have generated more business for Treebo since customers look for best prices available on various channels but MMT-Go's price parity restriction didn't allow it to offers lower prices to anyone else. FabHotels submitted that OTAs such as Yatra, Expedia, Booking.com, Agoda, Easemytrip and Cleartrip have also imposed price/room parity on FabHotels and that MMT-Go took advantage of the pervasive wide MFN network and offered discounts on properties listed on MMT-Go portals, that other OTAs did not have the ability to match. MMT-Go enforced contractual wide parity obligations prior to the [redacted] as well as under the [redacted]. In support of this, FabHotels has provided certain emails and WhatsApp correspondence. MMT implemented rate and price parity since 2015 when FabHotels and MMT first entered into standard click wrap agreement.

243. Further, FabHotels stated that in the relevant market, given the price conscious nature of Indian consumers**,** bookings for budget room accommodation would be driven by price consideration and given MMT-Go's ability to offer discounts that other OTAs could not,

multi-homing had/would have negligible constraints on MMT-Go's market behaviour. In fact, with the room parity obligation cast on FabHotels and with MMT-Go's ability to incur high marketing and advertising expenses, multi-homing by consumers looking for budget hotel rooms would have reduced significantly.

244. FabHotels submitted that there are no objective justifications for imposing wide MFN obligations. While free-riding may be argued as a justification for imposing narrow MFN, where MMT-Go restricts FabHotels from offering better terms directly, free-riding cannot justify wide MFN that applies to all forms of distribution channels.

245. Mr. Deep Kalra, Founder and Group Executive Chairman of MMT-Go, has admitted that MMT-Go imposes price parity. As per him, price parity clause in the agreement basically ensures that a hotel does not quote a lower price on any other platform. This is done to protect the interest of consumers. While MMT-Go stated that it doesn't have the resources to monitor parity on a day-to-day basis, but, evidences (emails and Whatsapp messages) provided by FabHotels clearly show that MMT-Go not only monitors the price parity strictly but also ensures that price parity is maintained. FHRAI in its information has also submitted an email [redacted] asking the hotel to remove the rate disparity with respect to competitors of MMT-Go, otherwise the visibility of the property would be reduced.

246. On an overall appreciation of the aforesaid submissions, the Commission notes that there is no disagreement between the parties as regards the existence of such obligations in the agreements between MMT-Go and the chain hotels/franchisors (Treebo and FabHotels). Rather, MMT-Go has sought to provide objective justifications for having such clauses in its agreement with hotel partners and franchisors. The Commission observes that the wide rate parity impositions, whereby the hotel partners are restrained from offering better prices to other OTAs or to offer any better prices on their own websites, are generally perceived as anti-competitive because of their ability to restrict price competition and, thus, making it difficult for an entrant or an existing player to establish a market presence, thereby creating entry/expansion barrier for new/other platforms due to the supplier's price parity clause with an incumbent platform. Hence, there would be little incentive for sellers to secure a

lower commission if it cannot be used to drive competition, thereby resulting in foreclosure of competition. It can also reduce incentives for OTAs to compete with others by offering lower commission rates, in return for a better rate per room night, thereby softening price competition between platforms and decreasing innovation.

247. For the aforesaid reasons, parity arrangements in case of the online booking platforms market have been a focus of several antitrust investigations across the globe. At the outset, based on a general appreciation of the international jurisprudence and economic literature, it is noted that room rate parity can be either wide or narrow. Platform MFNs are labelled "wide" if they constrain the price on all other platforms, including the provider's own website (if any). In contrast, platform MFNs are considered "narrow" if they prevent the provider from setting a lower price on its own website, while leaving prices on other platforms unrestricted. Wide rate parity is the more restrictive form of parity agreement. In such clauses, a hotel agrees not to undercut the room prices that the OTA charges for their hotel. This agreement generally applies to all distribution channels, including other OTAs and the hotel's own website. Narrow rate parity clauses generally allow hotels to offer lower rates to other OTAs, but not publicly online through their own websites. Narrow rate parity clauses also generally do not restrict a hotel from offering lower direct rates when it's through indirect or offline channels, such as email or telephone bookings, or to guests in their loyalty programs. Sellers are, permitted to offer better prices and terms to competing platforms. Thus, the difference between narrow and wide parity clauses is in the scope, *i.e.*, the scope of coverage in wide parity clauses are broader than the scope of coverage in narrow parity clauses.

248. What is perplexing in the present case is that the rate parity is not the only clause that exists in the agreements which are before this Commission for examination. Such parity obligation exists in conjunction with room parity obligations, deep discounting strategies and exclusivity conditions. Thus, any examination of these clauses sequentially will be bereft of the simultaneous, and reinforcing, impact they create or can potentially create on the overall competition in the market.

249. Presence on OTAs is essential. MMT-Go is a dominant platform and an important gateway for hotels to reach end consumers. Thus, the hotels do not have a real choice to leave this OTA and be present on other OTAs. Even if all OTAs impose these parity obligations, the impact caused because of such obligation may vary from OTA to OTA. As a matter of fact, the DG has found that all OTAs were imposing rate parity, while some were imposing both rate parity as well as room parity.

250. Rate parity obligation in favour of MMT-Go meant that a hotel will not be able to supply its room night to any other OTA at a price lesser than the price offered to MMT-Go. Room parity in favour of MMT-Go ensured that at any given point of time, the hotels rooms offered for sale at MMT-Go would not be lesser than any other OTA. In order to understand the impact of such stipulations, it is necessary to identify the harm being caused, in light of the objective justification, if any exists.

251. It may be worthwhile to understand the impact with the help of an illustration. Consider that Hotel A is listed on all OTAs and decides to supply a room night to MMT-Go at ₹ 1000 per night. Now, Hotel A will not be able to supply the room night at a price lower than ₹ 1000 per night to any other OTA. Considering that MMT-Go charges a commission of 20% from Hotel A on every room night sold through MMT-Go's portal, Hotel A will get ₹ 800 per room night sold while MMT-Go will keep ₹ 200 per night.

252. In case of price parity obligations, the foremost theory of harm is that no existing or potential OTA will have an incentive to offer a commission lesser than 20% to Hotel A as such lower commission will not secure them a room night from Hotel A at a price lower than ₹ 1000 per night. Thus, while (at least hypothetically) Hotel A could have benefitted in the form of contracting a lower commission with another competing OTA by supplying its hotel room for a price lesser than ₹ 1000 per night, it will not be able to do so because of the price parity obligation imposed by MMT-Go. Hence, it will reduce incentives for other OTAs to compete with MMT-Go by offering lower commission rates, in return for a better rate per room night, thereby softening price competition between OTAs and decreasing innovation. This, to an extent, can be correlated with the data collected by the DG. The DG, while looking at the allegation of excessive commissions concluded that the commission charged

by MMT-Go was found to be commensurate with the industry practice and hence, the same may not be termed as excessive. While the Commission is not going into the determination of the commission charged by MMT-Go being excessive, as the same has also not been found by the DG either, it cannot be completely ruled out that such industry practice was the result of softening of competition between OTAs pursuant to the operation of rate parity obligations.

253. Another harm which is apparent is that even if all OTAs secure the rate parity obligation from Hotel A, the one having maximum capability to fund discounts may end up intermediating the maximum bookings. In the instant case, rate/price parity is applied at the time of listing and further discounts and cash backs are provided on it by the OTA. Room availability parity, in addition, would imply that even the last unsold room, intended to be sold through OTA platforms should be reflected on all the OTAs which have room parity impositions in their agreements with hotels. Thus, even if all OTAs have secured rate parity and room parity from Hotel A, the OTA offering maximum discounts, may end up selling most room nights of Hotel A. Thus, even if other OTAs charge a commission lesser than 20% (the commission rate which is being charged by MMT-Go), such OTAs may neither benefit in terms of securing a better rate/price per room night (than ₹ 1000 per night) from Hotel A, nor be able to sell any rooms nights because even the last room night will be sold through the lowest price OTA *i.e.*, MMT-Go in the present scenario.

254. Further, because all room nights will be sold through the dominant platform, Hotel A will have to pay the highest commission (*i.e.*, 20%) for each room night sold, despite having contracted a lower commission rate with other OTAs, which in turn would imply an overall increase in the price of per room night for the end-consumer. To put it differently, there would be little incentive for Hotel A to secure a lower commission if it cannot be used to drive competition, thereby resulting in foreclosure of competition. Further, it may not matter even if other OTAs agree for lesser commission rates because commission is payable on intermediation of room bookings and since most rooms would be sold through the OTA that has the ability to discount the most, Hotel A will end up paying the highest commission on all room nights booked.

255. In the context of the present case, thus, what has happened is that the collective operation of these clauses and strategies on the part of MMT-Go have created an ecosystem which is self-driven to strengthen the position of MMT-Go, despite other OTAs also imposing some of these clauses/restriction through their agreements with hotels. Further, the presence of room availability clause ensures that, any hotel which wants to list its property on MMT-Go has to ensure that there shall be no difference in the availability of rooms of the Hotels provided to MMT-Go and other OTAs ("Room Availability Parity"), even if they are getting better terms and conditions from any other OTA. This may have the impact of reducing the competition between the OTAs to prevail merely in terms of the ability to offer discounts to the final consumers. And further because most of the bookings will be made through the dominant platform (which is also charging the highest commissions), this platform may also be most capable to fund those discounts through the commission's earned. This will further make it more attractive to end-consumers as compared to its rival OTAs leading to more bookings through it and more commissions to fund more discounts. This loop is vicious and can lead to foreclosure of competition for other OTAs.

256. Thus, it becomes pertinent to examine the combined effect of these clauses in presence of deep discounting along with commissions charged by the OTAs in the relevant market. Further, it has to be appreciated that deep discounting practices introduced to attract new customers, to bring about a shift in consumer behaviour in a new market, or by a new entrant to sustain itself in an entrenched market to enable it to keep afloat, cannot be seen in the same coin as is done by an entity which has significant market power and which is eyeing to oust competition from the market. Thus, the nature of the deep discounting, the market, the period for which it is in vogue may also be relevant.

257. Further, given that other OTAs were losing out to MMT-Go (*e.g.*, the dominance assessment showed that decline in the market share of Booking.com was matched by a commensurate increase in MMT-Go's market share during 2017-18 and 2018-19), the most rational response in a competitive market situation on the part of the other OTAs would be to offer a lower commission to the hotel partners and secure a lower room rate per night.

But because of the rate parity obligation, there was no incentive for OTAs to compete with competitors by offering lower commission rates, in return for a better rate per room night. Thus, the harm theorised in literature is evident from the data available before the Commission.

258. Another important result which is evident from the data is that MMT-Go offered the highest discounts to the end-consumers. Without going into the question of how these discounts were funded, as discounts *per se* or of itself may not be an antitrust concern, it is important to see the impact such discounts may create in conjunction with other surrounding stipulations. The theory suggests, and MMT-Go also confirmed, that these discounts are funded from the higher commissions secured by MMT-Go from the hotel partners. The impact of such higher commissions in the long run would be the higher capability to fund discounts over the rate at which the room nights will be supplied to all OTAs (as well as directly sold through own website) which in turn will ensure that most room nights would be sold through MMT-Go (which is also evident from its market share based on stayed room nights as collected by the DG during investigation). Since most room nights will be sold through MMT-Go that charges a high commission, the room rates at which room nights will be supplied by the hotels will converge towards an overall high price in the long run.

259. In the counterfactual scenario, consider that there was no price parity obligation on Hotel A. In the absence of price parity clause, Hotel A would have been free to adjust the price for each OTA and for its own direct sales, based on the cost of selling through those channels (*i.e.*, commission charged by each OTA). Hence, given that the platforms' commission rates are higher than Hotels A's cost of selling directly, the price would have been higher for intermediated sales than for direct sales. When the OTAs/platforms impose price parity clause, Hotel A is constrained to charge the same price in all channels, which, all else being equal, increases Hotel A's average cost of distributing the product (as its ability to freely decide the supply cost for each OTA based on the commission charged by them is now lost). Further, had there been effective competition between the OTAs (which is already compromised given that MMT-Go is a dominant OTA), it would have been possible for Hotel A to delist itself from MMT-Go without losing considerably in terms of

OTA sales and visibility (and discoverability). Had Hotel A had the option to deviate and be active on another OTA instead of MMT-Go, it would have acted as a check on MMT-Go's dominance and conduct, which in the present facts and circumstances is severely compromised.

260. Thus, the pricing strategy of MMT-Go allows it to list hotel rooms at discounted rates, as may be determined unilaterally by itself, while it takes away the freedom of differential pricing from its hotel partners, thereby limiting the possibility for them to offer their inventory at discounted rates through alternate channels/platforms based on other commercial considerations. Parallelly, the room parity condition restricts them from providing differential availability of rooms of the hotels to other OTAs/alternate portals including to such OTAs that charge lower commission rates or have unmet demand at a given point in time. Resultantly, the hotels are made to relinquish their price-setting freedom on the MMT-Go platform, which decides the final price payable by consumers after discount on its platform, and also on all other platforms/channels through the price parity condition. This, in combination with the room parity clause, effectively prevents the hotel partners from implementing independent yield management strategies for their time-limited room inventories. This is unambiguously unfair given that the hotels bear the sales risk and price-setting ability is central to freedom of trade and fair competition.

261. MMT-Go has argued that it is practically impossible to monitor parity on a day-to-day basis and that it has neither the means nor the resources to monitor the prices or the inventories offered by the hotels/accommodations across the competing distribution channels. However, evidences (emails and WhatsApp messages) provided by FabHotels clearly show that MMT-Go not only monitors the price parity strictly but also ensures that price parity is maintained. In this regard, FHRAI in its information has also submitted [redacted] asking the hotel to take corrective action and remove the rate disparity with respect to competitors of MMT-Go. He also threatened that the visibility of the property would be reduced if there is continuous disparity in rate and inventory with respect to competitors of MMT-Go. Further, MMT-Go has claimed that the DG has relied upon few instances to establish implementation of these

clauses. In this regard, the Commission notes the submissions made by the Informants that the non-implementation of these clauses strictly could have been on account of the caution exercised by MMT-Go, considering the initiation of the investigation.

262. Further, the Commission notes that the DG has also found the restriction laid in Clause 2.1 of the 'Exclusivity Agreement' between MMT-Go and certain Chain Hotels like denied their hotel partners an opportunity to list on other platforms/OTAs especially Booking.com and Paytm during the busiest booking periods. The DG had concluded that such restriction had the impact of increasing the dependence of chain hotels on MMT-Go, thereby increasing the revenue of MMT-Go that will have adversely affected the business of the competitors of MMT-Go. Further, the imposition of D-Minus clause by MMT-Go also restricted the option of Chain Hotels to list their hotel partners on other OTAs, and hence, restricted Chain Hotels to generate revenue from other OTAs. Further, the said exclusivity condition was not only eliminating competition in the relevant market of intermediary services for online hotel booking in India, it was also found to be restricting consumer choice by restricting their ability to book the hotels from other OTA portals. In view of same, the DG found that the imposition of D minus clauses on the chain hotels amounted to violation of Section 4(2)(a)(i) and 4(2)(c) read with Sec 4(1) of the Act. The Commission is of the view that the exclusivity condition along with the parity obligations and deep discounting worked in coherence which accentuated the adverse impact created in the market.

263. Based on the foregoing, the Commission finds that the deep discounts, exclusivity condition and parity conditions, in conjunction, creates an ecosystem that reinforces MMT-Go's dominant position in the relevant market. *Firstly*, it helps MMT-Go to retain and further increase its network of users/travelers, who would increasingly use the platform for availing the best deals. *Secondly*, it impedes the competitive process between OTAs by limiting the competitive levers/instruments at the disposal of other portals who, for instance, cannot get better prices from hotels by offering lower commission rates. *Thirdly*, the consequent adverse effect on sale of rooms through other platforms/channels and their user bases, further accentuates the dependence of hotels on MMT-Go as well as the bargaining power

imbalance that already exists between MMT-Go and its hotel partners. *Fourthly*, the increased sales through MMT-Go may lead to unilaterally determined higher commissions charged by it, giving it the ability to also pass on discounts which are funded through these commissions, which may adversely impact the prices at which the hotels rooms are being offered to end-consumers. While it may be argued that discounts are beneficial for the end-consumers, the net impact may be adverse when seen in light of higher commissions funding the higher discounts leading to overall higher prices on which the discounts are applied.

264. Parity terms imposed by MMT-Go cannot be justified on the ground that it is purportedly an 'industry practice'. It is important to appreciate that the effect and implications of a conduct indulged in by a dominant platform on its users and competition in the relevant market is fundamentally different from when a smaller insignificant player does it. MMT-Go being the largest OTA in the relevant market, presence on it is essential for hotels to access online customers for both sale and discoverability. Thus, while a hotel can choose to be on other smaller platforms based on the terms of contracts they offer, the same is not possible with MMT-Go. Hotels, especially budget hotels with no brand recognition, have to either accept the terms that MMT-Go offers or forego significant online opportunity of sale and discoverability. Moreover, while the other OTAs' may indeed have parity condition in their contracts, it is noted that the discounts they offer are not comparable to what is offered by MMT-Go. The data on room nights on which discounts are provided indicates that largest number of room nights on which more than 30% discount is provided are booked through MMT-Go. Expedia has submitted that average discount provided by Expedia from 2013-2019 was on an average below 5%. The Expedia funded discounts are offered from time to time for short periods on specific websites to drive booking conversion. PayTM submitted that it did not provide discounts to users for hotels but instead provides cashback incentives into their PayTM accounts within 24-48 hours. Thus, comparing the combined effect that deep discounting and parity together have, when imposed by a dominant platform that has already reaped the benefits of network effects in its favour, with that of the parity conditions of other platforms is not a like-to-like comparison.

265. MMT-Go claims the parity condition to be driven by the need to address free riding concerns. The Commission is of the view that the potential free riding problem does not have any perceptible relevance in the presence of the discounts that MMT-Go offers over and above the rate at which a hotel lists its rooms. When looked at in light of the deep discounts that MMT-Go has been offering over the years (as the data on record bring out clearly), it does not appear to be a realistic possibility that a user would discover a hotel on MMT-Go and then book it through another channel/OTA at a higher price point. It is MMT-Go's own submission that discounts were provided to build network. Thus, through its discounting strategy MMT-Go ensured both user footfalls and conversions on its platform. Further, when hotels have more OTA choices, the increased competition between the OTAs may lower fees/commission paid to hotels, so consumers may not have as much incentive to free ride. Moreover, what emerged from the cases dealt by other authorities, it has been observed that there may not be any concern about the effect of free riding on incentives to invest (in case of OTAs) because the investments of the platform are not "specific" to a particular hotel – thus, if there is free riding on the part of a particular hotel, this does not undermine the incentive of the platform to invest overall.[3] Be that as it may, the Commission finds some merit in the finding of the DG that the narrow price parity clauses may be justifiable on the grounds of free riding problem. Hotels and OTA are in a contractual relationship and therefore, free riding of hotels on the investment made by OTAs in advertisement and promotion can be detrimental to the business of OTAs. However, wide price parity obligation is not justifiable as it reduces the competition between the OTAs and may have an adverse impact on prices charged to end-consumers.

266. For the aforesaid reasons, the Commission is of the view that the wide parity obligations imposed by MMT-Go, along with exclusivity conditions, are in contravention of the provisions of Section 4(2)(a)(i) and 4(2)(c) read with Section 4(1) of the Act.

[3] OECD, Rethinking Antitrust Tools for Multi-Sided Platforms (2018), The Competition Analysis of Vertical Restraints in Multi-Sided Markets, By Cristina Caffarra and Kai-Uwe Kühn. Available at https://www.oecd.org/daf/competition/Rethinking-antitrust-tools-for-multi-sided-platforms-2018.pdf.

Predation

267. The next allegation that needs examination is with regard to predatory pricing. The Informants had alleged that MMT-Go offer deep discounts on hotel rooms and provide rooms at prices which are impossible for the hotels to themselves offer, thereby eliminating competition, as well as tarnishing the reputation of the hotels. The Commission in its *prima facie* order dated 28.10.2019 observed that deep discounts are often offered in platform markets to establish network effects. The Commission, however, further observed that since MMT-Go has been *prima facie* found to be in a dominant position in the relevant market and have been in business since the year 2000, such practice may not be introductory and solely aimed at building the network. This issue was thus directed to be investigated.

268. While investigating this issue, the DG looked at the various costs incurred by MMT-Go and the revenue earned by it, so as to ascertain whether the average variable costs of MMT-Go in the online hotel intermediation segment was covered by the revenue earned by it in the same segment. The DG noted that expenses incurred by MMT-Go in relation to the bookings mainly include payment gateway costs, call centre costs, personnel costs, brand and other platform level marketing costs and other fixed costs, losses incurred by MMT-Go for hotel dishonoured bookings, losses incurred for compensating unsatisfied consumers, *etc*. In addition to these expenses, MMT-Go also provides various types of discounts to the customers such as to e-coupon, cash back to card offered and used by consumer for booking hotels/ accommodations. The DG collected the financial data from MMT-Go including audited financials and trial balance for the FY 2015-16 to 2020-21 and recast it to arrive at average variable cost. Based on this, the DG found that the average room revenue is less than the average variable cost during the period under investigation. During the said period, MMT-Go was found to have incurred a net variable loss on per room night basis. Moreover, the DG noted that MMT-Go has been in business since the year 2000 and hence was of the view that this practice may not be introductory or aiming at building the network. The DG also observed MMT-Go's argument that its discounts (and final sell rates to customers) have no impact on the amount paid to the hotel as the latter solely depends on the Best

Available Rates ('BAR') and the commission agreed (and the discounts are borne solely by MMT-Go). However, from the responses of the hotels collected by the DG showed a negative effect of promotions in the form of discounts and cash backs on their business. The hotels claimed that they had to incur losses in the form of loss of future revenue from their own online/offline business at those basic rates and they were also having difficulty in maintaining price parity and the discounted rates were also leading to harm to reputation. Further, though MMT-Go has stated that the hotels had the option to exercise the 'Do Not Discount' (DND) option, some hotels specified the difficulty in exercising the DND option. The DG also observed that global OTAs like Expedia and Booking.com were not engaged into discounting practices.

269. The DG also noted that MMT-Go's decision to restrict its main competitors *via* exclusive agreement with OYO and the earlier exclusive agreements with FabHotels and Treebo, shows its intention to limit competition. MMT's ability to offer rates below the average room rate is likely to further drive out other OTAs. The DG also took note of the submissions of the third parties, *i.e.*, other OTAs (Cleartrip and Booking.com) that MMT-Go held a prominent position in the market because of its discounting practices. Based on all these facts and submissions, the DG concluded that MMT-Go has engaged in deep discounting and predatory pricing thereby contravening Section 4(2)(a)(ii) of the Act in the relevant market for intermediary services for online hotel booking in India.

270. MMT-Go criticised the assessment made by the DG. Relying on its Expert Economist Report, MMT-Go has stated that certain cost items which the DG has treated as variable are considered as fixed in nature by MMT-Go, either because they are not incurred at the transaction level or are investments made by the company to acquire customers. These include, for example, expenses for customer loyalty program, and other platform marketing and administrative expenses and is of the view that certain cost items under 'other direct cost' which should not be apportioned between the hotels and packages businesses has also been considered. For example, certain 'advertising and business promotion expenses 'accrue entirely to the hotel business while certain 'direct costs' accrue only to the packages business. The DG has apportioned all these costs under 'other direct cost' between hotels

and packages. It has also updated the calculations of the MMT-Go's contribution margin and resultantly shown that average room revenue is more than the average variable cost based on the assumption by considering some costs as fixed that have been considered as variable by DG based on the working of outside agency. In the Expert Economist Report, it has been stated that the DG is inconsistent in its treatment of certain cost items between MMT and GoIbibo and has labelled some cost items as fixed for MMT and variable for GoIbibo. The revenues and costs in the DG's calculations are inconsistent with the number of room nights considered for calculating revenue and variable cost per room night. While revenues and costs correspond to the overall hotel business (including international hotels), the room nights correspond to the domestic hotels business only.

271. MMT-Go *vide* its submissions dated 29.07.2022 has also argued that the DG's analysis is devoid of any discussion on the intent of MMT-Go to drive out competitors through predatory pricing and that the DG has relied upon the exclusivity agreements entered by MMT-Go with FabHotels and Treebo, for a limited period, to conclude MMT-Go's intention to limit competition. It is submitted that the intent of discounts and incentivisation has always been customer acquisition and market creation and that the issue of deep discounting has been erroneously combined with predatory pricing for analysis. Moreover, the DG has discussed the impact of MMT-Go's discounting strategies not on the other OTAs but on the hotel partners. Such an approach is contrary to the market for intermediary services for online hotel booking in India, as defined by the DG. Nevertheless, MMT-Go submitted that the discounts offered by MMT-Go were only aimed at developing the market for online hotel booking in India and only contributed to the growth of its hotel partners. Further, it was argued that given the nascent two-sided nature of the market and the large disruptions it has seen, negative profit margins indicate additional costs that MMT-Go has incurred to grow the market.

272. The Commission at the outset clarifies that, though often used together or even interchangeably in common parlance, deep discounting and predatory pricing are two different concepts. Predatory pricing, in simplistic terms, is charging of prices below firm's own cost typically below the average variable cost, while deep discounting implies an

unusually large reduction in price by a retailer and is seen in reference to the maximum retail price (MRP) fixed by the manufacturer or the prices being generally charged by other retailers. Thus, while predatory pricing is seen in reference to a firm's cost benchmark, deep discounting is generally seen in reference to the MRP or retail price. It is possible that a price charged to the end consumer may be deeply discounted, yet not predatory if it is still above the relevant measure of cost. As regards the application of competition law, while deep discounting in itself may not trigger an intervention, the presence of other exclusionary or anti-competitive practices along with deep discounting may create an ecosystem which are amenable to distorting the level playing field and, in relation to the present case, the same has already been discussed above while dealing with the parity obligations. Thus, the Commission's analysis herein is limited to the observations of the DG and the submissions made by the parties with regard to predatory pricing.

273. The Commission notes the submissions made by MMT-Go that the DG has carried out the investigation of predatory pricing by simply weighing variable costs against the commission earned by MMT-Go from the online hotel booking segment. While such an assessment may be suitable for traditional market cases, such simplistic assessment in platform market cases overlooks the specificities of such markets, which may require a nuanced assessment. For the purposes of the present case, MMT-Go is predominantly a two-sided intermediation platform, which also has presence in other verticals. Such platforms function differently from the traditional market players. Because of the nature of services they provide, the success of such platforms depends heavily on network effects. This requires network creation that may entail continuous investment to attract both sides of the platform to interact and thus, create value for other users to join the platform. Though many expenses appear to be variable, if seen strictly from the lens of traditional market assessment standard. This may be because such expenses are directly related to the intermediation transactions *e.g.*, cashbacks or discounts offered for booking hotel room night. While the cashback is associated with the room night booking, it may also help in building the network as every transaction has a ripple effect through feedback loops. In that sense, the cashback may also have an element of investment that helps the platform build the network. Further, in case of such platforms, the profit margins may be negative because businesses must invest to

increase demand. But such lack of profitability does not necessarily imply predatory pricing. It is also stated that other OTAs are also incurring losses or face heavy competition as they invest in the growing market. For example, [redacted]."

274. In view of the objection raised by MMT-Go, the Commission finds it difficult to determine the reliability and validity of assumptions on the basis of which cost is categorised in the Investigation Report. The costs are segmented into variable and fixed without proper explanations and reasons thereof. The assessment of cost as fixed and variable may be different from an accounting and tax perspective. Whereas it may be different from an economic perspective in a competition matter, which may further differ from an industry to industry. The DG's classification of costs such as on illustrative basis: recruitment expenses, printing and stationery, bank charges, and interest expense on late payment of statutory dues under common variable cost is not clear as these do not vary with the number of hotel room nights booked. Moreover, there is no explanation for treatment of certain costs that are considered as fixed for MMT but have been taken variable for Goibibo like: electricity, communication, insurance, legal and professional, repair and maintenance, rates and taxes, and traveling and conveyance *etc*. There is insufficient clarity in the DG's average variable cost (AVC) calculation and the basis/assumptions for such differential treatment of costs in MMT and Go-Ibibo that has been relied upon by the DG has not been elaborated. Thus, in view of the above, the Commission is hesitant to accept the simplistic categorisation done by the DG in this matter to arrive at a finding of predation. In view thereof, the Commission is of the view that the finding of predation, as given by the DG, is not substantiated by the data and evidence presented in the Investigation Report.

Misrepresentation of information

275. The next allegation investigated by the DG was with regard to misrepresentation of information by MMT-Go as regards the hotels/property which were shown as sold out on its portals while the same were only delisted and may have had available rooms for booking. The DG, based on the submissions made by the parties and selected hotels, deduced that the

hotels which were shown 'sold out' have suffered as these hotels were actually active during this period and consumers were misled to believe that these hotels are not available which had an adverse impact on the hotel business by denying them access to e-platforms as well as consumers. Moreover, as the MMT-Go is dominant player, if any consumer makes any search for a particular property on MMT-Go's platform and finds it to be sold out, there are very little chance that he/she will try to find the same property on other OTAs which will not only have adverse impact on the business of the concerned hotel but it will also restrict consumer's fair choice to choose hotels. Finally, the DG concluded that by showing such misleading information and creating information asymmetry in the market, the conduct of MMT-Go has the potential to deny market access to the concerned hotels.

276. FabHotels submitted that despite termination of the agreements with MMT-Go, MMT-Go continued to list FabHotels properties on its portals, however, the property has been labelled as 'sold out'. Thus, if the consumer makes an online search for any of the 'FabHotels Property' anywhere in India, consumers will find the selected FabHotels property has been sold out. Further, Goibibo website redirects the consumer to 'other similar properties' which are part of MMT-Go's inventory thereby taking consumer onto MMT's portal.

277. In relation to this allegation, MMT-Go submitted that if a property is shown to be unavailable on the MMT-Go platforms on a given date; but is available for booking on a competing distribution channel, then it adversely affects the customers' perception of the selection of properties available on the MMT-Go platforms. It is, therefore, in the interest of MMT-Go, to delist and deactivate all hotels which seek to leave the MMT-Go platforms at the earliest. MMT-Go further submitted that "sold-out" label is applied to all properties which have not allocated/blocked inventories on the MMT-Go platforms and sometimes it can be due to technical glitches. Further, MMT-Go stated that till date more than 2000 hotels have delisted themselves from the MMT-Go platforms and only two hotel chains have raised this issue. This demonstrates that MMT-Go promptly delists properties when requested and does not display 'sold out' for prolonged period. It was further stated that the issue was faced on GoIbibo only due to a technical difficulty arising out of the manual Search Engine Optimization process followed by GoIbibo till December 2020. Since MMT

and GoIbibo are under the same management, had there been an intent to misrepresent, the same information would have been displayed on MMT portals as well.

278. The Commission observes that MMT-Go is a dominant player in the relevant market. Consumers heavily rely on results being shown on MMT-Go's website and any such misrepresentation of information on MMT-Go's platform could affect the perspective of the consumer and may dissuade the consumer from searching on alternative channels for the same hotel, under the assumption that the hotel is sold out. This could result in lower number of room bookings of the hotel partner and also reduces the competition among the budget hotels registered on different OTAs, thereby leading to exclusion of such hotels. Moreover, MMT-Go being a dominant platform, the act of misrepresentation is also exploitative in nature as regards such hotels.

279. Before parting with the allegations relating to abuse of dominant position by MMT-Go, the Commission observes that there were certain other allegations raised by the Informants under Section 4 of the Act, as regards which the DG has not returned a finding of contravention. The Commission is also not inclined to deliberate further on those issues, except to the limited extent as has been dealt by the Commission in this order.

Denial of Market Access (Delisting)

280. As regards the allegations relating to delisting, the Commission at the outset notes that neither OYO nor MMT-Go have denied having any commercial arrangement/agreement *interse* pursuant to which FabHotels and Treebo were delisted from its online portals in June and April 2018, respectively. Rather MMT-Go, pursuant to the interim proceedings before the Commission, volunteered to relist these hotel chains on its portals which is mentioned in the order dated 13.07.2021 of the Commission. This was done as OYO also submitted that it had no objection to MMT-Go relisting them on its portals.

281. What then needs to be assessed now is *firstly*, whether the delisting of these hotel chains in 2018 was anti-competitive and *secondly*, if the answer to the first question is in affirmative, whether the relisting in 2021, pursuant to the intervention of the Commission, was sufficient to correct the distortion caused because of such conduct/arrangement. Since the second

question depends on the examination of the first one, the Commission will deal with the former issue first.

282. MMT-Go has submitted that the answer to the first question is in 'negative' stating that listing on MMT-Go is not necessary for any hotel/franchisee service provider to grow and sustain. MMT-Go has placed reliance in this regard upon the growth of FabHotels and Treebo on one hand and OYO on the other hand, during the period intervening 2016-2018, when the former were listed on MMT but the latter was not. MMT-Go has argued that while OYO grew exponentially during this period, FabHotels and Treebo's growth in business, either in terms of inventory or revenue was nowhere near that of OYO which at that point of time did not have access to OTA platforms. MMT-Go has also stated that its choosing of OYO over FabHotels and Treebo in 2017-18 was a commercial decision which it was forced to take as OYO was an indispensable business partner and onboarding OYO was conditional upon delisting of FabHotels and Treebo by MMT-Go. It has also been argued that by excluding FabHotels and Treebo, no discrimination has been caused as these players are neither comparable nor similarly placed with OYO, given the vast difference in their inventory base in comparison to that of OYO. Further, claims related to decline in its Superhero properties was also denied by MMT-Go. Lastly, it has been stated that this allegation has been investigated by the DG under Section 3(4) of the Act, and thus it was imperative for the DG to establish appreciable adverse effects on competition (AAEC) in the market in India, which assessment has not been appropriately done by the DG.

283. OYO has also submitted that MMT-Go platform is not essential for hotels in any market in India and thus, the contention of FabHotels and Treebo that MMT-Go is an essential facility for their survival is not made out. It was contended by MMT-Go that majority hotel bookings are still being done offline by consumers. OYO further submitted that neither FabHotels nor Treebo have produced any evidence to prove that they were driven out of the market as a result of their delisting from MMT-Go portal. Further, the data relied upon by the DG shows a consistent increase in FabHotels' number of live properties post delisting, except in January 2020 which could be attributed to the Covid-19 pandemic. Also, there had been no impact on FabHotel's revenue. Further, any impact of delisting was

immediately recovered by [redacted] and then increased to a new high [redacted]. It then decreased only due to pandemic. OYO further stated that while giving a finding regarding substantial decline in FabHotels room nights' bookings post desilting, the DG wrongly took into account only the booking received through OTAs. As regards Treebo also, it was submitted that its revenue initially increased to INR 4.9 Crore in May 2018, from INR 4.6 Crore in April 2018 (*i.e.*, at the time of delisting) and then marginally decreased till it was INR 3.8 Crore in October 2018. Accordingly, any alleged impact of delisting was, by Treebo's own data, recovered entirely within 3 months of delisting and new heights were reached as early as August 2018. The recovery continued with Treebo recording an increased revenue of INR 6.1 Crore in December 2019. Treebo's revenues continued to climb absent being listed on MMT-Go's platform and any later reduction in revenue was on account of the Covid-19 pandemic and not owing to any alleged anti-competitive conduct.

284. OYO has also refuted FabHotels' claim that it was an effective competitor of OYO and stated that its comparison with FabHotels is misleading as during FYs 2016, 2017 and 2018, FabHotels' properties were listed on MMT-Go's platforms, while OYO's hotel partners were delisted. Further, despite being delisted, OYO could grow and flourish during these years, while the inefficient FabHotels could not effectively compete, even when it was listed on MMT-Go. Further, it has been submitted that regardless of whether OYO's hotel partners were listed on MMT-Go's portals or not, its revenue from online bookings continued to be between [redacted] out of which [redacted] of online sales are from OYO's own app (including walk-ins). Further, OYO has submitted that its relationship with MMT-Go is also not significant, given that it contributes only [redacted] of OYO's total revenues and room nights and OYO's share of MMT's revenues is only [redacted]

285. FabHotels and Treebo, on the other hand, have vehemently opposed the arguments of OYO and MMT-Go. They both have argued that their OTA sales (B2C) were impacted severely because of delisting from the MMT-Go portals and to survive in the market, they resorted to other forms of bookings (B2B) like corporate bookings. Further, it was argued that though MMT-Go has relisted them in 2021 pursuant to Commission's intervention, such listing has

not been on fair and non-discriminatory terms.

286. The Commission has considered the submissions made by the parties on the allegation of delisting. The DG has found the said conduct anti-competitive under Section 3(4)(d) read with Section 3(1) of the Act. Section 3(4)(d) of the Act deals with vertical agreements in the nature of refusal to deal. As defined under Explanation (d) to Section 3(4) of the Act, "refusal to deal" includes any agreement which restricts, or is likely to restrict, by any method to persons or classes of persons to whom good are sold or from whom goods are bought." Further, to establish a contravention under Section 3(4) read with Section 3(1) of the Act, it is required that the vertical agreement under scrutiny has caused or is likely to cause an appreciable adverse effect on competition (AAEC) within India.

287. The Commission has perused the impugned clause from the agreement entered into between MMT-Go and OYO on [redacted] (the 'OYO Agreement'). The said clause in verbatim is reproduced below:

[redacted]

288. It may also be relevant to see [redacted], which preceded the aforesaid clause:

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

289. Apparently, [redacted] required MMT-Go to 'cease to list' any accommodation, directly or indirectly, by or through FabHotels and Treebo within a particular time frame as provided in the said clause. As a consequence of this clause, MMT-Go delisted FabHotels and Treebo. At the relevant time, FabHotels, Treebo and OYO were all providing franchising services to independent budget hotels who did not possess much brand value of their own and thus, through the co-branding by these franchisee service providers, these independent budget hotels were able to benefit from the brand value of these franchisee service providers, while also ensuring a minimum level of standardized services to these consumers. These franchisee service providers were listing their hotel partners at OTAs in order to get the latter better visibility, discoverability and access to the end-consumers. Arguably, the independent budget hotels could also list on OTAs without being associated with these franchisors. However, getting adequate visibility amongst the large pool of hotels available at the OTAs would remain challenging for such independent budget hotels whose main purpose of associating with OYO, FabHotels or Treebo was to benefit from their brand recognition. Thus, the franchisee service providers became a gateway for these independent budget hotels to secure an effective listing/visibility at OTAs, while the OTAs were acting as gateways to access the end-consumers. Considering the relationship between OTAs and

franchisee service providers, it is not in dispute that they are in a vertical relationship, whereby hotels were getting access to OTAs, and ultimately access to end-consumers, through these franchisee service providers. Thus, the impugned Agreement between OYO and MMT-Go is amenable to the provisions of Section 3(4) of the Act. Further, looking at the nature and consequence of [redacted] of the OYO Agreement, it was evidently in the nature of refusal to deal, *qua* Treebo and FabHotels, as it required MMT-Go to delist (in other words, not to deal with) FabHotels and Treebo.

290. During the hearing, several times, MMT-Go impressed upon the Commission that it was at the receiving end with regard to this contractual obligation to delist FabHotels and Treebo, which it purportedly stated to have accepted as a condition precedent to have OYO on its platform. This contention was also used to combat Commission's determination of it being a dominant player, as also to argue that it cannot be said to have any motive for delisting hotels/franchisors which are its channel partners and such delisting does not make any commercial sense, in view of larger inventory leading to greater network effects.

291. At the outset, the Commission observes that Section 3(4) of the Act is neither exhaustive in nature nor it requires that the impugned restriction is in form of an imposition. The only requirement, as envisaged under the Act, is that there is an agreement/arrangement/understanding between vertically related players, which restricts or is likely to restrict, persons to whom good are sold or from whom goods are bought, which causes or is likely to cause AAEC. More often than not, this restriction is in the nature of an imposition in the sense that the party accepting the condition/restriction, pursuant to the market power exercised by the entity imposing the restriction, has no option but to accept such a condition. However, the case before the Commission is not of this general category. In the present case, admittedly, MMT-Go took a commercial decision considering the inventory of budget hotels available with OYO. Further, looking at the other clauses of the OYO Agreement, especially [redacted], it is apparent that the Agreement was a mutually beneficial arrangement between MMT-Go and OYO. While MMT-Go agreed to delist two franchisee service providers (FabHotels and Treebo) which were availing the services of MMT-Go at the relevant time period in order to reach the end consumers; OYO, seemingly

in return, agreed for D-minus clause which was beneficial to MMT-Go as it helped MMT-Go to deprive the Indian OTAs (*namely*, Yatra, Cleartrip, PayTM, EaseMyTrip, Goomo and Via) of the option to list OYO Hotels/Rooms during the last few days (5 days before the booking day in case of D-minus 5). Thus, there seems to be mutually beneficial (backed by ample consideration of forbearances on each part) reciprocal arrangements between MMT-Go and OYO who are vertically related, to foreclose both the markets for their respective competitors. On one hand the rivals of OYO (FabHotels and Treebo) were deprived of a dominant OTA for distribution and on the other hand, the competing Indian OTAs of MMT-Go were ousted for a crucial time period from having OYO branded properties on their portals for booking.

292. Further, though intent is not relevant for a Section 3(4) assessment, the Commission observes that a collective reading of Clause 2.1 and 2.2 in light of the surrounding facts and circumstances that existed at the time when the OYO Agreement was entered into between MMT-Go and OYO, explains their respective motivations (besides the mutually benefitting nature of the said arrangement) for entering into this allegedly anti-competitive arrangement. There are various newspaper reports indicating publicly, a shift of OYO from aggregation model to franchise model, to reduce its operational costs and improve serviceability. Thus, initially OYO seems to have started off as an aggregator, providing services somewhat similar to that of MMT-Go. However, it gradually started to move to a franchisee service provider model, thereby completely exiting the aggregation model by the end of 2017.[4] To say that, such considerations were coincident and had no bearing on the commercial arrangement between OYO and MMT-Go that followed in 2018, will be a naïve proposition. However, since such motive is not so relevant for the antitrust assessment given that no such requirement is envisaged under Section 3(4) of the Act, the Commission is not inclined to deliberate further on this aspect.

293. The aforementioned discussion establishes that there was an agreement/understanding between OYO and MMT-Go which was in the nature of a vertical arrangement amenable

[4] Available at https://www.medianama.com/2017/12/223-oyo-exits-from-hotel-aggregation-model-report/, last accessed on 18.10.2022.

to Section 3(4) read with Section 3(1) of the Act. The assessment under the said provisions further requires establishment of AAEC or likelihood of AAEC. However, before moving to the AAEC assessment, the Commission notes that during the hearing, OYO has denied being a franchisor (despite having admitted this as its business model in a prior case dealt by the Commission in 2019[5]). The Commission does not find it necessary to delve into this determination in order to move further with its assessment of AAEC, as irrespective of the nomenclature or the nature of the service that it provides, it is in unequivocal terms in a vertical relationship with MMT-Go for the purposes of present allegation. Further, MMT-Go's argument that FabHotels and Treebo were neither comparable nor similarly placed with OYO, given the vast difference in their inventory base seems misplaced. If FabHotels/Treebo were not viewed as competitors by OYO, there would not have been any reason why OYO would have asked MMT-Go to agree to such a condition.

294. As regards the AAEC, both MMT-Go and OYO have submitted that the DG has not adequately carried out the AAEC assessment. It has been argued that the presence on OTAs was not necessary for survival and as such, both FabHotels and Treebo were able to grow despite delisting and were not ousted from the market which demonstrates that there was no AAEC in the market.

295. Though these arguments sound very attractive, there are compelling reasons for which the Commission finds it difficult to accept them. As explained earlier, MMT-Go is primarily a two-sided market that caters to two distinct group of users, the end-consumers and the hotels. These hotel partners use the services of franchisee service providers like OYO, FabHotels, Treebo *etc*. to reach the end-consumers through the intermediation portals of OTAs, while the end-consumer use it to search, compare and book hotel rooms. The impugned delisting led to FabHotels and Treebo being ousted from a dominant OTA, *i.e.* MMT-Go. Thus, any effect analysis needs to take into account both these sets of users to gauge the net effects and to ascertain whether, on a rule of reason analysis, such effects are adverse as well as appreciable.

[5] Case No. 03 of 2019, RKG Hospitalities Pvt. Ltd. vs. Oravel Stays Pvt. Ltd., available at https://www.cci.gov.in/antitrust/orders/details/177/0.

296. While delineating the relevant product market, the Commission has deliberated in detail the relevance and necessity for a hotel partner, more so those which have lesser visibility, to be listed on OTAs. Presence of a hotel or franchisee service provider on an OTA can amplify its visibility to the other user side, not only directly to the users transacting through an OTA but also those searching through meta search engines and then booking through modes other than OTAs.

297. Further, the Commission has already found MMT-Go to be a dominant platform, and as alleged a gateway for online hotel booking, which constitutes an important access route for independent hotels to reach the end-consumers. Also, the Commission has earlier observed that the franchisee service providers, namely OYO, Treebo and FabHotels, were important gateways for the independent hotels to get visibility on the OTAs. Thus, the non-accessibility of a dominant OTA, *i.e.* MMT-Go, to FabHotels and Treebo (consequent to delisting) may significantly hamper not just the online visibility of the Informants *i.e.* FabHotels and Treebo, but more importantly of the associated budget hotels that avail of the franchisee services of FabHotels and Treebo. Thus, MMT-Go being a dominant OTA in the relevant market delineated by the Commission, delisting from the said portal cannot be said to not have foreclosed an important channel of distribution to FabHotels, Treebo and those independent budget hotels which were reaching the MMT-Go portals through them. Further, the argument that FabHotels and Treebo were able to survive and found alternative channels to sell their inventory post delisting lacks correct understanding of the intent and purpose of the Act as it completely disregards the impact on the independent budget hotels which rely on these players to reach the end-consumers through OTAs.

298. The Commission is cast with a duty to ensure healthy and fair competition in the markets, and not just to ensure survival of players. The survival of players is the means through which such competition is ensured, promoted and sustained. The explosion of online commerce has changed the dynamics of consumer preferences and transactions. As a market regulator, it is thus imperative that the competition regulator ensures that all stakeholders get an opportunity to compete on merits and get a fair chance to be part of digital commerce.

This is more important because in the absence of fair competition in the online commerce space, the consumers using such channels to consummate their transaction, both from the buyers' side as well as sellers' side of the market, will be deprived of the benefits of competition. As discussed earlier in the order while delineating relevant market, the end-consumers using online channels may not be using the offline channels while consummating their transaction interchangeably. Further, and more importantly, the hotel partners use all the distribution channels complementarily and not interchangeably. Thus, even if FabHotels and Treebo survived through other modes, like corporate bookings or offline bookings, this fact alone is not sufficient to outweigh the harm being caused to the competition on the OTAs. More than the harm to a competitor, the Commission is more concerned about the harm to the competitive process. Thus, more than the survival of FabHotels and Treebo, *albeit* through other means, the Commission cannot be oblivious of the adverse impact which their exclusion from the OTA channel has caused or is likely to cause to the competition in the market and the consequently on the consumers.

299. From the perspective of hotel partners, the Commission observes that these independent budget hotels were tying up with franchisors like FabHotels, Treebo and OYO in order to get brand recognition which could help them in getting better visibility on OTAs (in terms of better search ranking, better reviews through improved quality, better consumer handling solutions etc.). Further, the impugned exclusion has not only affected FabHotels and Treebo branded hotels, but also those budget hotels which were availing some logistic support (e.g. as in the Superhero programme) from them, while operating as independent hotels. Such impugned arrangement between MMT-Go and OYO left these budget hotels with no option but to disassociate with these franchisees and necessarily engage with OYO, if they wish to avail franchisee services or any other logistics support from a consumer-recognised franchise chain inter alia for quality improvement or branding purposes, without losing the visibility of their properties on the largest online booking platform in the country. This is confirmed from DG's findings also wherein it was found that as a matter of fact the number of superhero properties with Treebo quickly declined to zero post delisting. The act of delisting imposed unnecessary costs of switching on hotel partners who were associated with Treebo or FabHotels to another franchisee chain such as OYO to enable them to be

visible on MMT-Go. This cost was neither voluntary nor based on incompetence of Treebo or FabHotels but was the result of delisting attributable to anticompetitive agreement between MMT-Go and OYO. Thus, as the facts appear before the Commission, the impugned exclusion under the Agreement had the dangerous likelihood to tilt the franchisee budget hotel downstream market in favour of OYO at the cost of fair competition. This, in fact, increased the ability and incentive for both market players, *i.e.* MMT-Go and OYO, to engage in strategies which could be antithetical to potential competition in the market. Further, a continued operationalisation of this exclusive agreement could have compelled all independent hotels seeking franchise services, for improving their brand recognition and for the purpose of signaling to the consumer the unobservable feature of quality to forcibly tie up with OYO to the possible exclusion of other players. Any other franchisee arrangement with competitors like FabHotels and Treebo would delist them from the dominant intermediary *i.e.* MMT-Go reducing their visibility and footfalls. Even if the delisting of FabHotels and Treebo by MMT-Go is not seen as a manifestation of abuse in itself for the sake of assumption, the position held by MMT-Go speaks volume of the impact such delisting would likely cause in the market. Delisting from dominant online channel of distribution sought to create an artificial advantage for OYO and OYO's hotel partners against Treebo's and FabHotels' hotel partners which was not based on competition on merits but was an obvious consequence of delisting. This created an ecosystem of incentives for OYO's hotel partners to continue their association with it not merely based on OYO's merits but its association with MMT-Go and an ecosystem of disincentives for Treebo and FabHotels' hotel partners to curtail the association and jump the bandwagon, not attributable to demerits of Treebo or FabHotels but their dissociation with MMT-Go. Thus, the Commission has no doubt in holding that the impugned arrangement between OYO and MMT-Go led to foreclosing the market in the form of denial of market access, under Section 19(b) and (c) of the Act, for FabHotels and Treebo as also for the independent budget hotels which were availing some logistic support from these players.

300. As regards the end-consumers also, who were using the OTAs to consummate their booking or to carry out their searches, the delisting deprived them of the benefits of competition as the choice of inventory was narrowed down to the properties offered by OYO. But for this

arrangement, FabHotels and Treebo would have been able to list their properties on MMT-Go and give a wider choice in terms of brands whose services consumers could choose to avail. As discussed earlier in the order while delineating relevant market, the consumers using online channels may not be using the offline channels while consummating their transaction interchangeably. Thus, even if FabHotels and Treebo survived through other modes, like corporate bookings or offline bookings, the consumers using online modes were deprived of the competition between different players. Further, given that OYO and MMT-Go agreement was driven towards the growth of MMT-Go and OYO in their respective markets, the improvement in their respective service ability cannot be viewed as flowing from the improvement in the production or distribution of goods or provision of services. MMT-Go's engagement with other players in the market would improve their ability to compete with OYO on a level playing field and the competition amongst these players in the market to gain more attention from consumers would have also resulted in improved service quality and better pricing. The availability of wider array of hotels on MMT-Go portals would not only increase consumer choices but also drive competitors to innovate different technologies and develop more schemes. Thus, the redeeming factors available under Section 19(3)(d)-(f) do not exist in the present case.

301. Further, the Commission cannot be oblivious to the fact that [redacted] and [redacted] of the OYO Agreement seen together, in light of the respective positions held by MMT-Go and OYO in their respective markets, the former being a dominant OTA and the latter having significant market power in the vertical chain can possibly allow such players to bolster their respective strengths, which if goes unchecked, may not augur well for the market or other market participants. This would have the impact of creating entry barriers as understood under Section 19(3)(a) of the Act.

302. The Commission is conscious of the contractual freedom of the parties and towards that end, it is not the Commission's objective to interfere with such freedom. However, when such freedom leads to anti-competitive outcomes, the Commission is statutorily duty bound to intervene. The denial of access in the present case, as an admitted position, has emanated from an exclusionary and mutually beneficial agreement between MMT-Go and OYO and

not from any non-compliance of contractual commitments on part of FabHotels and Treebo.

303. The Commission is thus, convinced that the conduct of MMT-Go in delisting FabHotels and Treebo, as well as the budget hotels which were availing some logistic support from them, in 2018 had adversely affected competition in the market by denying access to an important channel of distribution through foreclosure. Thus, the Commission feels no hesitation in concluding that the delisting occasioned to FabHotels and Treebo, as well as the budget hotels which were availing some logistic support from them, in 2018 was anti-competitive within the meaning of Section 3(4)(d) read with Section 3(1) of the Act.

304. This brings us to the second, and an equally important question—whether the relisting by MMT-Go of FabHotels and Treebo was sufficient to correct the market distortion which was caused pursuant to delisting. MMT-Go and OYO both have argued that FabHotels and Treebo have now been relisted on the MMT-Go's platform and thus, even if there was any foreclosure occasioned to them, such foreclosure has been remedied post their relisting. FabHotels and Treebo, on the other hand, have argued that though they have been relisted, they have not been accorded fair and non-discriminatory access.

305. FabHotels has submitted that a comparison of its stayed room nights data for the period September 2017-April 2018 with September 2021-April 2022 demonstrates that FabHotels' relisting has not been fair and non-discriminatory. While prior to delisting, the room nights booked through MMT-Go was more than [redacted] of the room nights booked through other OTAs for the period October 2017 to March 2018, post relisting it was below 50% from September 2021 to July 2022. FabHotels has further submitted that MMT-Go has been discriminatory in terms of the visibility being provided to its properties on the MMT-Go portals. Based on its own internal comparisons, FabHotels has presented data while claiming that, in [redacted], FabHotels' properties received only [redacted] of the visits that other "comparable" properties receive on MMTGo Portals. It is further submitted that after MMT-Go re-listed FabHotels' properties on MMT-Go Portals in September 2021, FabHotels has been charged a commission rate of 25%, which as per MMT-Go's own submissions is charged to [redacted] of the hotels on MMT-Go. This, as per FabHotels is discriminatory. Treebo also made similar assertions during the hearing.

306. The recent upsurge in online search, booking and shopping has changed the distribution architecture for sellers and service providers, underscoring the importance of digital distribution as an essential means for reaching the end consumers. The online marketplace platforms, in particular, have emerged as key access routes for sellers/service providers to reach consumers who are increasingly shopping, searching or booking hotel rooms online. The search and comparison functionalities of the intermediary platforms, their reach and scale, and the network effects that work in their favour, lead to huge consumer footfalls on these platforms thereby making presence on these platforms critical for the visibility and competitive ability of sellers/service providers.

307. Recent reports and studies (national as well as international) strengthen this conviction by showing how a few large platforms can control online distribution because of a variety of factors, including strong network effects in the digital environment, and their ability to access and accumulate large amounts of data. These characteristics equip these large platforms with such market power that their actions can influence and affect competition between business users significantly. The Commission further observes that the market power held by these digital platforms has accentuated due to the pandemic because of the changing landscape of customer preferences and nature of transactions, making traditional businesses increasingly dependent on a limited number of large online platforms, further contributing to the bargaining power asymmetry between large online platforms on the one hand and their users on the other.

308. Fair market opportunity is the hallmark of competition. Thus, the Commission is of the view that equitable access to a dominant online intermediation on fair terms is necessary for the functioning of businesses who rely on such intermediaries to reach the end-consumers. It has already been discussed in the previous part of this order that the main purpose of listing on an OTA by a franchisee/hotel is to get visibility, mere presence may not be sufficient. While visibility is the function of many factors which an OTA can decide, what is important is that such factors/criteria are objectively decided, transparently communicated to the hotel/franchisees and fairly implemented. Otherwise, the competition on merits will be

severely compromised by perpetrating conduct/arrangements creating in substance an unequal level playing field, under the garb/ charades of accessibility by a platform. This is neither the intent nor the object of the provisions of the Act.

309. Thus, while the Commission is not inclined to intervene with the contractual freedom of the parties to decide their commercial terms of dealing, suffice to reiterate that such terms shall not be employed as tools to distort fair competition in the market. MMT-Go, as a dominant channel of distribution, shall endeavor to provide fair and non-discriminatory access of its platform to users.

310. Based on the foregoing discussion, the Commission is of the view that the commercial arrangement between OYO and MMT-Go which led to the delisting of FabHotels, Treebo and the independent hotels, which were availing the services of these franchisors was anticompetitive within the meaning of Section 3(4)(d) read with Section 3(1) of the Act.

ORDER

311. In the facts and circumstances of the case, the Commission finds the conduct of MMT-Go in violation of the provisions of Section 4(2)(a)(i) as well as Section 4(2)(c) read with Section 4(1) of the Act as adumbrated in this order. Further, for the reasons recorded in this order, the arrangement between MMT-Go and OYO has also been found to be in contravention of Section 3(4)(d) read with Section 3(1) of the Act.

312. The Commission observes that under Section 27 of the Act, it has wide ranging powers to impose monetary as well as non-monetary sanctions. Having regard to the submissions made by the parties and taking a holistic view in the matter, the Commission is of the view that, besides imposing monetary penalty (which is dealt later in the order), it is imperative to ensure an environment that supports fair competition amongst the OTAs as well as amongst the franchisee service providers, which will ultimately benefit consumers and the independent hotels in the long run. Towards that end, the Commission directs MMT-Go as under:

a. MMT-Go is directed to suitably modify its agreements with hotels/chain hotels, to remove/abandon the price and room availability parity obligations imposed by it on its hotel/chain hotel partners with respect to other OTAs.

b. MMT-Go is directed to modify its agreement with hotels/chain hotels, to remove/abandon the exclusivity conditions that exist *inter-alia* in the form of D minus clause.

c. MMT-Go is directed to provide access to its platform on a fair, transparent and non-discriminatory basis to the hotels/chain hotels, by formulating the platforms' listing terms and conditions in an objective manner.

d. MMT-Go will notify all its hotel/chain hotel partners, about the aforesaid modifications.

e. MMT-Go is directed to provide transparent disclosures on its platform as regards the properties not available on its platform, either on account of termination of the contractual arrangement with any hotel/chain hotel or by virtue of exhaustion of quota allocated to MMT-Go by such hotel/chain hotel. Illustratively, for properties listed on MMT-Go but sold out on the said portal by virtue of exhaustion of quota allocated to MMT-Go, may specify '*sold out on MMT-Go portal*'; similarly, properties continuing to be appearing on MMT-Go portal, despite termination/expiry of listing arrangement should be removed from the portals and in the interregnum with a '*not available on MMT-Go portal*' specification.

313. In the above backdrop, the Commission believes that MMT-Go will earnestly usher in such practices that reins the anti-competitive conduct as has been found against it and will implement the directions of the Commission in its true import and spirit. MMT-Go is further directed to submit a compliance report, on an affidavit, with regard to the aforesaid directions, within 60 days of the receipt of this order.

314. Further, as regards the imposition of monetary penalty, the Commission notes that MMT-Go as well as OYO have submitted certain factors that according to them are mitigating and

thus, warrant reduction in their respective penalties, should the Commission decide to impose any monetary sanctions.

315. MMT-Go has *inter alia* submitted that even before the Commission has rendered its decision, it has already voluntarily addressed the allegations raised in the present matter. Parity obligations though exist have not been imposed and no coercive action has ever been undertaken by it against any hotel with regard to deviations. FabHotels and Treebo Hotels had been relisted on MMT-Go's portals during investigation and MMT-Go has assured that they can continue to be listed after entering into new agreements with it. It was further submitted that the '*sold out*' aspect arose because of a technical issue and same has been addressed through automation. It was further submitted that the 'D Minus' exclusivity is only with chain hotels and none of the independent hotels were subjected to it. It was also averred that the hospitality sector has been severely affected because of the Covid-19 pandemic and MMT's business and operations were also adversely affected because of the same. Since the industry has just started recovering post covid, MMT-Go prayed for a lenient view to be taken.

316. OYO has *inter alia* submitted that it has consistently cooperated with the Commission and the DG during the course of the investigation and has no objection to MMT-Go listing any entity on its platforms. Further, the attention of the Commission was also brought to how gravely the COVID-19 pandemic has impacted the hospitality industry, including OYO.

317. The Commission observes that under the provisions contained in Section 27(b) of the Act, the Commission is empowered to impose such penalty upon the contravening parties as it may deem fit, which shall not be more than 10% of the average of the turnover for the last three preceding financial years, upon each of such person or enterprises which are parties to anti-competitive agreement or abuse. The Commission observes that the twin objectives behind the imposition of penalty are: (a) to reflect the seriousness of the infringement; and (b) to ensure that the threat of penalties will deter the infringing undertakings from indulging in similar conduct in the future. Further, the quantum of penalty imposed must correspond to the gravity of the offence, and the same must be determined after having due regard to the mitigating and aggravating circumstances of the case. The Commission further observes

that the Hon'ble Supreme Court, in *Excel Crop Care Limited v. Competition Commission of India & Anr.*, Civil Appeal No. 2480 of 2014 (*Excel Crop* case), had laid down that the criteria of 'relevant turnover' be considered for the purpose of imposition of penalty.

318. On a holistic appreciation of the facts and circumstances of the case and the mitigating factors put forth by the OPs, the Commission is of the view that the ends of justice would be met if a penalty of 5% of their respective relevant turnover is imposed on these erring parties. That brings the Commission to the determination of relevant turnover in the present matter. *Vide* order dated 26.10.2021, the Commission had directed the OPs to furnish copies of their audited balance sheets and profit & loss accounts(s) for the financial years 2017-18, 2018-19 and 2019-20, along with the revenue generated by MMT-Go from the hotel segment for the said financial years, by way of an affidavit supported by certificate of Chartered Accountant.

319. The Commission observes that though the contravening conduct of MMT-Go pertains to hotel segment, the predominant nature of the service that it offers is online intermediation services. In case of digital market platforms, restricting revenue to just one segment would not appropriately capture the interdependent and integrated nature of the ecosystem wherein one product/ service reinforces multiple other products/ services. This approach might be appropriate in traditional markets, but not so much so in case of two-sided or multi-sided platforms. In such platforms, not only two user sides are interacting and thus, intricately intertwined with each other, but the products/ services offered by the platform operator through other verticals also derive strength from each other due to economies of scope and scale. Accordingly, in such markets, for the purposes of revenue determination, the entire platform has to be taken as one unit. Any other interpretation or approach would render the deterrence exerted by the Statute as redundant and nugatory. Keeping in view the nature of the services offered by MMT-Go, the Commission considers it appropriate to consider its entire turnover as shown in its financial statements submitted by it as the relevant turnover. Based on the foregoing, the Commission deems it fit to impose on MMT-Go a monetary penalty @5% of its relevant turnover, during the financial years 2017-18, 2018-19 and 2019-20, as calculated below:

Financial Year	MMT (Relevant Turnover in crore rupees)	GoIbibo (Relevant Turnover in crore rupees)	MMT-Go (Relevant Turnover in crore rupees)
2017-18	2,759.07	1,356.31	4,115.38
2018-19	3,145.53	1,430.89	4,576.42
2019-20	3,130.72	1,586.45	4,717.17
Total	9,035.32	4,373.65	13,408.97
Average	3,011.77	1,457.88	**4,469.66**
5% of Average Relevant Turnover			**223.48**
Rupees Two Hundred Twenty-Three crores and Forty-Eight Lakhs only			

320. As regards OYO, the Commission observes that OYO is a franchisee service provider engaged primarily in providing services to its partner hotels through listing on its own portal as well as the portals of other OTAs, besides providing other services to said hotel partners. OYO submitted financial statements with regard to Oravel Stays Limited as well as Oyo Hotels and Homes Private Limited (OHHPL/formerly 'Alcott Town Planners Private Limited'), the latter being the subsidiary of the former. However, OYO has claimed that only the commissions earned by it on hotel room bookings be considered as its relevant turnover. Further, OYO has submitted that for the financial years 2017-18 and 2018-19, the commissions earned on hotel room bookings through Oravel Stays Limited be considered while for the financial year 2019-20, the commission earned on hotel room bookings as reflected in OHHPL be taken into consideration for penalty imposition, if any. Having regard to the business operations of OYO, the Commission observes that its entire revenue from the business operations constitute its relevant turnover and the same needs to be taken into consideration, for the purpose of imposition of penalty and a restrictive interpretation of the term relevant turnover as canvassed by OYO cannot be accepted. In view thereof, the Commission deems it fit to impose on OYO a monetary penalty @5% of its relevant turnover, as submitted by it, during the financial years 2017-18, 2018-19 and 2019-20, as calculated below:

Financial Year	Oravel Stays Limited (in crore rupees)	OHHPL (in crore rupees)	OYO [Total] (Relevant Turnover in crore rupees)
2017-18	265.91	160.86	426.77
2018-19	3,595.13	535.94	4,131.07
2019-20	36.29	5,538.98	5,575.27
Total	3,897.33	6,235.78	10,133.11
Average	1,299.11	2,078.59	3,377.70
5% of Average Relevant Turnover			168.88
Rupees One Hundred Sixty-Eight Crores and Eighty-Eight Lakhs only			

321. The Commission directs MMT-Go and OYO to deposit the respective penalty amounts as calculated above within a period of 60 days of receipt of the present order, in accordance with the provisions of the Act.

322. Before parting with the order, the Commission deems it appropriate to deal with the request of the parties seeking confidentiality over certain documents/information filed by them under Regulation 35 of General Regulations, 2009 (as amended). Considering the grounds put forth by the parties for the grant of confidential treatment, the Commission grants confidentiality to such documents/information in terms of Regulation 35 of the General Regulations, 2009, subject to Section 57 of the Act, for a period of three years from the passing of this order. It is, however, made clear that nothing used in this order shall be deemed to be confidential or deemed to have been granted confidentiality, as the same have been used for the purposes of the Act in terms of the provisions contained in Section 57 thereof. Accordingly, the Commission directs that two versions of the present order may be issued – non-confidential version which shall be served upon the parties and a complete confidential version which shall be shared only with the parties through members of the confidentiality ring. The same shall be prepared keeping in mind the confidentiality requests made by the parties and the provisions of Section 57 of the Act read with Regulation 35 of the CCI General Regulations, 2009 (as amended). For convenience, it is directed that the confidential version of this order may be provided to such ring members/individuals through one of the ring members, who shall then share the same with the other ring members nominated by such party/individual. It is made abundantly clear that the confidential version of this order shall only be accessed by the members of the confidentiality ring.

323. The Secretary is directed to forward a certified copy of the present order to the parties, in terms of the directions above.

Sd/-
Ashok Kumar Gupta
(Chairperson)

Sd/-
Sangeeta Verma
(Member)

Sd/-
Bhagwant Singh Bishnoi
(Member)

New Delhi
Date: 19/10/2022