

**IN RE: RKG HOSPITALITIES PVT. LTD. (INFORMANT) AND ORAVEL STAYS PVT LTD.
(OPPOSITE PARTY)**

Decision date: 31/07/2019

Keywords: abuse of dominant position, franchising

Issue: Whether OYO's conduct was abusive of its dominant position in the market?

Rule: Sec. 4 of the Competition Act, 2002.

The Informant had entered into a Marketing and Operational Consulting Agreement with OYO under which the Informant was permitted to (i) utilize the know-how and (ii) be listed on OYO platform or any other online website, as may be expressly permitted by OYO in writing. The Informant alleged that the Agreement contained terms which were one sided, unfair and discriminatory which OYO was able to impose because of its dominant position in the relevant market. The Informant highlighted multiple clauses in the Agreement to substantiate its allegations, such as:

- a) *Clause 1.4:* It allows OYO to unilaterally modify the structure of the Informant's hotel to meet its standards
- b) *Clause 1.5:* It empowers OYO to put exclusive signage of OYO brand and/or signage for co-branding of OYO with Informant's hotel name.
- c) *Clause 1.7:* It subjects the hotel to incentives and disincentives as per OYO's policy based on its performance.
- d) *Schedule 1 and 3C Scoring Policy:* This policy was alleged to be unfair and oppressive to the Informant as there was no scope of disproving the punitive score given by OYO based on unsubstantiated complaints by customers.
- e) *Clause 7:* Through this clause, OYO has denied market access to the Informant by debarring it for a period of 1 year from entering into any agreement directly or indirectly to engage with online aggregators .
- f) *Clause 9:* OYO had a right to forthwith terminate the Agreement under certain circumstances enumerated in the Agreement (e.g.), while the Informant could terminate the Agreement by giving 30-day written notice. Further, Clause 10.2 constituted a check on the right of the Informant to terminate the Agreement. Upon termination, the revenue share to be paid to OYO was required to be paid by the Informant within 48 (forty eight) hours of termination of the Agreement. Delay in payment was subject to 18% interest per annum from Informant to OYO while there was no reciprocal provision of such interest in case of default by OYO.

The Informant further alleged that in furtherance of its single point agenda of capturing the market, OYO offered predatory discount (60% alleged) on hotel room bookings and an additional cash-back of 40% on Paytm transactions during winter holidays of Christmas and New Year as per the newspaper reports. The conduct of OYO was stated to be *malafide* since its primary focus is to garner a high market share to the exclusion of other players by creating unviable market conditions. Based on the aforesaid facts, the Informant alleged that the conduct of OYO is designed to eliminate competition from the market.

OYO, on the other hand, submitted that it is not an aggregator as it provides hospitality services itself and therefore competes with hotel chains and does not compete with Online Travel Agencies ('OTAs') and/or aggregators of hotels or meta search engines. With regard to delineation of relevant market, OYO submitted that limiting the market definition to only online bookings, as submitted by the Informant, is unsustainable as the online and offline channels are merely two modes of selling travel and travel related services. With regard to dominance, OYO denied OYO being dominant in any relevant market.

OYO further submitted that the data relied upon by the Informant is unreliable. It relied on various other reports and submitted that it does not enjoy a majority market share. Countering the allegation regarding predatory pricing, OYO submitted that short term discounts over the holiday period cannot be deemed to be predatory as they are in the nature of promotional offers.

Analysis of the Commission

The Commission held that the relevant product market in the present case would be "*market for franchising services for budget hotels*". As regards the relevant geographic market, the Commission concluded that OYO operates on a Pan-India level and in the franchising market, it seems to face the same/similar competitive constraints and homogenous conditions of competition throughout India. Therefore, the relevant market would be '*Market for franchising services for budget hotels in India*'.

The Commission did not find the market share figures provided by the Informant reliable as the relevant market proposed by the Informant is different from the one delineated by the Commission. The relevant market determined by the Commission did not envision OYO as a travel App or just a pure aggregator. It held that though OYO may be a significant player in the relevant market, presently it cannot be unambiguously concluded that it holds a dominant position.

Further, with regards to OYO's conduct, the Commission concluded that there was a valid business justification for having the impugned clauses to allow aligning of the partner hotels to OYO's brand image, to ensure that the services offered are of a standard benchmark quality and to ensure consumer satisfaction. Thus, it concluded that the terms and conditions of the Agreement in the present matter are not unfair, as alleged in the information.

Thus, Commission held that there exists no *prima facie* case and the information filed was closed under Section 26(2) of the Act.