

CPI's Asia Column Presents:

The Relevant Market for Travel Agency Services – Online vs. Offline

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In a major shift from its earlier stand, the Competition Commission of India (“CCI”) has, in its *Ctrip.com/MakeMyTrip Limited* decision² dated August 20, 2019 (recently uploaded on its website), categorically noted that the online channel appears to be a distinct mode of distribution, in view of its increased popularity, which cannot be simply replaced or substituted by other offline modes or direct sales. This is in contrast to its observations in earlier merger decisions, where it had noted that online and offline retail did not constitute separate relevant markets as they were merely different channels of distribution which are substitutable. The CCI seems to have adopted this new approach due to the increased popularity of online travel agencies (“OTAs”) and their use by a large segment of consumers in India, which in CCI’s view cannot be simply replaced or substituted by other offline modes or direct sales without losing out significantly on consumer reach.

Offline vs. Online Distribution Models

One of the issues which has often come up for judgement before the CCI is whether two modes of distribution, i.e. online on one hand and brick-and-mortar on the other, can be considered as two relevant markets or whether they are a part of the same relevant market. The CCI has to date consistently taken the stand that the product purchased, whether from an online portal or through offline brick-and-mortar retail outlets, is fundamentally the same and merely the distribution channel through which said product was procured differs. Furthermore, five years ago, in *Ashish Ahuja v. Snapdeal.com*,³ the CCI concluded that *“The Commission also notes that both offline and online markets differ in terms of discounts and shopping experience and buyers weigh the options available in both markets and decide accordingly. If the prices in the online market increase significantly, then the consumer is likely to shift towards the offline market and vice versa. Therefore, the Commission is of the view that these two markets are different channels of distribution of the same product and are not two different relevant markets.”* As recently as two years back, the CCI continued to hold this position and noted in its decision involving the acquisition of Ibibo Group by MakeMyTrip Limited that *“...all the Travel Channels operate through both offline and online modes. Some predominantly online players also have an offline presence and similarly, predominantly offline Travel Channels have an online presence. Thus, from a supply side perspective, it appears that most of these channels operate on a ‘hybrid model’ wherein a Travel Channel has both online as well as offline presence to provide convenience to customers with specific online or offline preferences.”*⁴

However, 2018 started to see a shift in the CCI’s approach towards online and offline channels as forming part of the same relevant market, where the CCI noted that, *“No doubt, to the end consumers, the distinction line between online and offline sellers is sometimes blurry, yet it cannot be denied that online marketplaces offer convenience for sellers as well as buyers. For the sellers, they save costs in terms of setting up of a store, sales staff, electricity and other maintenance charges. The benefits afforded to buyers include comfort of shopping from their homes thus saving time, commuting charges and at the same time they can compare multiple goods.”*⁵ Further, in 2016, by way of a minority decision in *Justickets v. Big Tree Entertainment*, the CCI had rejected the contention that the online sale of movie tickets is just an alternative distribution channel for selling tickets to the end consumer and that it cannot be considered as a separate relevant product market. The minority decision had recorded that *“From a consumer’s perspective, online ticketing*

platforms provide a service that is distinct from the point of view of comfort and convenience of the consumer inasmuch as the ticket booking can be done from home or from the workplace and is not substitutable with retail sales over the counter where long queues and uncertainty of availability of tickets are faced by the consumers.” In *Ctrip.com/MakeMyTrip Limited*, the CCI carried out the competition assessment for both the online market on one hand, and a broader market encompassing the online as well as offline market on the other. However, the exact delineation of the relevant market was *left open* since the merger did not raise competition concerns in either of the alternate markets.

The EU’s Position

The European Commission (“EC”) has considered the question of whether online and offline travel agency services should be considered separate markets. In its 2001 decision in *Otto/Sabre/Travelocity JV*,⁶ the EC had noted that *“as regards a further possible distinction between on-line travel agencies and traditional travel agencies, based on the past decisions the provision of travel agency services on-line is not a different market from the provision of travel agency services by traditional travel agencies.”*

However, the EC has now adopted a case by case approach (based on market investigation) in its recent orders on whether to further segment the markets on basis of distribution channels. In a recent order in *Priceline Group/Momondo Group*⁷ (2017), the EC noted that *‘The majority of respondents to the market investigation taking a position considered that the distribution of travel services through online channels constitutes a separate market from the distribution of travel services through other channels.’* However, in this case the EC finally left open the question of whether the intermediation of travel services online constitutes a separate market from the intermediation of travel services through brick-and-mortar outlets. Whereas in another order, in *GBT/HRG*⁸ (2018), involving assessment of market for providing business travel agency services, the EC noted that *“... the market investigation has not brought elements showing that the outcome of the competitive assessment would be materially affected if online and offline business travel agency services were considered as distinct markets”* and therefore concluded that the market for the provision of business travel agency services included both online and offline business travel agency services.

Way Forward

The CCI on 8 January 2020 published its key findings and observations in its report titled ‘Market study on E-commerce in India’⁹. The market study report recognizes the increasing importance of online commerce across all three broad industry sectors i.e. consumer goods (mobiles, lifestyle, electrical & electronic appliances, and grocery), accommodation services and food services.

- In the goods category, the findings of the market study reveal that the share of online distribution and its relative importance as a sales channel vis-à-vis the offline channels varies significantly across products. *For instance*, in case of mobile phones, online sales reportedly account for around 40 percent of total sales in India, whereas on the other hand, for electronic/electrical appliances and lifestyle related products including

apparels, shoes, accessories and fashion products, the stakeholders considered online as more of a supplementary channel, brick & mortar sales being the predominant mode of sales.

- In hotels category, the study reveals that online bookings as a proportion of total bookings has been rising, though bookings via offline travel agents, corporate tie-ups and walk-in customers remain significant.
- In the food service category, 83 percent of the restaurants reported to have an online presence with online sales accounting for on an average nearly 29 percent of the respondent restaurants' revenue.

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² *Ctrip.com/ MakeMyTrip Limited* ([C-2019/05/664](#)).

³ *Ashish Ahuja v. Snapdeal.com* ([Case No. 17 of 2014](#)).

⁴ *MIH Internet SEA Pte Ltd./MakeMyTrip Limited* ([C-2016/10/451](#)).

⁵ *All India Online Vendors Association v. Flipkart India (P) Ltd.* ([Case No. 20 of 2018](#)).

⁶ [Case No COMP/M.2627](#) - OTTO VERSAND/SABRE/TRAVELOCITY JV.

⁷ [Case M.8416](#) - THE PRICELINE GROUP/MOMONDO GROUP HOLDINGS.

⁸ [Case M.8862](#) - GBT/HRG.

⁹ CCI Report titled 'Market study on E-commerce in India' dated January 8, 2020, Link: https://www.cci.gov.in/sites/default/files/whats_newdocument/Market-study-on-e-Commerce-in-

[India.pdf](#)