

# Competition News Alert

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## Competition Commission of India release report on Market Study on e-commerce in India- A Soft advisory or Warning signal ?

The electronic commerce (“**E-Commerce**”) market in India is no stranger to allegations of anti-competitive conduct. E-Commerce firms in India have been subject to allegations ranging from predatory pricing to discriminatory terms.

Amidst the growing clamor for the Competition Commission of India (“**CCI**”) to regulate the e-commerce market, and a global shift in competition policy, the CCI launched an investigation into the E-Commerce market in April 2019.

On 08 January 2020, the CCI published the “*Market Study on E-commerce in India: Key Findings and Observations*” (“**Market Study**”) encapsulating the findings and results of the investigation. The Market Study covers E-Commerce in the segments of (i) consumer goods (mobiles, lifestyle, electrical and electronic appliances, and grocery); (ii) accommodation services; and (iii) food services.

The Market Study observed that the imbalance of bargaining power, and information asymmetry between e-commerce platforms and business users, are at the core of the **competition law issues** concerning the E-Commerce market. The competition law issues highlighted in the Market Study are

- (i) Platform neutrality- Preferential treatment of platform’s own or related entities;
- (ii) Platform-to-business contract terms- Unilateral revision in contract terms and imposition of unfair/one-sided contract terms;
- (iii) Platform price-parity clauses- Restriction of sellers/service providers from offering their goods or services at lower prices on other platforms (i.e. wide parity) or on the seller/seller provider’s own website (i.e. narrow parity);
- (iv) Exclusivity Agreements- Agreements where a certain product is launched exclusively on a single online platform, as well as, agreements where a platform lists only one brand in a certain product category; and
- (v) Deep Discounts- Platforms funding price discounts for products listed on the platform.

Based on the said findings, the CCI directed course correction in the E-Commerce market in the form of **self-regulatory measures** to reduce information asymmetry and positively influence competition outcomes.

The self-regulatory measures indicated by the CCI are as follows :

### Search Ranking

The main search ranking parameters are to be set out in the user terms and conditions, in intelligible and unambiguous terms. If there is a possibility of the search parameters being influenced by any direct or indirect remuneration paid by users, the marketplace platforms are to set out a detailed description of those possibilities and the effects of such remuneration on ranking. However, any such disclosure should not enable the manipulation of search results by third parties.

## Collection, use and sharing of data

Platforms are to formulate a transparent policy with respect to collection and usage of data. The policy should also include the potential and actual sharing of such data with third parties or related entities.

## User review and rating mechanism

Platforms to maintain transparency in publishing and sharing user reviews and ratings with business users. Ratings and reviews are to be authentic and mechanisms must be devised to prevent fraudulent reviews/ratings.

## Revision in contract terms

Prior notice to be given to users in case of any proposed changes to the terms and conditions. Any proposed changes are to be implemented only after the expiry of a notice period. Such notice period must be reasonable and proportionate to the nature and extent of the envisaged changes, and their intended consequence for the user.

## Discount policy

Platforms are to be clear and transparent with respect to their discount policies. The discount policy should, amongst other things, specify the basis of the discount rates funded by the platforms for different products/suppliers and the implications for business users' participation/ non-participation in discount schemes.

**VA Comment-** *The CCI's "soft advisory" actually signals a shift in its enforcement priorities concerning the online markets. Until now, the CCI had accorded a soft glove treatment to e-commerce players by considering them an emerging alternate distribution channel for the same product, instead of a separate relevant market. This broad market definition effectively removed online market players from the CCI's scrutiny. The market study indicates the CCI's intention to commence to regulate the online market and may also serve as the yardstick for future investigations into the online market.*

For further details or any query, please feel free to contact :

**MM Sharma** , Head- Competition Law & Policy [msharma@vaishlaw.com](mailto:msharma@vaishlaw.com)



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1st, 9th & 11th Floor, Mohan Dev Building, 13, Tolstoy Marg, New Delhi-110001, India

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### NEW DELHI

1st, 9th & 11th Floor  
Mohan Dev Bldg. 13 Tolstoy Marg  
New Delhi - 110001, India  
Phone: +91-11-4249 2525  
Fax: +91-11-23320484  
[delhi@vaishlaw.com](mailto:delhi@vaishlaw.com)

### MUMBAI

106, Peninsula Centre  
Dr. S. S. Rao Road, Parel  
Mumbai - 400012, India  
Phone: +91-22-4213 4101  
Fax: +91-22-4213 4102  
[mumbai@vaishlaw.com](mailto:mumbai@vaishlaw.com)

### BENGALURU

105-106, Raheja Chambers,  
#12, Museum Road,  
Bengaluru 560001, India  
Phone: +91-80-40903588 /89  
Fax: +91-80-40903584  
[bangalore@vaishlaw.com](mailto:bangalore@vaishlaw.com)