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COMPETITION LAW AND ASSESSING THE EFFECTIVENESS OF COMPETITION LAW IN DIGITAL ECONOMY IN INDIA

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INTRODUCTION

The digital economy has a highly wide-ranging impact and has a significant influence on the actions of many human beings. Over the course of our social and economic activities, it has been highly effective in exerting an influence. While writing his best-selling book "The Digital Economy: Promise and Peril in the Age of Networked Intelligence" (1995), Don Tapscott is credited with being the first person to use the term "Digital Economy."[3] Markets that are centered on digital technologies are referred to collectively as the digital economy, which is an umbrella term on its own. In most cases, it entails the exchange of information, services, or goods through the medium of electronic commerce. A significant amount of economic growth has occurred over the past couple of years as a result of the expansion of this sector. Additionally, the shift in technological paradigm has had repercussions on the markets that extend far beyond the limitations of the digitalization context alone. In addition, the proliferation of mobile devices has led to a rise in the availability of the internet throughout the course of the years. In light of this, the exponential expansion of this industry can be attributed to the growing number of people who are participating in the digital economy.

The digitalization of many sectors within the traditional economy has had a significant impact on the operations of regular and traditional enterprises, and because of this, the markets that are associated with these firms have been changed. Traditional markets and digital markets are distinguishable from one another in a number of ways. The first thing to note is that a significant portion of the digital economy is founded on the personal data of users and the movement of this data from one platform to another. It is therefore uncommon to come across the typical units of transactions in a market, which are price and the amount of

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[3]Kosha Gada, “The Digital Economy in 5 Minutes” *Forbes* (2016).

money paid. For instance, the turnover of a company is a key indicator of the size of its market. On the other hand, a digital platform may deal with many sides in an economy, where one side is subsidised by the other, meaning that the market is zero-priced.

A second point to consider is that the factors that have an impact on the market are extremely diverse. When compared to the traditional market, the sole pricing structures in the market do not serve as the primary factor in determining demand. The market concentration is consequently determined and promoted by the interaction of a number of different network effects simultaneously. When compared to the old economy, the digital economy is significantly more dynamic. The market strength of any company can be readily challenged due to the availability of an infinite number of routes to reach an end-user and supply digital services. Even the tiniest and most recent newcomer in the market can become a challenge to the business of an incumbent. This study begins with an examination of the primary stakeholder sectors of the digital economy. Based on this analysis, an identification of difficulties and challenges that are posed to the authorities in charge of competition legislation is made, with reference to sectors that were previously recognized and the digital economy as a whole. In the latter portion of this article, the authors have made an effort to present recommendations and inputs to the issues that were described earlier. These recommendations and inputs are based on the assessments that were done in the past, as well as the assertions that were made by competition law authorities all over the world and prominent legal experts.

EVOLUTION OF COMPETITION LAW

The Competition Law was established in 1890 with the enactment of the Sherman Anti-Trust Act in the United States. This legislation was implemented to safeguard the interests of the minority faction from the dominant influence wielded by the expansive conglomerates that emerged during the era of the Industrial Revolution. This was implemented to facilitate effective utilization of the tiny group's resources by exerting control over their commercial operations in the market, in relation to other competitors. It was subsequently regarded as a fundamental cornerstone of the market economy. Subsequently, the "Competition Law" was implemented in a majority of both established and developing nations worldwide.

The Competition Law in India originated from Article 38 and Article 39 of the Indian Constitution in 1949[4]. These articles establish that the State is responsible for ensuring and safeguarding a social order. These Articles establish the regulations for protecting social, political, and economic fairness and ensuring that the possession and management of material resources in a community are distributed in a way that benefits the general welfare. Additionally, it is the responsibility of the State to prevent the accumulation of wealth as a result of the market economy.

OBJECTIVES AND PRINCIPLES OF COMPETITION LAW

The fundamental principles of the Competition Act, 2002

The Competition Act, 2002 essentially encompasses four key components[5].

- Anti-competitive agreements
- Abuse of dominance
- Combinations and their regulation
- The Competition Commission of India

➢ ANTI-COMPETITIVE AGREEMENTS

Anti-competitive agreements refer to agreements made between corporations during a commercial transaction that might undermine competition in a particular market or benefit a select group while disadvantaging others. The Competition Act, 2002 prohibits contracts that are anti-competitive.

The term 'agreement', as defined in Section 2(b) of the Competition Act, 2002[6], does not require the parties to sign a legal document. It is uncertain whether it is documented or not. The offered definition is clearly wide rather than comprehensive, and it encompasses several matters. The main rationale behind adopting a broader interpretation of 'agreement' under the Competition Act, 2002 is to address the issue of individuals involved in anti-competitive practices who are unable to formalize their illicit activity through an official written contract.

According to Section 3 of the Competition Act, 2002[7], it is prohibited to engage in any agreement related to the production, sale, transportation, storage, procurement, or

[4]The Constitution of India, art. 38, 39

[5]Competition Comission of India, “Introduction to Competition Law Part-1” (2016)

[6]Competition Act, 2002 (12 of 2003), s. 2(b)

[7]Competition Act, 2002 (12 of 2003), s. 3

administration of goods and services that has or is likely to have a negative impact on the Indian market. According to Section 3(2), any agreement that goes against this clause is considered null and void.

- **ABUSE OF DOMINANCE**

  When an individual or a corporation has a stronger position that enables them to operate without being influenced by competition in the market sector, they are considered to be in a dominant position. In addition, they exert a beneficial impact on their competitors, clientele, and the prevailing market conditions. A dominant position is the state of dominance held by a corporation in a specific market in India, which enables it to operate without being influenced by business constraints.[8]

In order to prove an abuse of dominant position, a company must initially possess a dominating position in both the specific product and the regional market for that product. Section 4 of the Competition Act, 2002, specifically addresses the restriction of such usage. It signifies that no company or organization should exploit its dominant position for its own advantage.

KEY FEATURES OF THE DIGITAL COMPETITION BILL, 2024

- Systematically Significant Digital Enterprises: The law includes quantitative and qualitative criteria, also known as the twin test, in order to determine whether businesses are considered to be Systematically Significant Digital Enterprises (SSDE). The thresholds for both users and finances are used to determine these criteria. In order for an organization to be considered an SSDE in the Core Digital Services market, it is necessary for the organization to meet both the financial and user standards.
- The quantitative threshold, which is also referred to as the financial threshold, is satisfied when a company meets any of the following criteria in each of the three financial years that immediately preceded it: a turnover in India of at least USD 480.027 million (Rs 4000 crore), a global turnover of at least USD 30 billion, a gross

[8]Shraddha Jain, "Competition Law in India", *iPleaders*, Aug. 24, 2022, *available at*: https://blog.ipleaders.in/competition-law-in-india-2/ (last visited on Apr. 20, 2025).

merchandise value in India of at least USD 1.92 billion (Rs 16000 crore), or a global market capitalization of at least USD 75 billion[9].

- The qualitative threshold, which is often referred to as the user threshold, is considered to have been met if it has satisfied any of the following requirements in each of the three financial years that immediately before it: at least one crore consumer users or at least 10,000 business users are required for the main digital service to be considered successful.

The draft also lays down a set of **ex-ante obligations for SSDEs** aimed at preventing anti-competitive behavior and preserving market fairness:

i. **Self-Preferencing**: SSDEs are explicitly barred from engaging in practices that favor their own products, services, or those of affiliated or partnered entities over third-party offerings. This provision seeks to safeguard competitive neutrality within digital marketplaces.

ii. **Data Usage**: The use of non-public data belonging to business users for competitive advantage is strictly prohibited. SSDEs are also restrained from allowing third-party access to such data without prior consent from the relevant business or end users. Moreover, they must facilitate data portability for users in a clear and structured manner.

iii. **Third-party Applications**: Users must retain the freedom to install and use third-party applications on Core Digital Services. They should also have the ability to choose, set, and modify default application settings without restriction.

iv. **Anti-Steering Provisions**: SSDEs are not permitted to limit business users from communicating or promoting offers to their end users or from directing them toward alternative services, whether their own or those offered by third parties. Nonetheless, limitations essential to the functionality of the Core Digital Service may be allowed, subject to regulatory guidelines laid down by the CCI.

v. **Tying and Bundling**: Enterprises designated as SSDEs are prohibited from mandating or incentivizing the use of supplementary products or services—whether offered by themselves, related entities, or associated third parties—unless such use is deemed integral to the provision of the Core Digital Service. The CCI retains the authority to

[9]Manveen Singh, "Overview of India's Digital Competition Bill, 2024", *GW Competition and Innovation Lab*, Aug. 08, 2024, *available at*: https://competitionlab.gwu.edu/overview-indias-digital-competition-bill-2024 (last visited on Apr. 20, 2025).

specify the nature of these integrally linked products or services through appropriate regulations.

COMPETITION ISSUES IN DIGITAL MARKETS

In a slew of recent final orders, the CCI penalized digital companies for not playing fair in the market. These orders highlight how these companies are abusing their dominant position through their business practices to harm competition and consumers. The CCI in its orders has come down heavily upon the rules of engagement between platforms and their users. These rules, apart from being exploitative on account of the unequal bargaining power enjoyed by these platforms relative to businesses, also exclude competitors. At the most fundamental level, platforms' interactions with other actors in the economy have come under scrutiny. Some of the issues that have been taken up by the Commission have been highlighted by the 53rd Report of the Parliamentary Standing Committee (PSC) on Finance. The following sections discuss the identified practices, the theory of harm, and the competition remedies that have been proposed by the Commission in some of its recent orders.

Anti-Steering Provisions:

- Anti-steering measures, often employed by dominant digital platforms, restrict the ability of users to direct or guide their preferences outside the platform's ecosystem.20 These practices distort competition and limit consumer choice. The problem with anti-steering lies in the creation of a "walled garden" model within app markets. This implies that both developers and consumers are unable to switch to another platform if they perceive the terms and conditions within that enclosed environment to be onerous. It has been argued that these anti-steering practices and high commissions pose challenges to market innovation, especially for smaller app developers. Additionally, anti-steering provisions can also result in higher prices and diminished quality of services, as the lack of competitive pressures diminishes the incentive for platforms to improve or differentiate their offerings.

Adjacency/Bundling and Tying:

- Tying is commonly described as the practice where a dominant firm sells a product with the condition that the buyer must also purchase another product or agree not to buy the tied product from another supplier. This definition also encompasses the sale

of products or services that could be considered distinct but are offered only as bundled products. Earlier cases involving tying and bundling were characterized by an instinctive theory of leveraging. According to this theory, a dominant firm could extend its market power from a controlled market to another competitive market with the aim of establishing a "new or second monopoly in this market". Consequently, engaging in tying and bundling could result in doubling of the deadweight loss and a decrease in consumer welfare.

Data Usage (Use of Non-Public Data):

- The increasing significance of data, coupled with the unique features of digital markets, has raised apprehensions regarding the potential long-lasting market dominance linked to data. Data's role in reinforcing demand-side aspects of a market, such as search and switching costs, as well as choice and information overload, may further solidify a firm's market power when it holds a dominant position.31 Given that data serves as an input into production, firms controlling data can wield market power and hinder the entry of potential competitors. The impact of such behaviour can be amplified through mergers, where data collected in one market can be leveraged in another.
- In the case of ***XYZ v Alphabet Inc and Others***[10], it was observed by the CCI that Google possesses extensive and detailed data about app users, including comprehensive personal and financial transaction information. With access to this financial transaction data, Google has the ability to distort competition in downstream markets. The Commission observed that providing app developers with access to user-level transaction data would be beneficial, enabling them to offer targeted promotions. The investigation revealed that Google not only has the capacity but also the motivation to utilize this data to target premium users with its own products. It was observed that the adverse effects on competition are twofold: first, it puts rival apps at a disadvantage by providing Google with customer data that enables it to outcompete them, and second, it solidifies Google's position in the online target advertisement sector.
- **CHALLENGES FACED BY STATES IN APPLYING COMPETITION LAW AND POLICY IN DIGITAL MARKETS AND POLICY RESPONSES IN STATES**

[10] Case No. 07 of 2020

- In response to the UNCTAD questionnaire, several member State competition authorities highlighted the challenges of applying conventional, price-centric competition analysis to the digital economy. The distinctive nature of digital markets, particularly their limited contestability, poses fundamental problems for traditional regulatory tools. Once a digital platform attains a significant position in the market, it becomes exceedingly difficult for new entrants to disrupt or replace it. This entrenched dominance is often fortified through strategic conduct by dominant platforms, such as the acquisition of potential or emerging competitors, allowing them to maintain or expand their market power and limit both accessibility and competitive viability within the digital landscape.
- Moreover, competition concerns in digital ecosystems extend beyond simple market dominance. As observed by the Court of Justice of the European Union in the Android case, digital ecosystems comprise interconnected and overlapping markets. Within these ecosystems, an operator controlling the core platform may deploy practices such as self-preferencing or tying and bundling to secure competitive advantages even in markets where it may not be dominant per se.[11] This advantage is largely due to ecosystem-driven lock-in effects and high switching costs, which limit user mobility and hinder rival firms' ability to compete effectively. These dynamics underscore the need for competition authorities to shift focus from traditional market boundaries to the broader and more complex interplay within and across digital ecosystems.
- The analytical limitations of existing competition law frameworks have also been highlighted by scholars and practitioners. The current toolkit, developed primarily for conventional markets, often falls short in measuring or addressing new forms of anti-competitive conduct arising in digital spaces. If regulatory authorities continue to adhere strictly to the consumer welfare standard, many instances of digital market concentration may not even appear problematic.[12] Yet, alternatives to the welfare-based approach, such as focusing on the preservation of the competitive process itself, still lack a well-defined conceptual or theoretical foundation.

Policy responses in States

[11]Ibid.
[12] Id.

- Competition authorities continue to enforce competition law against anticompetitive practices. Some States have revised the law, adopting new concepts and adjusting merger control standards, or have adopted new legislation to complement existing legal frameworks. Moreover, new proposals have been made, and different approaches taken, including soft law and market research, to strength the powers of competition authorities.

CONCLUSION

The rapid expansion of the digital economy globally, and particularly in India, has fundamentally altered the dynamics of competition in markets. The digital landscape is characterized by transformative technological advances, platform-based business models, network effects, vast data-driven power, and the consolidation of market power in the hands of a few dominant players. This has necessitated a reevaluation of traditional approaches to competition law, which were initially designed to regulate more conventional, static markets. In the context of digital economies, traditional competition law frameworks appear increasingly inadequate to tackle the unique challenges posed by digital platforms and online ecosystems.

In India, competition law has evolved significantly since the enactment of the *Competition Act, 2002*, but the country's legal and regulatory infrastructure still faces challenges in keeping pace with the rapid changes in the digital economy. The increasing dominance of global tech giants in the Indian market, combined with the shift towards an online-based economy, underscores the pressing need for a more dynamic and responsive competition law framework. India's approach to digital competition must be both comprehensive and forward-looking, addressing not just current challenges but also anticipating the needs of a digital economy that is likely to evolve significantly in the coming years.

Digital platforms are fundamentally different from traditional markets. Their unique characteristics—network effects, data monopolies, multi-sided markets, and winner-takes-all dynamics—require innovative regulatory responses. Network effects, for instance, are a defining feature of digital platforms where the value of a product or service increases with the number of users. This creates a feedback loop where dominant platforms continue to grow exponentially, often at the expense of smaller competitors. The consequence is that digital markets tend to "tip," meaning that a single dominant player can emerge, potentially

eliminating meaningful competition. This is a critical concern in sectors such as e-commerce, online retail, search engines, social media, and digital payment systems.

The pervasive role of data in the digital economy also poses unique challenges for competition law. Data, particularly user data, is not only an economic resource but also a competitive advantage in digital markets. The control of vast amounts of data by a few digital platforms allows them to offer highly personalized services and target advertisements more effectively. This data-driven dominance can create barriers for new entrants, thus stifling competition and innovation. Moreover, the algorithms that govern the operation of these platforms are often opaque and inaccessible to regulators, which makes it difficult to scrutinize and enforce competition law effectively.

SUGGESTONS

1. **Strengthening the Legislative Framework for Digital Markets**

   The evolving nature of digital markets necessitates a tailored legislative approach. While the Competition Act, 2002 has served as a strong foundation, it must be augmented with specific provisions for digital platforms. The Draft Competition (Amendment) Bill, 2024 is a step in this direction but needs further refinement. There should be explicit recognition of practices like self-preferencing, gatekeeping, leveraging, and data monopolization as potentially anti-competitive.

2. **Establishing a Dedicated Digital Markets Regulator or Specialized Wing**

   The creation of a specialised digital markets unit within the Competition Commission of India (CCI), similar to the Digital Markets Unit (DMU) in the UK, is essential. This unit should have technical expertise in digital markets, data analytics, algorithms, and emerging technologies. It must be capable of real-time monitoring and agile enforcement.

3. **Clarifying the Role of Data in Antitrust Analysis**

   In the digital economy, data is a critical asset. The CCI should develop specific guidelines to assess anti-competitive conduct based on data accumulation, data sharing practices, and privacy implications. There should be clear demarcation

between pro-competitive and anti-competitive data practices, including data-driven mergers.

4. **Introducing Ex-Ante Regulations for Large Digital Platforms**

The current enforcement regime in India is largely ex-post, where action is taken only after a violation occurs. For dominant digital platforms, ex-ante obligations such as mandating interoperability, fair access to platform infrastructure, and prohibiting bundling of services should be introduced to prevent the abuse of dominance.

5. **Enhancing the Leniency and Whistleblower Programs**

The current leniency regime under the Lesser Penalty Regulations, 2009 needs certainty and incentive mechanisms. The CCI should commit to providing full immunity to the first informant, as done in the United States, to encourage reporting of cartels and covert anti-competitive agreements. There should also be protection measures for whistleblowers in digital sectors.