



INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed Edition :

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume 2 Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

IJLRA

EDITORIAL TEAM

EDITORS



Megha Middha

Megha Middha, Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar

Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board



Dr. Namita Jain



Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019

Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8 Articles in various reputed Law Journals. Conducted 1 Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and

learning.

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS

ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

BIG TECH COMPANIES WITHIN COMPETITION LAW - NAVIGATING DOMINANCE, REGULATIONS, AND FAIR PRACTICES

AUTHORED BY - KIRAN KHANNA & DR. NAMAH DUTTA

Abstract

This paper explores the regulatory structure intended to protect fair practices and competition, delving into the complex world of Indian competition law as it relates to Big Tech corporations. The paper examines the laws put in place to protect competition after providing an overview of the rising power of major internet companies in India. The paper looks at particular clauses including anti-steering laws, platform neutrality, and data usage while focusing on the need for ex-ante competition regulation in the digital market. The paper tackles issues and disputes related to Big IT and emphasizes the absence of a worldwide agreement on ex-ante competition regulation. It also offers a thorough analysis of the intricate relationship between regulation, dominance, and fair practices.

Keywords: *Big Tech, Competition Law, Ex-ante Competition Regulation, Digital Competition*

Introduction

The explosive growth of Big Tech Companies is a distinguishing phenomenon in the modern global economy. Businesses such as Amazon, Google, Facebook, and Apple have unparalleled sway over a variety of industries, not only the digital one. Their ascent, characterized by exponential development and fast invention, has not been without consequences. Research on these digital giants' domination and impact on market dynamics has become increasingly important as they continue to expand their power and reach. Big Tech companies' dominance has changed more than just the way markets operate; it has completely changed the structure of whole economies and sectors.¹ These companies' sheer size and skill in gathering vast amounts of user

¹ "India's approach to regulate Big Tech competition may be in line with global trends", *TECHCIRCLE*, December 29, 2022, available at < <https://www.techcircle.in/2022/12/29/india-s-approach-to-regulate-big-tech-competition-may-be-in-line-with-global-trends>> (last visited on January 03, 2024).

data have ushered in a new era in which data is a powerful currency and market dominance reaches previously unheard-of heights. This change has far-reaching effects that go beyond economic borders, including privacy standards, social institutions, and the fundamental nature of competition.

To ensure just and equitable market practices, it is crucial to assess competition legislation in the context of big IT companies. These organizations have the power to discourage competition, prevent the admission of new competitors, and restrict innovation because of their dominant positions. Evaluating the adequacy of current competition rules becomes essential in order to prevent monopolistic behaviour and foster an atmosphere in which new entrants may participate in fair competition on an even playing field. However, this project is not without its complex difficulties.² The regulatory environment struggles to keep up with the rapidly changing and dynamic nature of the technology industry. The intricacies of digital platforms, data-centric business models, and international operations provide legal obstacles that demand flexible and subtle responses. In order to avoid anti-competitive activities and promote innovation at the same time, it is necessary to carefully review the current legislative frameworks and take proactive measures to close any regulatory gaps.³

Under these circumstances, investigating the relationship between Big Tech companies and competition law becomes essential for maintaining fair market dynamics, protecting consumer interests, and fostering global innovation. It is crucial that regulatory frameworks adapt to the difficulties of the present while also taking future changes in the technology landscape into account as we traverse this complex terrain.

Research Questions

- With the growing dominance and impact of big tech companies, there is now a pressing need to assess whether amendments in competition law will serve as a rising factor that can effectively regulate these industry giants and ensure fair competition within the marketplace?

² *Id.*

³ “Big Tech: Impact, Dominance and Anti-Competitive Practices”, *PWOnlyIAS*, (October 30, 2023), available at <<https://pwnonlyias.com/big-tech/>> (last visited on January 03, 2024).

- Does India have appropriate laws in place to address emerging issues relating to large digital companies?
- Will the creation of the competition law help smaller companies in the sector?
- Will the interests of consumers be safeguarded by antitrust laws?

Research Objectives

- To assess the efficacy of recent changes to competition legislation as possible means of controlling the increasing influence and power of large digital firms and guaranteeing fair competition in the market.
- To evaluate whether India's current legal frameworks are sufficient to handle the new issues brought about by big digital enterprises, as well as to look for any legislative gaps and see how well Indian laws align with international norms.
- To examine how the enactment of competition laws may affect smaller technology firms. This will involve a competitive analysis and an examination of the opportunities and difficulties that regulatory changes may present for the expansion and viability of smaller businesses.

Regulation of Big Tech and Safeguarding Competition in India

India is now working on a comprehensive big tech regulation strategy, with an emphasis on improving safe harbour rules for the digital age and strengthening competition laws. Section 79 of India's Information Technology Act, 2000 (IT Act) provides the current protective shield for large technology businesses, which is akin to the Communications Decency Act (CDA) in the USA. Section 79 of the IT Act, which describes the Safe Harbour Clause, gives internet intermediaries legal protection against user-posted material on their platforms. Nonetheless, India is actively creating its own legislative framework, the Digital India Act, which is meant to replace the IT Act of 2000, in recognition of the changing digital reality. This project is in line with the rules' wider parameters, which include the Telecom bill, data localization, and other relevant factors in the modern digital environment.⁴

When it comes to antitrust issues, India uses the Competition Act of 2002. The CCI, which is in charge of examining and correcting monopolistic activities, is in charge of regulatory monitoring.

⁴ *Id.*

The Competition (Amendment) Bill, 2022, is a major step forward in this regulatory direction. In order to improve competition in the digital sphere and prevent monopolistic tendencies, the proposed bill imposes strict regulations. Interestingly, it requires the express clearance of the CCI for mergers and acquisitions with a transaction value greater than ₹2,000 crore. This change demonstrates the government's dedication to making sure that certain business practices are closely examined, especially in the technology industry.⁵

Furthermore, self-preferencing and other actions that can negatively affect customers and companies are now included in the definition of anti-competitive acts under the Competition (Amendment) Bill, 2022. The measure, which gives the CCI additional investigation and prosecution authority, shows that it is combating anti-competitive activity head-on. In an effort to promote more openness, the measure imposes new duties on Big Tech firms, requiring them to provide the CCI with comprehensive data on their business operations. For the regulatory authority to thoroughly evaluate and handle any possible anti-competitive activity in the digital sphere, this transparency initiative is essential.

Big Tech Regulation & Fair Digital Competition

Competition authorities throughout the world have been scrutinizing digital marketplaces more closely in recent years, with a particular emphasis on any anti-competitive behaviour. Investigative actions against tech giants like Google and Facebook, well-known e-commerce sites like Amazon and Flipkart, online food delivery services like Zomato and Swiggy, and online travel aggregators like MakeMyTrip, among other notable players, are examples of how this increased scrutiny has materialized in the Indian landscape.

The Indian government has proactively suggested many policies in response to alleged anti-competitive issues posed by digital markets. Of these, the most important is the addition of a deal value threshold to the Competition (Amendment) Bill, 2022, as modified. At the same time, the Parliamentary Standing Committee on Finance (SCF), chaired by Jayant Sinha, has been assigned the responsibility of investigating and examining the alleged anti-competitive actions of large technology companies. In its extensive report, which was turned in to the committee in December

⁵ "Antitrust Law in India: Big Tech Regulation & Fair Digital Competition", *Parker & Parker*, July 27, 2023, available at <<https://www.parkerip.com/blog/antitrust-law-in-india-big-tech-regulation-fair-digital-competition/>> (last visited on January 03, 2024).

2022, the idea of an ex-ante assessment of digital markets was supported.⁶ The paper outlined the several ways that anti-competitive harm may appear in digital marketplaces and offered a number of suggestions for how organizations with substantial influence should be regulated to prevent them from engaging in such damaging activities. These organizations were referred to as digital intermediaries with systemic importance. Additionally, the SCF recommended creating a specialist digital markets section inside the Competition Commission of India's (CCI) current structure and pushed for the implementation of separate laws pertaining to digital competition.

The position adopted in June 2022 by the Parliamentary Standing Committee on Commerce is noteworthy. As stated in the committee's report on the regulation and development of e-commerce in India, 'rapid action' is required to effect meaningful changes to the antitrust laws. It was stressed that this haste was a deliberate reaction to deal with the complex issues that emerged from digital marketplaces. Although there is no denying the necessity for India's digital markets to be regulated, there is a pressing debate of whether remedies should be implemented more gradually, methodically, and empirically. This emphasizes how important it is to carefully balance innovation and regulation so that the legal framework changes to keep up with the ever-changing dynamics of the digital marketplaces.

Necessity to regulate Digital Marketplaces via ex-ante Competition in India

Between 2014 and 2019, India's "digital economy," which includes digital products, services, and technology in a variety of industries, had a remarkable upsurge. It is noteworthy that throughout this period, the growth of this digital economy was 2.4 times faster than that of the Indian economy as a whole.⁷ Although a few well-known internet companies were crucial in fostering this expansion, questions have been raised regarding these businesses' dual roles as intermediary platforms and suppliers of products and services on those platforms everywhere, including in India. Because of the concentrated nature of the digital economy, this dual function has given rise to concerns about possible economic harm. As a result, competition authorities throughout the world have emphasized the need to regulate the behaviour of large tech corporations in digital marketplaces.

⁶ "Digital Competition Law, Indian Government Mulls Regulation of Big Tech", *Inventiva*, August 10, 2023, available at <<https://www.inventiva.co.in/trends/digital-competition-law-indian-government-mulls-regulation-of-big-tech/>> (last visited on January 03, 2024).

⁷ "Does India require ex-ante competition regulation in digital markets?", *Shardul Amarchand Mangaldas*, April 03, 2023, available at <https://www.amsshardul.com/insight/does-india-require-ex-ante-competition-regulation-in-digital-markets/#_ftnref20> (last visited on January 03, 2024).

Under the Competition Act of 2002, the CCI oversees competition in digital marketplaces in India. This law includes a number of measures intended to stop companies that have a monopoly from entering into anti-competitive agreements or abusing their dominating market positions. Furthermore, in order to prevent power concentration and any negative effects on competition, mergers and acquisitions are governed by the Competition Act, subject to certain jurisdictional criteria.

The Ministry of Corporate Affairs (MCA) formed the Committee on Digital Competition legislation (CDCL) in response to the Standing Committee's recommendations in order to determine whether a specific competition legislation designed for digital marketplaces is required. While the government and the CCI view correcting competition distortions in digital markets as their top priority, the necessity of ex-ante competition regulation necessitates consideration of two important factors. First of all, it calls into question the need for ex-ante regulation by requiring an analysis of whether the current regulatory framework is sufficient to handle competition challenges in the digital ecosystem. Second, it necessitates determining if ex-ante regulation is beneficial enough to offset any possible disadvantages, such as overregulation, false positives, conflicts with other regulations, and the possibility of inhibiting innovation in rapidly evolving digital marketplaces.

Anti-Steering Provisions

After a thorough investigation, the CCI concluded that Google had abused its dominating market position in the matter of *XYZ v. Alphabet Inc and Others*.⁸ Among the abuses that were discovered, Google was discovered to have placed unfair and biased requirements on app developers, requiring them to use Google Play's Billing System (GPBS) for both in-app purchases and paid app downloads. The Standing Committee has expressed worry that this regulation would limit developers' freedom of choice by essentially excluding other payment gateways like PayPal and RazorPay. In light of these, Google was hit with a hefty ₹937 crore fine by the CCI. In addition to being punitive, this fine was meant to serve as a warning to Google not to engage in such anti-competitive behaviour in the future. Google challenged the CCI's ruling on its grounds and brought the case to the NCLAT in response. In addition, Google requested a stay on the CCI's behavioural remedies. But when the NCLAT denied Google's plea for a

⁸ *XYZ v. Alphabet Inc. and Others*, CCI, Case No. 07 of 2020 (25 October 2022).

temporary stay, the internet behemoth made public the steps it intended to take to abide by the CCI's orders.

In the case of *Together We Fight Society v. Apple Inc.*, where identical accusations of anti-competitive activity have been made, the CCI has concurrently launched a parallel inquiry into Apple.⁹ The fact that these procedures are still pending is a reflection of the regulatory scrutiny that India's leading IT businesses are subject to. Beyond the app store policies, the CCI's inquiry into Apple also looks at the company's policy of not allowing outside app shops to be included on its own App Store.

Self-Preferencing/ Platform Neutrality

After conducting an inquiry, the CCI found that Google had misused its dominant position in the matter of *Umar Javeed and Others v. Google LLC and Another*.¹⁰ Abuse was found in a number of tactics, such as the premium placement and pre-installation of its applications on high-end mobile devices. As one of the remedies, the CCI directed Google to refrain from placing limitations on Original Equipment Manufacturers (OEMs) with respect to the pre-installed apps that OEMs may choose from and how they are arranged. Furthermore, Google was prohibited from stopping consumers from removing the pre-installed applications. Google was hit with a significant financial penalty of ₹1337.6 crores by the CCI. After this ruling, Google appealed to the Supreme Court and the NCLAT, disputing the CCI's conclusions. However, Google's request for a temporary stay on the remedies was denied by the Supreme Court as well as the NCLAT. Google consequently announced major modifications to its Android OS business model in accordance with the CCI's directives. This action was taken in order to comply with the CCI's regulatory orders.

Moreover, in *Matrimony.com Limited v. Google LLC and Others*, the CCI similarly determined that Google's actions violated Section 4 of the Competition Act.¹¹ The offense was associated with search engine bias, namely the prominent display of Google's Flights Unit on the page displaying search results. Google was required by the CCI to include a disclaimer in the commercial flight unit box, clearly stating that clicking the 'search flights' link would take users to Google's Flights website rather than results compiled by any other outside service provider. In

⁹ *Together We Fight Society v. Apple Inc.*, CCI, Case No. 24 of 2021 (31 December 2021).

¹⁰ *Umar Javeed v. Google LLC and Others*, CCI, Case No. 39 of 2018 (20 October 2022).

¹¹ *Matrimony.com Limited v. Google LLC and Others*, CCI, Case No. 07 and 30 of 2012 (8 February 2018).

addition to the disclaimer requirement, the CCI fined Google ₹135.86 crores for violating the Competition Act and imposed further remedies. Google decided to contest the CCI's ruling, and as of right now, the appeal is still ongoing at the NCLAT.

Data Usage

In response to claims that they are abusing their market dominance with regard to data practices compliant with WhatsApp's privacy policy starting in 2021, the CCI has opened an investigation into WhatsApp and Meta.¹²

Lack of Global Consensus on Ex-Ante Competition Regulation

In line with global trends seen in the USA, the UK, and the EU, the Standing Committee has proposed specific legislation to govern competition within the digital industry ex ante. These nations have developed their regulatory frameworks to address competitive challenges in the digital space, or they are in the process of doing so. However, the committee seems to ignore the continued absence of national and international agreement about the effectiveness of this kind of law.

One such piece of legislation is the recently passed Digital Markets Act (DMA) in the European Union. The OECD Competition Committee Chair, Fredric Jenny, has expressed displeasure of the DMA notwithstanding its implementation, among other international criticisms. Jenny voiced worries that the DMA would unintentionally discourage innovation or competition in the sake of preserving the digital environment. The DMA is criticized for what is seen as its rigidity in responding to changing platforms and markets, its propensity to encourage anti-competitive behaviours, and its questionable ability to accelerate antitrust actions. Comparable legislative initiatives have had difficulty gaining broad congressional support in the US, as seen with the American Innovation and Choice Online Act and the Open App Market Act. Consensus on these measures has been hampered by significant differences and fears over the unforeseen repercussions of ex-ante regulation on consumers, growth, and innovation.¹³

¹² *In Re: Updated Terms of Service and Privacy Policy for WhatsApp Users*, CCI, Suo Moto Case No. 01 of 2021 (24 March 2021).

¹³ *Supra* note 7.

In the meanwhile, the UK does not yet have an ex-ante competition law that is designed with digital marketplaces in mind. Ongoing discussions, however, are meant to create a pro-competitive structure that shapes the actions of large technology companies with strategic market intent. Notably, the UK's strategy deviates greatly from the EU's blueprint. The UK government supports a more nuanced approach, whilst the DMA takes a universal approach, applying ex-ante requirements consistently to all gatekeepers regardless of their activity. It proposes imposing on certain corporations a customized code of conduct that takes into account the particulars of each company.¹⁴

Not only does the Standing Committee ignore the lack of agreement, but it also ignores the fact that laws such as the DMA have a protracted transition and implementation time. As a result, there is a lack of hard data to back up the need for and possible advantages of this experimental regulation strategy. The Standing Committee need to have considered the possibility of a multitude of contradictory legal stances if individual countries unilaterally establish extensive ex-ante laws in the absence of international agreement. This may have a disproportionate effect on India's digital environment both domestically and internationally, weaving a complex web of regulatory inequalities.

Challenges and Controversies Surrounding Big Tech

The charge of anti-competitive activity against Big Tech is at the forefront of worries. These corporations engage in activities that restrict competition and lead to the collapse of several smaller enterprises in their unwavering quest of increased profits. One such instance is Google's favouritism for its products in search results, which may undermine fair competition and solidify the company's market dominance.

The continuous criticism of Big Tech for violating user privacy is another divisive topic. These companies are accused of tracking users' internet behaviour without getting proper authorization and using personal data for financial advantage. One prominent example is Facebook's unlawful sharing of user information with Cambridge Analytica, which raised questions about the manipulation of political narratives in addition to compromising user data.

¹⁴ "Big-Tech Regulation: Biting Off More Than We Can Chew?", *Mondaq*, April 26, 2023, available at <<https://www.mondaq.com/india/antitrust-eu-competition-/1304578/big-tech-regulation-biting-off-more-than-we-can-chew>> (last visited on January 03, 2024).

Big Tech has been under scrutiny due to allegations of tax avoidance, since they deliberately locate their companies in low-tax nations to reduce their tax liabilities. One notable example of the intricate financial strategies these computer companies use is Apple's use of the "Double Irish with a Dutch Sandwich" tax evasion plan.

Automation in particular has led to massive job losses as a result of technological breakthroughs supported by Big Tech, which have disproportionately affected emerging and disadvantaged nations. In addition to highlighting the ethical concerns of developing technology without taking sufficient steps to address its societal ramifications, this calls into question economic injustice. There's a worrying tendency highlighted by accusations that Big Tech corporations ignore domestic rules and claim exemption due to their worldwide roots. The fact that these companies operate in a globally digital environment and that this might have an impact on local legal systems calls into question the conventional ideas of responsibility.¹⁵

The Big Tech companies' platforms have come under fire for spreading false information and endangering public safety and order. One relevant example is the misuse of WhatsApp to disseminate false information, which has resulted in violence and instability in the real world, as seen in India.

Conclusion

Big Tech's global impact has forced governments to scrutinize its operations, leading to the creation of robust regulatory frameworks. Following international standards, India in particular is focusing on comprehensive projects like the Digital India Act and the Competition (Amendment) Bill, 2022. The significant obstacles posed by Big Tech's hegemony continue to generate discussions throughout the world, emphasizing the significance of enacting fair digital competition and consumer protection laws.

¹⁵ *Supra* note 7.