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E-COMMERCE AND COMPETITION LAW: CHALLENGES AND WAY AHEAD

AUTHORED BY - RICHA KUMARI

ABSTRACT

Due to a rise in e-commerce, the Indian economy has seen considerable changes recently. The rise of e-commerce has a number of economic, governmental, and social ramifications. For the purpose of regulating foreign direct investment in the industry, the Department of Industrial Policy and Promotion released a press note in March 2016. In order to ensure an equal playing field, the policy, among other requirements, had placed a number of limitations on international web shops. In view of the competition difficulties in e-commerce in the current economic climate, the research work aims to determine whether such limits are indeed required or if they obstruct the convenience of conducting business. The paper discusses about how the competition law is beneficial in the economy and its drawbacks.

KEYWORDS

Digital markets, e-commerce, innovation, competition law, competition commission of India

INTRODUCTION

The term "digital market" broadly describes the use of the internet, mobile devices, social media websites, and search engines to connect with a wider range of consumers. E-Commerce transactions are included, in which suppliers, producers, and manufacturers can offer their goods for sale to customers online. The fact that actual monetary transactions and data interchange to carry out the stated transactions take place, increasing the seller's overall sales, is a vital aspect of the e-commerce industry.

COMPETITION LAW AND E-COMMERCE

More market efficiency is produced by market competition, which also fosters innovation, development, higher product quality, quicker service, and overall customer welfare. Yet, when there are more competitors on the market, there is a bigger chance that the market would fail since the dominant firms don't hesitate to push their dominance over weaker players, occasionally even engaging in cartels and bid-rigging.¹ Consequently, the necessity for a regulatory agency to oversee the enforcement of competition law and policy remains. The core element of Indian competition law is that market forces and the agreements that govern them must be structured in a competitive way.

Hence, the Directive Principles of State Policy and Articles 38² and 39³ of the Indian Constitution serve as the foundation for the country's competition policy. The Competition Act 2002, which created the Competition Commission of India, was passed in 2003. After the substantive sections of the Act relating to antitrust enforcement and regulation of combinations came into force in the years 2009 and 2011, respectively, the Commission was given its enforcement and regulatory authority. The Act is applicable to E-Commerce in the same manner as it is applicable to other business-related areas in many other markets. Two elements, namely competition laws and policies, govern competition in India. Given that markets may experience failures if there are no competition laws in effect.

These are government actions that "directly affect the conduct of firms and structure of the industry" because competition policy is necessary to create competition.⁴ In order to promote competition, competition policy entails reforms in specific areas, such as a) industrial policy, which includes measures relating to licensing requirements, restrictions on foreign technology tie-ups, guidelines on the location of industries, etc.

b) trade policy, which includes measures relating to trade restrictions, reduction of tariffs, removal of investment controls, etc.

¹ Geetanjali Phatke., *Effects on Competition Law and Policy on Digital Markets in India*, (2019) 4 ICLR 14

² INDIA CONST., art.38

³ INDIA CONST., art.39

⁴ Competition Commission of India, Annual Report,

[https://www.cci.gov.in/sites/default/files/annual%20reports/CCI AR-2016-11 English.pdf](https://www.cci.gov.in/sites/default/files/annual%20reports/CCI%20AR-2016-11%20English.pdf)

c) disinvestment and privatization of state-owned enterprises as they receive more benefits. Government agencies implement competition laws.

Relationships between the administration of Prime Minister Narendra Modi and many major technology firms have been strained, and New Delhi has been tightening regulations on companies like Facebook, YouTube, and Twitter. The Competition Commission of India (CCI), the nation's competition watchdog, is investigating these IT companies for alleged misuse of the application market. The Committee recommends that the government consider and enact a digital competition act to guarantee a fair, transparent, and contestable digital ecosystem, which will be beneficial for not only our nation and its developing start-up economy, but also for the entire world, the panel stated in a report submitted to India's lower House of Parliament.⁵ In order to prevent monopolies, the panel advised designating leading technology companies as systemically important digital intermediaries. However, it also cautioned that these companies "must not favour its own offers over the offers of its competitors" when serving as market intermediaries for supply and sales. Amazon and its rival Flipkart are accused of engaging in anti-competitive behavior in India, including pushing preferred sellers online and providing priority.

The study comes as companies like Google, Apple, Facebook, Amazon, and others are coming under increasing international investigation for allegedly abusing their market positions by utilizing large amounts of customer data. In its discussions with the parliamentary panel earlier this year, the Competition Commission of India (CCI) slammed Google and Facebook India, saying: "By and large, data is not collected but actually generated by businesses as they build the ability to capture signals through their services and technologies. Any company is able to do this to build its own data space. The CCI's investigation of WhatsApp's privacy policy modification, which is related to claims that it shares user data with its parent company Facebook's advertising division, has recently received approval from the Indian Supreme Court.

According to experts, the committee's recommendations were a positive move. "This desire (by the panel) is in line with the level of market maturity in India. Yet the rules shouldn't put too much pressure on the businesses. Because of its digital environment, India has been able to withstand

⁵ Competition policy: The challenge of digital markets,
https://www.monopolkommission.de/images/PDF/SG/SG68/S68_summary.pdf

the consequences of the global economic downturn. So, the regulations should balance minimising pointless obstacles with preventing unfair market circumstances.

More market efficiency is produced by market competition, which also fosters innovation, development, higher product quality, quicker service, and overall customer welfare. Yet, when there are more competitors on the market, there is a bigger chance that the market would fail since the dominant firms don't hesitate to push their dominance over weaker players, occasionally even engaging in cartels and bid-rigging. Consequently, the necessity for a regulatory agency to oversee the enforcement of competition law and policy remains. The fundamental tenet of Indian competition law is that market forces and the agreements that govern them must be structured in a competitive way. However, when such contracts impose restrictions on specific other market participants encouraging unfair competition, the competition authorities step in to take action. The competition policy in India deals with Articles 38 and 39 of the Constitution of India under the Directive Principles of State Policy.

In the case of TRAI vs CCI⁶ in Telecommunications Sector, In 2016, Reliance Jio Infocomm Limited (Reliance Jio), a newcomer to the telecom industry, filed a complaint with the CCI alleging that Airtel, Vodafone, and Idea (the incumbent dominant operators, or IDOs), as well as the Cellular Operators Association of India, had engaged in cartelization and abused their dominant position in violation of Sections ⁷3 and 4 ⁸of the Competition Act, 2002. (Competition Act). The IDOs and the COAI were determined to have engaged in cartel activity, according to the CCI (Prima Facie Order). After then, the CCI notified the parties and the investigation got going. We can also examine the ambitious Jio-Amazon deal's compliance with competition law challenges. 10% of the ownership in Jio Platforms Limited is contributed by Facebook. The social media behemoth declared its desire to use whatsapp to link Jio's e-commerce platform, Jiomart, to retailers and small enterprises.⁹

⁶ CCI v. Trai ,AIR 2018.

⁷ Section 3, Competition Act, 2002, Acts of Parliament.

⁸ Section 4, Competition Act, 2002, Acts of Parliament.

⁹ Samanvi Narang and Prateek Gupta, *Analysing the Competition Law Issues in the Ambitious Jio-Facebook Deal*, 2020 SCC OnLine Blog OpEd 41.

We are aware that Facebook and Jio both appear to be market leaders in their respective fields. According to data from the Telecom Regulatory Authority of India, Jio has a larger market share than its rivals Bharati Airtel and Vodafone- Idea in terms of user base and revenue sharing in the Indian mobile service marketplaces.

Currently, Facebook -and-pop businesses in the local market. Secondly, it would try to break into another market by leveraging WhatsApp's influences .Furthermore, WhatsApp might consent to JioMart using its messaging service. If done so and in the way that WhatsApp already includes the JioMart platform, it may constitute abuse of dominance in violation of Section 4(2)(d)¹⁰ of the Competition Act. Installing WhatsApp would be the primary commitment, while pre-installing JioMart would be the unrelated secondary commitment.¹¹

Do we really need a digital Act?

The rise of the internet economy has presented both significant obstacles and a wealth of opportunities. Competitor authorities throughout the world are finding it more and more challenging to successfully control the "digital market," and the main reason for that is probably the basic difference between how digital markets and traditional markets function. It is obvious that the competition authorities around the world have challenges ahead since they can no longer depend on decades of competition jurisprudence.¹²

As a result, authorities from many countries are considering either a total revamp of their competition law framework or the introduction of additional laws that are especially intended to punish the largest participants in the digital markets.

Even if the Competition Commission of India has taken action against big-tech corporations and launched multiple inquiries, heavy fines, and corrective action orders in numerous cases in compliance with the competition already in place.

¹⁰ Section 4(2)(d), Competition Act, 2002, Acts of Parliament.

¹¹ *ibid*

¹² Does India need a separate Competition Law for Digital Markets, <https://www.medianama.com/2023/02/223-quick-take-india-competition-law-digital-market/>.

CONCLUSION

The Indian Competition Act is fairly comprehensive and was created to address the needs of the expanding economy and global trends in economics with regard to competition law. As a result, the 2002 competition law is acknowledged as a landmark statute. The law prohibits the abuse of authority. In order to increase the commercial sustainability of the industry, this law primarily encourages market competition while also allowing flexibility in the distribution of profits to businesses of all sizes. Even though the complete law has yet to be put into practise, its approval will surely boost both domestic and global market competition.

