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INTERPLAY BETWEEN ANTITRUST LAWS AND ARTIFICIAL INTELLIGENCE

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Abstract:

This paper deals with the relationship between antitrust laws and the rapid development of artificial intelligence (AI) technology. As artificial intelligence continues to transform the economy, it also raises new legal issues in regulatory protection. This summary provides an overview of the main topics enumerated herein. This article primarily examines the potential of AI-powered algorithms to improve business performance, as well as the risk of anti-competitive behaviour. Intelligent algorithms can optimize pricing strategies, adjust self-reports, and optimize performance by analysing the best data and predictive models. However, there are concerns that these algorithms may encourage collusive or exclusionary practices that affect competition and the welfare of consumers. Second, this article examines the application of intelligence-based antitrust models in the market. Antitrust laws designed to promote competition and prevent monopolistic behaviour need to adapt to the complexity of AI technology. In the context of intellectual property, the question arises of how to define relevant markets, how to measure market power, and how to measure inconsistent behaviour. Additionally, this paper explores the challenge of finding and solving algorithmic problems where AI systems independently control cost or release decisions. Thirdly, it evaluates the role of regulatory bodies and courts in resolving the problem of protecting beliefs arising from intellectual property. In an era of rapid technological development, regulators and judges face the difficult task of interpreting and applying conservation laws. They need to balance promoting innovation and facilitating competition by leveraging their networks of experts to benefit the AI-driven economy. In summary, this article highlights the importance of understanding the interaction between religious and intellectual property rights to ensure that the right to compete is still useful in the digital age. This article focuses on the ongoing debate about strategically managing intelligence-driven businesses that foster innovation and competition by posing legal issues and providing solutions.

I. INTRODUCTION

Artificial Intelligence (AI) technology has been rapidly advancing and changing several industries, especially the digitalised sectors. Concerns about A.I. platforms' ability to hinder competition and negatively impact consumer welfare have grown as they continue to have a substantial impact on markets. Consequently, to maintain competitive markets and protect consumer interests, antitrust authorities throughout the world have focused more of their attention on closely examining the actions and policies surrounding AI platforms. Various companies are pursuing AI development but it can be seen that there is a need for increased cooperation between these companies. This would help create AI systems that ensure safety and security and provide mutually shared benefits. AI can be defined as a digital system that is capable of performing tasks commonly thought to require intelligence, with these tasks typically learned via data and/ or experience¹. The dynamics of the race for technological superiority² are becoming competitive with each passing day. With AI continuously evolving, there is a global race to regulate this technology. Today, the private sector dominates this domain of AI innovation.

The intersection of antitrust law and AI presents an interesting landscape where the traditional boundaries of law are being challenged and altered. As AI technologies continue to advance in unprecedented ways, they are not only changing business but also causing legal and regulatory issues, especially in the attack space. Antitrust law aims to promote fair competition and prevent monopolisation in the market. The inherent features of AI, such as predictive analytics, self-pricing, and automated decision-making, present both opportunities and challenges from a legal perspective.

Stephen Hawking once famously said, 'AI is likely to be the best or worst thing to happen to humanity'³. AI is ushering in a new era of innovation, transforming economies and businesses across the globe, including India. AI technologies have the potential to disrupt traditional markets, affect market dynamics, and raise unique competition concerns, like – (i) Collusion: AI-driven algorithms can automatically set prices and coordinate strategies among competing firms. Detecting and preventing collusion in the AI era present intricate challenges for competition authorities. (ii) Dominance: Tech giants with significant AI capabilities can gain a competitive

¹ Miles Brundage, Shahar Avin, Jasmine Wang, Haydn Belfield, Gretchen Krueger et al., “Toward Trustworthy AI Development: Mechanisms for Supporting Verifiable Claims”, arXiv:2004.07213 [cs.CY](Apr. 20, 2020)

² The technological developments create a rift between cooperation and the aim of competition law which is a significantly under-discussed area involving A.I. Development and its inter-relationship with Antitrust Laws.

³ Stephen Hawking

advantage, raising concerns about monopolistic behaviour and abuse of market power, often difficult to detect. (iii) Algorithmic Bias: AI can perpetuate bias and discrimination, posing ethical and legal challenges that competition authorities must address. (iv) Big Data: The use of AI often involves vast amounts of data, leading to privacy and security concerns⁴.

1.1 Background

India is traditionally known for its agriculture and service-driven economy, which is rapidly evolving into an AI-based economic centre, harnessing the potential of AI to drive growth, enhance competitiveness, and foster technological advancement. Generative AI platforms like ChatGPT, etc., are becoming instrumental tools for professionals, businessmen and even students. However, it is also opening new areas for antitrust scrutiny. As India's economy and businesses undergo a dynamic AI transition, the implications of Competition law are also becoming increasingly alarming. AI-driven technologies are not only redefining market dynamics but also raising complex techno-legal and regulatory challenges that are bound to affect all sectors of the economy.

Antitrust regulations, starting from the late nineteenth and mid twentieth hundreds of years, were laid out to facilitate competition, prevent monopolies in the market, and improve customer welfare. With time, these regulations have developed in light of changing financial and economic regimes. Today, as AI is in its boom and developing rapidly, it has become imperative to understand its implication on the antitrust regime. On one hand, AI advancements hold the advantage of improving market productivity, encouraging development, and further adding to consumer welfare.

1.2 Identifying Issues

The lack of transparency of AI algorithms, along with their ability to process vast amounts of data and adapt to the changing market conditions, has raised questions about their potential to facilitate collusion, prevent monopolisation, or reduce market power imbalances. Moreover, the abuse of position by a few dominant firms has added to the debates about the emergence of AI-driven monopolies and its implications on competition and innovation.

⁴ Dhanendra Kumar, "AI and antitrust: Balancing innovation with competition", Business Standard, November 5, 2023.

https://www.business-standard.com/economy/analysis/ai-and-antitrust-balancing-innovation-with-competition-123110500368_1.html

All these factors have made it essential to examine how traditional antitrust principles apply in the context of AI-driven markets and to identify potential gaps or challenges in their enforcement.

Here the important areas are-

- i. defining relevant markets in the digital age;
- ii. assessment of competitive effects in the data driven economy;
- iii. delineation of permissible versus impermissible forms of algorithmic coordination, and
- iv. regulating the transfer of data and its elements in the unregulated markets.

Moreover, the rapid speed of technological innovation in AI makes it imperative to take a dynamic and adaptive approach to antitrust enforcement and policy development. Regulatory agencies like the Competition Commission of India (CCI) and courts are grappling with these new and unseen legal issues related to AI, such as algorithmic transparency, accountability, and the allocation of liability in cases of AI-induced harm. Balancing the uncertainty of competition, innovation, and consumer welfare in this evolving landscape requires a deep understanding of both the capabilities and limitations of AI technologies.

II. ANTITRUST & AI

Technological development has brought the AI in functionality at the market places and business operations. AI has repeatedly shown the potential to disturb the market and also the ability to weaken the fundamental balance between the competition law and its enforcement. Technology not only provides convenience to the consumers but also puts their interest at risk by influencing the market elements and stakeholders and thereby affecting the competition in the market. Increased use and influence of artificial intelligence systems by companies and consumers bring with them new and dynamic oversight, compliance, governance and disclosure challenges. Legal and risk management professionals must develop processes and policies for AI tools that work within the requirements of the law as it is today, while also anticipating the coming wave of legal, regulatory and technological changes⁵.

2.1 AI- Powered Algorithms and Business Performance

Utilizing artificial intelligence (AI) has emerged as a critical component of strategic decision-making and performance optimisation in today's fast-paced, data-driven corporate environment.

⁵ LockeLord, February 21,2024, "Legal Issues in Artificial Intelligence: AI's Impact on Antitrust and Competition Law Issues". <https://www.lockelord.com/newsandevents/events/2024/02/ai-impact-antitrust>

Organizations now have unprecedented potential to gather insights, forecast trends, and automate processes, which will eventually result in more informed decisions and improved operational efficiency⁶. Business organisations have been able to analyse huge amounts of data and information using AI-powered algorithms with speed and precision. Decision-making has fundamentally changed as a result of this data-centric approach, moving away from intuition and toward evidence-based methods. Based on trends in previous data, predictive analytics, a cornerstone of AI, enables organizations to foretell potential future events⁷. Companies may make data-driven choices in real time by utilizing AI algorithms to track and evaluate market trends, competitor activity, and customer sentiment across a variety of digital channels. Organizations can respond quickly to changes in the market because of this decision-making agility, giving them a competitive advantage in a setting where flexibility is crucial⁸.

Business organizations can enhance resource allocation, reduce waste, and improve efficiency using AI-driven algorithms like demand fluctuation forecasts and effective inventory management. This helps to create a more robust and responsive supply chain in addition to cost savings. The programs worldwide also facilitate AI algorithms being used by organisations to devise plans to achieve their Sustainable Development Goals (SDGs).

The present competition law in India is governed by the Competition Act, 2002, prior to this, issues relating to competition law were dealt with by the Monopolies and Restrictive Trade Practices Act, 1969 which suffered from various infirmities and has now been repealed. The Indian competition law is largely modelled on the lines of the EU competition law framework and also borrowed ideas from US antitrust legislation. The Act establishes the Competition Commission of India (CCI) to regulate the issues pertaining to competition⁹.

Addressing AI's influence in the current scenario, it will be desirable that the competent authority frames regulations providing a definite time-frame for completion of the investigation, inquiry and final disposal of the matters pending before the Commission¹⁰.

⁶ Kitsios, F.; Kamariotou, M. Artificial Intelligence and Business Strategy towards Digital Transformation: A Research Agenda. *Sustainability* 2021, 13, 2025.

⁷ van de Wetering, R.; Hendrickx, T.; Brinkkemper, S.; Kurnia, S. The Impact of EA-Driven Dynamic Capabilities, Innovativeness, and Structure on Organizational Benefits: A Variance and FsQCA Perspective. *Sustainability* 2021, 13, 5414.

⁸ Brynjolfsson, E.; McAfee, A. The business of artificial intelligence. *Harv. Bus. Rev.* 2017, 7, 3–11.

⁹ Section 7, Competition Act, 2002.

¹⁰ CCI v. SAIL, (2010) 10 SCC 744 (India).

2.2 Antitrust Law shortcomings w.r.t. Complexity of AI

As AI technologies gain popularity and widespread usage, their integration with various industries like medical, governance, computations, law, this raises concerns about market competition, consumer welfare, and innovation. However, existing competition policy frameworks have fallen short in keeping pace with the rapid evolution of AI, leading to shortcomings in their effectiveness.

In India, the Competition Commission of India enforces the country's antitrust laws. While the Competition Act, 2002 provides a broad framework for addressing anti-competitive practices, its applicability to AI-driven markets is limited by several factors. One key challenge is the dynamic nature of AI technologies, which can make it difficult for traditional antitrust analyses to accurately assess market dynamics. AI algorithms can quickly adapt to changes in market conditions, leading to complex and unpredictable outcomes that may not fit neatly within existing legal frameworks. Moreover, the lack of transparency in AI algorithms presents a challenge for antitrust authorities in detecting and proving anti-competitive behavior. Unlike traditional business practices, such as price-fixing or market allocation, AI algorithms operate autonomously and may engage in anti-competitive behavior without the explicit knowledge or direction of their creators. This raises questions about accountability and liability in cases where AI systems are found to have violated antitrust laws. Another issue is the concentration of AI talent and resources among a small number of firms, which results in abuse of dominant position by major tech players. With the recent AI deals being successfully carried out by tech giants like- Google Inc., Amazon and Microsoft AI has become limited to big companies thereby making the entry of new entrants more difficult. In India, as in other countries, a handful of large tech companies control a significant portion of AI research, development, and deployment.

The exchange of data generated by AI platforms is being carried on on unregulated markets which increase its misuse and promotes anti- competitive practices. No regulations exist to regulate such data transfer. Moreover, the ownership of such data also comes into question¹¹.

Internationally, similar challenges exist in the enforcement of antitrust laws in the context of AI. The European Union's competition authorities have struggled with how to apply existing antitrust principles to digital markets pertaining to AI-driven algorithms and data-driven business models.

¹¹ See, Sylvia Zhang, Who owns the data generated by your smart cars? Harvard Journal of Law and Technology, Volume 32, Number 1 Fall 2018.

The EU's General Data Protection Regulation¹² (GDPR) and the proposed Digital Markets Act¹³ (DMA) seek to address some of these challenges by promoting competition and protecting consumer rights in the digital economy.

In the U.S., the two main legal systems for regulating the type of work generated by AI are copyrights and patents. Applying copyright law involves determining who actually came up with an idea for, say, a piece of visual art. The U.S. Copyright Office recently said¹⁴ that work can be copyrighted in cases where AI assisted with the creation; works wholly created by AI would not be protectable. The patent office, which offers a stronger form of protection for intellectual property, remains vague on how patent law will apply to the outputs of AI systems¹⁵. Decade by decade, the office has reconsidered what is and is not patentable. At present, AI is raising critical questions about who “invented” something and whether it can be patented. In the case of drug development, for example, a pharmaceutical company could use AI to comb through millions of molecular prospects and winnow them down to 200 candidates and then have scientists refine that pool to the two best possibilities¹⁶.

2.3 Role of Regulatory Bodies

The Federal Trade Commission¹⁷ (FTC) and the Department of Justice¹⁸ (DOJ), the two agencies responsible for enforcing the federal antitrust laws, have issued numerous public statements this year addressing the anticompetitive potential of AI. As competition issues surrounding the use of AI continue to develop, both the FTC and the DOJ say they will support a marketplace where businesses can compete and continue to innovate, but they caution companies that the agencies will use their full range of tools to identify and address circumstances in which AI can be used to harm competition. In keeping with that goal, both the DOJ and FTC announced earlier this year at the American Bar Association Antitrust Law Spring Meeting that they are taking steps to

¹² <https://www.hrpo.pitt.edu/european-union-eu-general-data-protection-regulation-gdpr>
Accessed on February 12, 2024.

¹³ https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/europe-fit-digital-age/digital-markets-act-ensuring-fair-and-open-digital-markets_en
Accessed on February 15, 2024.

¹⁴ <https://www.ropesgray.com/en/insights/alerts/2023/03/can-works-created-with-ai-be-copyrighted-copyright-office-issues-formal-guidance>
Accessed on January 7, 2024.

¹⁵ <https://www.nytimes.com/2023/07/15/technology/ai-inventor-patents.html>
Accessed on March 5, 2024.

¹⁶ Dylan Walsh, “The Legal Issues presented by Generative AI” , August 28, 2023, https://mitsloan.mit.edu/ideas-made-to-matter/legal-issues-presented-generative-ai_13
Accessed on March 7, 2024.

¹⁷ <https://www.ftc.gov/>

¹⁸ <https://www.justice.gov/atr>

address these issues, including (1) hiring data scientists, computer scientists, and economists to help them better understand AI and detect anticompetitive conduct; (2) conducting outreach to industry experts and technologists to learn more about how algorithms work; and (3) developing new guidance on the antitrust risks associated with AI¹⁹.

The government of the UK convened the world's first AI Safety Summit on 1st November, which was also attended by India, and a Bletchley Declaration was signed by the European Union and 28 countries to establish a shared understanding of opportunities and risks posed by AI. This brought together global CEOs of AI companies and global governments. UK PM Rishi Sunak stressed that for a better-shared understanding, governments must keep a check on developments of AI. A State of AI Science report was also released at the Summit²⁰.

Currently, the anti-trust regulator CCI, in India is in the process of defining the contours of the market study. The CCI Chairperson said that AI could trigger dynamic pricing and personalised pricing strategies which could lead to discrimination among customers. "As a competition agency, CCI needs to be vigilant and stay ahead of the curve and, accordingly, there is a need for a thorough market study on AI to understand these changes, anticipate potential anti-competitive behaviour and develop appropriate regulatory frameworks. It is crucial to ensure a level-playing field for all market participants, that fosters an environment where innovation thrives without compromising market fairness," said Kaur, the chairperson of CCI²¹.

III. THE ROAD AHEAD

Competition authorities need to be proactive to resolve complex issues arising from the intersection of competition law and intellectual property. There is a need to invest in building in-house expertise on AI so that they understand the nuances of AI technology and its impact on competition. Collaboration is another key element and we need to work closely with other regulators, international partners and experts to establish good governance and AI compliance. Regulators should issue advice and instructions to businesses on the responsible use of AI and

¹⁹ <https://www.klgates.com/Antitrust-and-AI-US-Antitrust-Regulators-Increasingly-Focused-on-the-Potential-Anticompetitive-Effects-of-AI-9-20-2023>

Accessed on April 1, 2024.

²⁰ https://www.business-standard.com/economy/analysis/ai-and-antitrust-balancing-innovation-with-competition-123110500368_1.html

Accessed on March 18, 2024.

²¹ <https://www.cnbcvt18.com/news/cci-chairperson-ravneet-kaur-on-artificial-intelligence-discriminatory-pricing-anti-competitiveness-digital-competition-law-18492891.htm>

Accessed on April 11, 2024.

avoid anti-competitive practices. Continuous evaluation of the business impact of AI is crucial to timely detect and prevent anti-competitiveness, especially in sectors where AI adoption is high. Aggressive action against AI-engineered anticompetitive behaviour, such as collusion or monopolistic behaviour, is necessary to maintain fair competition. This facilitates collaboration with data protection authorities to ensure that the use of AI complies with data privacy laws and that individuals' privacy rights are respected.

The need for artificial intelligence (AI) business research arises from the rapid evolution of artificial intelligence technology and its profound impact on business. As artificial intelligence continues to develop, its impact on many sectors is increasing, competition and business models are changing. Such technological innovations can lead to anti-competitive behavior. In India, the mission of CCI as a competition authority is to ensure fairness and competition in the market and therefore being alert and staying ahead of the trend requires good business acumen research to understand these changes in the hope of being able to prevent competition and create necessary regulations. . It is important to ensure a level playing field for all market participants, thus creating an environment in which innovation can flourish without distorting the fair text in the market. By staying ahead of the curve, CCI can better adapt to the digital age and enable AI to become a tool to improve business performance and customer well-being. We are currently developing the methodology of the proposed study.

AI technology has the potential to create significant benefits in the network, where the value of a product or service increases as more users acquire it. This can lead to a few key players having strong market power, stifling competition and innovation. Antitrust authorities need to carefully monitor these developments and intervene when necessary to prevent competition. Factors such as user participation play an important role. For example, companies with access to more information will have a competitive advantage in developing AI, making it harder for smaller rivals to compete at the gaming level. Antitrust regulators may need to consider new measures and methods for measuring market power and competition in the age of artificial intelligence. Concerns – Abuse of market power. Antitrust authorities should work with data protection authorities to ensure that competition concerns are resolved without affecting people's privacy rights. Antitrust laws and regulations must continue to evolve to keep pace with the rapid development of AI technologies and their impact on competition and business. Collaboration between advocacy organizations, policy makers, technologists and other stakeholders is crucial to ensure that the benefits of AI technology Construction are validated without competition and

in line with the health of customers.

IV. CONCLUSION

Regarding these antitrust issues discussed above, there must be control and regulation to ensure fair competition, prevent abuse of market power, and provide some level of action for information to all participants in the market. By encouraging competition and promoting market access, innovation can flourish and deliver greater productivity and benefits to consumers and society as a whole.

As Artificial Intelligence and allied tools make subsequent data deletion redundant, enforcement of responsible data-sharing along with segmentation of consent at instances where the same is required, offers a solution that ensures robust market competition along with quality product delivery. The model of integration between the competition laws and data privacy frameworks is the only feasible solution to deal with the probable perils of rapid changes in the digital market²². AI-related antitrust litigation is likely to grow. The volume of cases is rising, driven by a powerful mix of few legal precedents, a generative AI market that's exploding, and increasing scrutiny for violations by federal authorities and the plaintiffs' bar. Companies that use AI should implement proactive and preventive steps to minimize antitrust exposure. The key is to know exactly what AI is being used for, who has access to your data, and to understand how the AI works. Prevention becomes much tougher without this fundamental knowledge²³.

Antitrust authorities must be aware of the potential for AI to harm the competitive process and consumers. At the same time, organizations must weigh costs and benefits when adjusting their implementation approaches, while focusing on pragmatic and tailored solutions. Harassing competitors without harming customers or competition will increase competitive advantage and benefit innovation and customers. Necessary regulations must be made to determine businesses according to certain conditions and to apply rules appropriate to certain businesses that may harm certain customers, and to prevent false notifications regarding anti-competitive behavior. Similarly, attempts should be made to prevent mergers, taking into account each organization's limited resources and ability to become more competitive. Merger control is necessary if the merging entity is likely to have conflicting competition or the desire and ability to engage in

²² Harsh, "Harmonizing Competition Regulations and Data Privacy Laws In the era of Artificial Intelligence", NLIU Law Review, Vol. XIII Issue I.

²³ <https://www.crowell.com/en/insights/publications/artificial-intelligence-moves-into-the-realm-of-antitrust-litigation#:~:text=The%20antitrust%20bar%20is%20watching.in%20violation%20of%20antitrust%20laws>
Accessed on April 14, 2024.

competition; It is better not to focus on external indicators such as work or work concentration. It negatively affects competition and the customer's health has nothing to do with it. Maintaining this trust and protecting the consumer will ensure that the United States remains a strong and competitive market for the development of high-tech urine technologies while also reducing potential and actual harm.

