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"Competition Law in India – The Progress since its Inception"

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Introduction

Competition law comprises of rules and regulations that are intended to safeguard the undertaking of competition in order to generate maximum consumer welfare. Competition law has gone through different phases and only in recent years, its profound transformation is at par or more suitably attuned with the recent economic behaviour and political scenario in the world. While competition law was in its embryonic stage, it was majorly conceived by developed economies and thereby influencing developing economies like China and India to implement competition laws in their respective countries, has facilitated ease of doing business even in developing countries, as competition operates internationally and has a global reach. Being devoid of competition laws, a country can endure various shortcomings like damage to consumer's welfare, inferior quality of products and limited choice of goods available in the markets, just to name a few.

Development of Competition law in India

The competition law in India has managed to come out of its amorphous stage but it is still a work in progress. The Parliament of India, enacted 'The Competition Act' in 2002, thereby replacing the archaic Monopolies and Restrictive Trade Practices Act, 1969. The outdated MRTP Act, failed to recognise certain key areas in regards to the competition law that has otherwise bolstered the international economic markets. To bring India as a major player into forefront of leading economies, eliminating the MRTP Act became an indispensable move by the authorities. Therefore, a 'High level Committee on Competition Policy and Law was constituted under chairmanship of Mr. Raghavan.'[1] The Committee proposed to introduce regulations that are updated and competent enough to handle anti-competitive practices in the economy.

After the introduction of Competition Bill in 2001, the Competition Act came into force in 2002 and post its enactment, underwent amendments twice, 'The Competition (Amendment) Act 2007, and the Competition (Amendment) Act, 2009.'[2] The purpose to create the Competition Commission of India is to debar the nefarious activities that have an unfavourable impact on competition in India.

The Competition Act caters to the Article 38 of the Constitution of India, which states 'to secure a social order for the promotion of welfare of the people.' This article strives 'to minimise the inequalities in income, and endeavour to eliminate inequalities in status,

[1]Introduction to Competition Law, '*Competition Commission of India'*<https://www.cci.gov.in/sites/default/files/advocacy_booklet_document/CCI%20Basic%20Introduction_0.pdf>
[2]*Cleartax,'Competition Act, 2002'*<https://cleartax.in/s/competition-act-2002>

facilities and opportunities, not only amongst individuals, but also among groups of people residing in different areas and engaged in different vocations.'[3]

Methods that prove to create imbalance in the market

There are certain strategies in the commercial or business world that contends for superiority and tends to bend certain rules in their favour by tweaking certain methods. With prevalence of liberalisation and privatisation allied with rapid technological changes and broadening of international trade, has resulted in unleashing dynamic economic forces of the world.

Practices like anti-competitive agreements that is made amongst 'competitors to prevent, restrict or distort competition.'[4] An example would be a cartel agreement between competitors to fix prices so as to control the prices of goods or services. Bid rigging is another possibility where other cartel members 'refrain from bidding, withdraw their bid, or submit bids with higher prices or unacceptable terms.'[5] Besides this, abusive behaviour by a firm is a contentious issue under the competition laws. For example, a dominant firm might decide to reduce the prices of its product to get an edge over its competitor or to drive it out of the market. This is known as 'predatory pricing.' Another well-known strategy is mergers that is detrimental to the consumers. Not all mergers aim for consumer welfare. The flip side of merger is that the market will become less competitive and as a consequence, consumers may have to pay higher prices. In certain jurisdictions, it has been upheld that a merger cannot take place without the approval of the relevant competition authority or courts.

Prevalence of competition law on Indian authorities

As a general proposition, the Competition Act 2002, 'provides for establishment of a Competition Commission of India which will be a quasi-judicial body bound by principles of rule law'[6] while conferring decisions. The primary objectives to formulate and implement this act are – I) to promote and sustain healthy competition in the markets.
II) to eradicate practices having adverse effect on competition.
III) to safeguard interests of consumers.
IV) to ensure liberty of trade conducted by other international firms in markets in India.
There are three pivot provisions in the Competition Act, 2002. Firstly, **prohibition of certain agreements, which is precisely Anti-competitive agreements**. In a nutshell, section 3 of the Act, declares any agreement to be void which has an adverse effect on competition. As per Section 3(1) of the Act, 'no enterprise or association of enterprises or person or association of

[3]Central Government Act<https://indiankanoon.org/doc/1673816/>
[4]Competition and Consumer Commission Singapore, '*Anti-Competitive Agreements*'<https://www.cccs.gov.sg/anti-competitive-behaviour/anti-competitive-agreements#:~:text=Anti%2Dcompetitive%20agreements%20are%20agreements,be%20those%20made%20by%20cartels.>
[5]Competition and Consumer Commission Singapore, '*Anti-Competitive Agreements*'<https://www.cccs.gov.sg/anti-competitive-behaviour/anti-competitive-agreements#:~:text=Anti%2Dcompetitive%20agreements%20are%20agreements,be%20those%20made%20by%20cartels.>[5]
[6]ipleaders, '*Evolution and Development of Competition Law in India'*<https://blog.ipleaders.in/competition-law-evolution/>

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persons shall enter into any agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition.'[7]

Secondly, **prohibition of abuse of dominant position** is another vice that the Competition Act intends to address. It refers when a firm obtains position of strength in the relevant market which entitles them to operate independently of competitive forces, thus adversely impacting its competitors and consumers. To curb this, Section 4 of the Act 'prohibits any enterprise or group from abusing its dominant position, meaning thereby a position of strength, enjoyed by an enterprise or group, in the relevant market, in India.'[8] This provision encapsulates **'predatory pricing.'**

In **Airtel v. Reliance Jio,** the former alleged against the latter about leveraging 'its large commercial and economic backing to dominate the telecom market.'[9] With the move of providing free services to eradicate competition in the telecom market, it was a clear case of 'predatory pricing' as per Airtel. However, the Competition Commission of India (CCI) rejected the allegation of 'predatory pricing' against Jio, by stating that 'just giving access for free itself is not anti-competitive.'[10] The CCI opined that in the telecom sector where big players are already operating, it is not an anti-competitive step for 'an entrant to incentivise customers towards its own services by giving attractive offers and schemes.'[11] In its final decision on June 2017, the CCI favoured Jio and stated 'in the absence of any dominant position enjoyed by Reliance Jio in the relevant market, the question of alleged abuse does not arise.'[12]

Thirdly, Section 5 of the Competition Act, 2002 specifically deals with the '**Combination of one or more enterprises.' '**Combination under the Act means acquisition of control, shares, voting rights or assets, 'acquisition of control by a person over an enterprise, where such person has direct or indirect control over another enterprise,'[13] engaged in competing businesses and mergers and amalgamations between or amongst enterprises when the combining parties exceed the thresholds set in the act. Such combination is declared void when it negatively impacts the market.

[7]Central Government Act <https://indiankanoon.org/doc/1153878/>
8<https://indiankanoon.org/doc/1780194/>

[9]Ameya Garud, The Competition Forum, *'Predatory Pricing or Price Penetration',* <https://www.thecompetitionforum.com/post/predatory-pricing-or-price-penetration-the-dilemma-in-bharti-airtel-v-reliance-jio>

[10]Kiran Rathee & Veena Mani, Business Standard, '*CCI rejects Airtel's predatory pricing against Reliance Jio'*<https://www.business-standard.com/article/companies/cci-rejects-airtel-s-predatory-pricing-case-against-reliance-jio-117061000051_1.html#:~:text=According%20to%20CCI%2C%20just%20giving,competition%20in%20the%20telecom%20market.>

[11]Ibid.

[12]Suryansh Singh, Competition for Good, '*The Predatory Pricing Case Against Reliance Jio'*<https://www.icle.in/resource/the-predatory-pricing-case-against-reliance-jio-did-cci-miss-an-opportunity-to-rejuvenate-indian-telecom-sector/>

[13]Central Government Act<https://indiankanoon.org/doc/632687/>

Despite conducting successful operations, review of provisions, eradicating cartels and undergoing amendments twice, India still has untapped potentials to unearth in this arena. With advancements and progress in world of corporations, certain situations arise unexpectedly, where the existing provisions ceases to face the disputable issue. The Indian Competition law is derived from 'international antitrust community in seeking to formulate a fit for the Indian purpose."[14] Diverting much from theory and occurring much in practice in India, the Competition Commission of India (CCI) are enclosing plenty of cases despite Director-General stating otherwise. Section 26 of the Act declares an array of situations but 'does not provide for the case where the commission might disagree with the DG after it finds a contravention.'[15] Usually, the procedure begins with the Commission directing the DG to begin investigation into the allegations on which the latter needs to submit a report to the former, post which the Commission decides to hear the affected parties. After wrapping up with the proceedings, the CCI grants a final order as it deems fit. Nevertheless, the Act does not permit the CCI 'to close a case if the DG has found a contravention in its report.'[16] The deficiency created by the absence of such a vital provision has created an unjust situation where the affected party has 'no power to appeal with the higher authorities such as the Competition Appellate Tribunal (COMPAT) or the Supreme Court'[17] once the case is deemed closed by the Commission.

How India tackled cement cartelisation?

Cartel is an unlawful conspiracy, either formal or informal, whereby the firms collusively interact amongst themselves so as to collaborate in an industry to limit competition. It facilitates to set limits on pricing, output or production, division of markets between firms on the basis of product or territory and settle for certain measures so as to restrict any new entrant and create monopoly in the relevant market. It is rather a difficult task to gather sufficient evidence to impose a case against uncooperative defendants. Under Section 2(c) of the Competition Act, 2002, cartel is defined as which, 'includes an association of producers, sellers, distributors, traders or service providers who, by agreement amongst themselves, limit control or attempt to control the production, distribution, sale or price of, or, trade in goods or provision of services.'[18]

In its initial days, the frail act of the 'Monopolies and Restrictive Trade Practices Act of 1969' were inefficient to curb cartels. Nevertheless, the realisation to bridle offences like cartel was felt by the authorities, to shape the economic power of the country and increase the

[14]Suzanne Rab, '*Indian Competition Law: 10 years on an International Perspective',*<https://www.brunel.ac.uk/law/Brunel-Comparative-Competition-Law-School-2019/Documents-2019/Resources-tab/International-Competition-Law/SuzanneIndianCompetition.pdf>
[15]Shruti Choudhury, The Economic Times, '*Flaw in Competition Act'* <https://economictimes.indiatimes.com/news/politics-and-nation/flaw-in-competition-act-likely-to-make-cci-orders-void/articleshow/15538611.cms?from=mdr>
[16]Ibid.
[17]Ibid.
[18]Central Government Act<https://indiankanoon.org/doc/1591314/>

scope of relevant markets, thereby creating the formation and implementation of the Competition Act 2002, designed to corroborate the dynamic changes in the economy.

There are two methods by which cartel agreement takes place:

1) Horizontal cartel agreement – Horizontal agreements occurs amongst competitors that operate at the same level of production and in the same course of business. The common types of horizontal agreements are bid rigging, price fixing, agreement regarding quantity and market share.

2) Vertical cartel agreement – Vertical agreement occurs between firms that operate at different levels of production and distribution chain. Vertical agreements take place when there is a 'potential trading relationship between the sellers.' This agreement encompasses exclusive dealing arrangements, most-favoured customer clauses, resale price maintenance and refusal to deal.

Case of cement cartelisation – In 2016, on the complaint filed by the Builders' Association of India under Section 19 of the Act, the Competition Commission learned about 11 cement companies that were involved in price cartelisation. The companies were charged with collaborating among themselves in controlling production, limiting supply, price fixing, thus 'keeping the prices of several cement manufacturers in the same region uniform despite the fact that the cost of different units were different.'[19] As per the informer, these 11 companies were the chiefs in the relevant market, thus holding the majority portion of the market and 'during the alleged period of cartelisation, the operating profit margin of the industry was 26% on turnover.'[20] Following the course of action imbibed in Section 26 of the Act, the CCI ordered to conduct an investigation by the Director General (DG). The reports presented by the DG heralded to 'cartelisation based on circumstantial evidence such as parallel changes in the firm's prices, production and dispatch.'[21] In its final decision, the CCI cited that the 11 cement companies abused their dominant position and entered into anti-competitive agreements and hence, levied a huge fine of Rs 6,317 crores on the alleged parties including the industry body Cement Manufacturers' Association. The cement companies challenged the penalty at the Competition Appellate Tribunal and in 2018, the National Company Law Appellate Tribunal (previously known as Competition Appellate Tribunal) dismissed their plea. Unsatisfied with the response of Tribunal, they moved the case to Supreme Court which ordered 'the cement companies to deposit 10 percent of the penalty.'[22]

[19]Nidhi Singh, CUTS Institute for Regulation and Competition, '*Case Study 04'* <https://circ.in/competition-issues/case-study-04/>

[20]BHATTACHARJEA, ADITYA, and OINDRILA DE. "Cartels and the Competition Commission." *Economic and Political Weekly*, vol. 47, no. 35, 2012, pp. 14–17. *JSTOR*, www.jstor.org/stable/41720077. Accessed 29 Jan. 2021. <https://www.jstor.org/stable/41720077?read-now=1&refreqid=excelsior%3Ad6af00ce24ad0400561bb1127ba81601&seq=2#page_scan_tab_contents>

[21]Ibid.

[22]Suresh P Iyengar, Business Line, '*Companies Panel orders fresh probe into cartelisation in cement industry'*<https://www.thehindubusinessline.com/companies/competition-panel-orders-fresh-probe-into-cartelisation-in-cement-industry/article33300290.ece>

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Influence of U.S. Anti-trust laws on India's competition policy

In spite of targeting and revolving around the main concerns, the Competition Act, 2002 fails to fill certain lacuna that deals with the ongoing change in business. Not only Indian competition law, but when U.S. began working on its competition legislation, it was far from perfection. There were many trial and error approach while tackling the anti-competitive matters. Nevertheless, the U.S. has rectified many of its past mistakes and if not an ideal legislation, it has managed to formulate a good competition law regime over the years. The anti-monopoly regulation and competition policy which is widely known as anti-trust laws in the US, is comparatively progressive, with multiple legislations at work. There are two federal agencies that deals with the anti-trust laws – firstly, the Antitrust Division of the US Department of Justice (DoJ) which is the executive branch of the government and secondly, the Federal Trade Commission, which is an independent administrative agency. The Sherman Act is the first enacted legislation by the U.S. that outlawed the concentrations of power interfering with trade and monopolistic practices hindering fair competition. The Clayton Antitrust Act, 1914, is another piece of legislation that adds substance to the U.S. antitrust law regime. It covers issues like corporate mergers and acquisitions, interlocking directorates and price discrimination and tying. These antitrust laws are applied to suspicious business activities and ensure complete competitive fairness. The focus of anti-trust laws in the U.S. is to develop economic efficiency and regulate businesses.

On contrary, the Competition Act, 2002 of India has fallen short to deal with the changing business environment. Unlike US, India has one uniform legislation and agency dealing with the competition law, which is the Competition Act, 2002. In spite of analysing and dealing with multiple anti-competitive practices and cartelisation in the market, CCI has not dealt with the complicated cases that the U.S. antitrust hearings commonly encounter. The U.S. anti-trust laws deal with nuances of the big techs like Google, Facebook and Amazon that are stifling competition by crushing small start-ups and inevitably creating natural monopolies. They are often put under the scanner of authorities that questions them about anti-competitive practices at their companies. These U.S. hearings will not only influence the big tech's operations in India, but also 'Indian lawmakers will have no choice but to create laws to neutralise such companies.'[23] The law-makers now have to focus on the welfare of the small sellers in India who have been accusing Amazon for sabotaging their markets. Recently, CCI was approached by the All-India Online Vendors Association (AIOVA), a group of online merchants, alleging Amazon of using 'sellers' data to design its own private labels and selling products of certain preferred sellers at deep discounts.'[24] Thus, it has become imperative for CCI to implement provisions that not only caters to the conventional course of business but also face the challenges caused by digital economy and e-commerce.

[23]Ananya Bhattacharya, Quartz India, '*The U.S. Antitrust hearings on big tech have an important lesson for India'* <https://qz.com/india/1886797/why-google-amazon-facebook-big-tech-hearing-matters-to-india/>
[24]Ananya Bhattacharya, Quartz India, '*The U.S. Antitrust hearings on big tech have an important lesson for India'* <https://qz.com/india/1886797/why-google-amazon-facebook-big-tech-hearing-matters-to-india/>

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Influence of European Union's (EU) competition policy on India's competition law regime.

The EU competition law is derived from two treaties: The Treaty of the European Union ('TEU') and the Treaty on the Functioning of the European Union ('TEFU'). The EU law is primarily focused with promotion of competition within the Union through the elimination of obstacles to the free movement of goods, services, persons and capital. There are multiple provisions in the Act, that safeguards 'competition law', however, the two provisions that are primarily noted in the EU competition law are – Article 101 and Article 102 of TEFU. The former article restricts agreements, decisions by associations of undertakings and concerted practices that impact the restriction of competition and the latter article prohibits the abuse by an undertaking of a dominant position. The Indian model of Competition Act, 2002 is primarily influenced by the EU model. Both the jurisdictions determine the dominance of firm in the same manner by not depending on the established set benchmark of market share. However, in India, they compare a firm's market share with the rest of the firm's market share in the relevant market. In the EU, they presume dominance if the share varies between 50% to 70%. The share above 70% is a clear indication of dominance.

Digital sectors and Competition Commission of India (CCI)

With the technological revolution around the globe, the business world has achieved astounding feats benefitting the human race. Technology brought in exponential growth in trade and commerce, thus providing convenient, efficient, and faster way of performing business transactions. With the arrival of digital markets which is heterogeneous and voluminous, the leading jurisdictions of the world are re-thinking about the modification of competition policy and how to apply them to address digital challenges. One significant aim for the framers of competition policy is to protect society from deleterious impact caused by the convoluted mindset of the big players in the market. The dynamic growth of the digital markets is likely to cause difficulty in competition. The conventional methods of assessing 'relevant market and dominance; which include describing market boundaries, analysing market power, whether the behaviour of the firm is anticompetitive'[25] has become an obsolete approach. Digital markets go through metamorphosis on the basis of innovation, therefore relying on the profit margin is no more a reliable threshold to determine market power.

There are certain methods by which policy-makers can address the competition menace in digital markets. Primarily, an imperative upgradation and scrutiny are required by the analysts to determine potentiality of harms that could materialise through mergers of digital start-ups and also to keep a check on the potential abusive behaviour by the dominant firms. To resolve this issue, a merger control is a requisite step to regulate market structure and concentration. To put this into effect, most mergers must be notified to the competition authority and should be informed before the merger takes place, in which case the substantive analysis is entirely forward-looking. Authorities could operate through some 'additional tools

[25]Simran Jain, Mondaq, '*India: Growth of Digital Economy'*<https://www.mondaq.com/india/antitrust-eu-competition-/683170/growth-of-digital-economy-a-challenge-for-competition-regulators>

to analyse and detect novel forms of firm misconduct, such as algorithmic collusion.'[26] Algorithms has become an exceptionally powerful tool that grants a company to indulge in dynamic pricing, 'adapting prices to the current demand and supply situation or to competitor behaviour.'[27]

Based on the conference held on Competition and the Digital Economy on June 3, 2019, by the Organisation for Economic Cooperation and Development (the OECD), participants discussed about the probability of data being a competitive asset. Hence, data protection authorities and competition policymakers collaborate to generate uniform regulations as to achieve balance between both and to protect consumer's choices. The OECD's adaption of Competition Assessment Toolkit can serve as a model for domestic jurisdictions to identify the regulatory impediments stirred in the digital sectors. The Competition Assessment Toolkit 'help governments eliminate barriers to competition while identifying less restrictive measures that still achieve government policy objectives.'[28]

In a nutshell, domestic jurisdictions can cooperate or perform under the guidance of international counterparts to rein in the anti-competitive practices of digital businesses. The OECD has an array of mechanisms for 'competition authorities on emerging digital competition issues, assessing their past decisions, and using non-enforcement tools.'[29] As digital market is ubiquitous in nature, grasping it by a single competitive authority can be challenging. Hence, cross-border association among competition authorities and regulators, could be augmented 'to encourage better co-ordination, and to match the borderless nature of many digital markets.'[30]

Much emphasis must be given to 'data portability' measures. It focuses on how 'the data must be received in a structured, commonly used and machine-readable format.'[31] Hence, policymakers should create solutions like this for the new digital start-ups to tame the hurdles associated with data and 'empower consumers by reducing switching costs.'[32]

Certain participants in the OECD Conference were of the opinion that competition authorities alone cannot handle the cumbersome burden of handling the contentious issues arising in digital markets. With the aid of market analysts, sector regulators, data protection and consumer protection authorities, competition policy can expand its horizon encapsulating

[26]Ecoscope, '*Competition in the digital age'*<https://oecdecoscope.blog/2019/05/31/competition-in-the-digital-age/>
[27]Case C-525/16 MEO v Autoridade da Concorrência ECLI:EU:C:2018:270, para 26
[28]OECD ilibrary, '*OECD Competition Assessment Reviews'*<https://www.oecd-ilibrary.org/taxation/oecd-competition-assessment-reviews_25235311>
[29]Ecoscope, '*Competition in the digital age'*<https://oecdecoscope.blog/2019/05/31/competition-in-the-digital-age/>
[30]OECD, '*Conference on Competition and the Digital Economy'*<https://www.oecd.org/daf/competition/Co-chairs'%20Summary%20-%20Conference%20on%20Competition%20and%20the%20Digital%20Economy.pdf>
[31]Luke Irwin, IT Governance, '*The GDPR: Understanding the right to data portability'*<https://www.itgovernance.eu/blog/en/the-gdpr-understanding-the-right-to-data-portability>
[32]Ecoscope, '*Competition in the digital age'*<https://oecdecoscope.blog/2019/05/31/competition-in-the-digital-age/>

those areas of the anti-competitive practices that were otherwise escaping given to the loopholes of the Act or lack of visualisation of the policymakers, thus encouraging competition level playing field.

The backlash of Facebook acquiring Instagram - In the year 2012, the tech giant Facebook, acquired Instagram to rule out competitors from the markets. The Federal Trade Competition accused Facebook of, 'illegally maintaining its personal social networking monopoly through a years-long course of anti-competitive conduct.'[33] The CEO of Facebook, Mark Zuckerberg viewed the growth of Instagram as a threat to Facebook, and to regain its monopoly power, it also 'imposed anti-competitive behaviours against the third-party software.'[34] The antitrust policy of the U.S. is vetting through this acquisition and holding Facebook liable for gaining through anti-competitive practices.

Digital markets and Indian competition policy

The Indian competition policy began its journey in a nebulous way, however, with growth in business and accelerating economic power, where digital markets taking a centre stage, the competition policy has evolved and through formulation of updated strategies, it envisions to subjugate abuse of dominant power and protect consumer's welfare. Apart from acquisition and mergers, another method to 'establish market power is to entice users by subsidising their goods with the help of their financial capital.'[35] This strategy is often opted by big companies disposed to enormous financial capital, like Uber who offers discounts, thus attracting new users. Consequently, such subsidies lessen the efficiency in the market, whereby the competitors are treated unfairly, thus making them exit the market and thereby inducing the risk of dominant behaviour in the market. The likelihood of consolidation amongst competitors becomes prevalent, hence increasing the barriers to entry in the market.

The Competition Commission of India (CCI) is acting as a watchdog and assessing the changing phenomena in the digital markets. With expansion of e-commerce platforms, the regulators are refining their skills to tackle anti-competitive practices ensuing from the digital economy. The Indian Council for Research on International Economic Relations (ICRIER) are all set to conduct market studies along with addressing issues of dynamic changes in competition strategies with the arrival of digital markets, 'vertical integration between access and content services,'[36] and its impact on competition policies and its development. The

[33]Ankita Chakravarti, India Today, *'Facebook sued by U.S Govt. over its buying of WhatsApp and Instagram, harming competition'*<https://www.indiatoday.in/technology/news/story/facebook-sued-by-us-govt-over-its-buying-of-whatsapp-and-instagram-harming-competition-1748241-2020-12-10>

[34]Ibid.

[35]Simran Jain, Mondaq, '*growth of Digital Economy '*<https://www.mondaq.com/india/antitrust-eu-competition-/683170/growth-of-digital-economy-a-challenge-for-competition-regulators>

[36]Mint, '*Competition Commission initiates studies on telecom sector'*<https://www.livemint.com/industry/telecom/competition-commission-initiates-studies-on-telecom-sector-m-a-in-digital-market-11591620332608.html>

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Chairperson of CCI, Mr. Ashok Kumar Gupta commented on digital markets having the potential to 'yield high concentration and are often winner- take-all-markets.'[37]

For the authorities, it has become crucial to discern a situation between the natural competition and where a firm has resorted to exclusionary practices to spin the market condition in their favour. Intervention by authorities is suggested after identifying the difference between both and then take corrective measures to tone down the competition harm. The authorities must also look into those investment schemes that assist such companies to augment their position in the market.

Data is a key component in conducting a successful and rapid digital business and hence, the traditional regulations cannot be applied on the highly efficient platform. Therefore, it is essential for digital markets to have certain limitations so as to protect, preserve and facilitate competition. How is it that possible? CCI should keep a close watch on the big companies with substantial capital when they introduce offers like below cost pricing, and also pay 'due regard to the economic principles that form rationale of these businesses'[38] and the forceful consequences of their practices in the future. Incurring losses through endorsing for below cost pricing initially could only be momentary. As soon as one is able to acquire the dominant position in the market, one could hike prices, leaving consumers with limited alternatives.

The initiative taken by CCI to study and analyse e-commerce market study is greatly appreciated as it will identify contentious topics prevailing in the digital markets and engender regulatory measures accordingly to promote fair competition. Besides, CCI has also undertaken market study on mergers and acquisitions occurring in the digital sectors, 'with the aim to identify such transactions that have the potential of inhibiting future competition in the digital space.'[39] It is indeed challenging to trace acquisitions and mergers from the beginning that possibly triggers the anti-competitive threshold. India is devoid of provisions that contain acquisitions under the purview of competition act. Not to mention, certain provisions in the Competition Act, 2002 are imminent to undergo through amendments to cover the digital markets, like firstly, expanding the scope of anti-competitive agreements to include all categories of agreements, which falls out of the scope of either horizontal or vertical agreements. Secondly, based on the existing rebuttable presumption rule in the Competition Act, 2002, 'hubs in the assessment of hub and spoke cartels and imputing liability to such hubs,'[40] must be covered.

[37]Economic Times, '*One size fits all approach'*<https://telecom.economictimes.indiatimes.com/news/one-size-fits-all-approach-does-not-work-for-digital-markets-cci-chairperson/80092528>
[38]Simran Jain, Mondaq, '*growth of Digital Economy* '<https://www.mondaq.com/india/antitrust-eu-competition-/683170/growth-of-digital-economy-a-challenge-for-competition-regulators>
[39]Mr. Ashok Kumar Gupta, U.S. India Business Council, Virtual Roundtable Keynote Address, '*Competition Commission of India* 'July 29, 2020
<https://www.cci.gov.in/sites/default/files/speeches/USIBC.pdf?download=1>
[40]Ibid.

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CCI should also consider espousing for interoperability. It will act as a leash and a disincentive for the dominant players in the market. It will 'benefit customers through enabling combinations of component products/services that best meet their needs,'[41] along with reduction in prices in complementary goods and having range of other operators available if they desire to change.

Markets, in general are dynamically ever-changing. Digital markets specifically, are prone to transformation within short period of time and thus the regulators and policy-makers always have to be vigilant about the trends that have the potential to step on to the threshold of anti-competitive tactics. Any tardiness on the part of authorities to tap into the suspicious activities by any big firm must be avoided and concentration must be paid on how to keep pace with this rapidly changing market. Although digital market has always been a sort of an unchartered territory for the regulators, the CCI should be well-equipped to control the intricacies of this unconventional market. To effectuate a change, authorities must develop future-oriented approach and develop preventive mechanisms to keep the abusive practices at bay and also at the same time, competent enough to handle the competition and process with the innovation, without deterring the new entrants from entering into the market.

Conclusion

With an enormous number of competition enforcement cases pouring in from international borders, it has become imperative to establish collaboration among competition authorities and regulators in varied jurisdictions, to truly facilitate domestic enforcement. In keeping pace with the international trend and to face the changing realities of businesses in India, the Competition Act, 2002 was enacted, to stay connected with reality of the competition and further, to deal with the intricacies of competition issues, monopolies and to regulate the conduct of big companies so as to protect the consumer welfare. Prior to the Competition Act, 2002, the Monopolies and Restrictive Trade Practices Act, used to govern the monopolies in India. However, the act was inadequate and restrictive in nature, to address the market manipulations that deters other competitors from the market and novel hitches that are commonly arising in this digital market period. Although CCI has managed to ensure compliance and formulate exemplary market strategies to deal with the expeditious changes in the market to an extent, if compared with its contemporaries, Indian competition law is rather younger and still a work in progress.

[41] Ian Brown, '*Interoperability as a tool for competition regulation'* <https://cyberbrics.info/wp-content/uploads/2020/08/Interoperability-as-a-tool-for-competition-regulation.pdf>