



# DIGITAL CROSSROADS: NAVIGATING THE LEGAL LANDSCAPE OF E-COMMERCE AND BALANCING TECHNOLOGICAL GROWTH WITH FAIR COMPETITION

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## 1. INTRODUCTION

The interplay among technology, e-commerce, and the law is intricate. Throughout history, significant technological and economic revolutions have been facilitated by the development of commercial law. This legal framework enables the implementation of new business activities and effectively resolves problems that arise from them.

The "fintech revolution" intersects with the core domains of commercial law. The rapid and extensive advancements in technology have resulted in the rise and expansion of novel company models, activities, and market participants. Additionally, conventional market participants have also embraced new technologies. Commercial law encompasses a range of topics that may differ between legal systems. However, several fundamental areas, such as registries, contracts, securities, documents of title, secured transactions, company law, and insolvency, are all interrelated and influenced by these significant transformations. Specifically, as emphasized in this statement, DLT presents several concerns in its association with commercial law and encompasses novel notions of digital registries, smart contracts, and emerging forms of digital assets (tokens), as well as innovative forms of organization (such as DAO). It is important to acknowledge that fintech

encompasses a wide range of technical advancements that have an impact on legal domains outside commercial law, necessitating meticulous examination.<sup>1</sup>

Commercial law must adapt to the rapid advancements in technology. Within the majority of legal frameworks, the integration of emerging technology into company operations and novel entities is occurring without clear legal regulations at both national and international levels. This situation engenders legal ambiguity and produces intolerable degrees of jeopardy for consumers and investors, thus potentially resulting in hazards for financial stability. Online marketplaces are platforms that serve as intermediaries, connecting sellers, buyers, and advertisements to enable transactions. A platform provides a multifaceted environment that reduces transaction costs and leverages the network effects among various user groups. Although prominent companies and retailers do operate their own well-known websites, the majority of internet commerce in India is primarily facilitated via third-party platforms. Online platforms facilitate intermediation, enabling businesses to establish an online presence without the need to maintain their own websites. Establishing legal regulations that are consistent, easily understood, and not biased towards specific technologies is essential for facilitating new commercial endeavors. These regulations allow countries, regardless of their current economic status, to take advantage of revolutionary advancements in finance and business, while also minimizing potential hazards.<sup>2</sup>

The Competition Law in India has a significant and extensive historical background. The Government of India introduced the Competition Act, 2002 to address the inconsistencies in the outdated MRTP Act and align Indian laws with international standards. The purpose of this act is to safeguard and promote consumer interests, as well as encourage competition advocacy. Recently, CCI has been diligently overseeing corporate operations and implementing various initiatives to foster equitable commerce within the industry. The business and industry have been much relieved by the implementation of the 'Group Exemption' and 'Target Based Exemption', as well as the raised monetary threshold limits for submitting combinations with the CCI. The Indian E-Commerce industry exhibits significant potential for expansion and, thus, necessitates suitable regulation. CCI has been working diligently to guarantee that the E-Commerce sector maintains a level playing field with equitable accessibility for all participants.

### 1.1 Research Questions

- How well do e-commerce consumer protection laws account for new risks and challenges?
- How do data privacy rules affect international e-commerce, and how can we protect customer privacy and ensure compliance?
- Whether E-commerce regulations promote innovation while forbidding anti-competitive practices?

<sup>1</sup> Sharma, R., & Gupta, A., *E-Commerce and Antitrust Laws: A Comparative Analysis* 28 EUROPEAN BUSINESS LAW REVIEW 789-812(2014).

<sup>2</sup> LAWRENCE LESSIG, *CODE: AND OTHER LAWS OF CYBERSPACE* 185 (Basic Books 1999).

## 1.2 Statement of Problem

Digital technologies have quickly elevated e-commerce to a worldwide level, disrupting corporate models and fostering unprecedented connectivity. Scholarly study of the relationship between technology advances and the laws and regulations governing e-commerce is crucial due to the rapid rise of the digital realm.

## 1.3 Research Methodology

The researcher has used a Doctrinal research methodology to procure information and data. The researcher has consulted various books, journal articles, judgments and commentaries to gather awareness and knowledge about the subject.

## 2. CONSUMER PROTECTION IN E-COMMERCE

### 2.1 Nexus between E-Commerce and Consumer Protection

Online trade has shown to be a promising avenue for India's economy. Customers in smaller towns and cities are also making large online purchases, because of the advent of 4G in the nation and the meteoric rise of mobile phones. Yes, the internet has leveled the playing field between big and small towns; buyers in rural areas can now access the same name brands and top-notch goods that were once reserved for city dwellers. The number of internet users in India is 462 million, as reported by Internet Live Stats. The 'Digital India' program is helping to turn the nation into a digitally enabled society and a knowledge economy.<sup>3</sup>

Two beliefs underpin consumer confidence: first, that the customer will get his desired product or service, and second, that he will have recourse in the event of a problem. The trust and confidence of consumers is greatly affected by the unique characteristics of online transactions. The way people in general, and companies in particular, engage with one another has changed drastically due to advancements in information and communication technologies. Another way in which technology has transformed business dealings is through the rise of online shopping. Nowadays, corporate transactions on a global scale have reached new heights because of computer use and e-commerce via the internet.<sup>4</sup>

Concerns about data protection, consumer protection, and privacy violations are just a few examples of the ways in which new technology developments and the enormous convergence of e-commerce transactions have attracted the attention of consumers, businesses, governments, and international organizations. The necessity of constructing a regulatory framework to manage the difficulties of e-commerce and to sufficiently safeguard consumer rights has been brought to light as a consequence of the problems that e-commerce has

<sup>3</sup> Ibid.

<sup>4</sup> JULIE E. COHEN, CONFIGURING THE NETWORKED SELF: LAW, CODE, AND THE PLAY OF EVERYDAY PRACTICE 88 (Yale University Press 2012).

introduced. Under the new phenomenon of e-commerce, there was a need for a safeguarding system to ensure the safety of online shoppers and their transactions, as well as a system to facilitate the expansion of online shopping.

The Indian e-commerce market is thriving in the modern day. It is the state-of-the-art technology used in every industry today. “The Internet and Mobile Association of India (IAMAI)” estimated in 2014 that almost one million merchants, both big and small, reach out to consumers through online marketplaces. Among the many product lines offered by these internet stores are books, electronics, clothing, footwear, accessories, jewelry, and more. Many countries' legislatures, including India's, have long acknowledged the need of protecting consumers' fundamental rights.

As a means of protecting consumer rights in conformity with the UNGCP, India enacted the Consumer Protection Act in 1986. The objectives of the law, which included the definition of consumer rights and the provision of efficient and timely remedies, contributed to its widespread support. Online shoppers are more likely to be exposed to cyberspace than in-store shoppers since they are interacting with strangers—sellers and suppliers. Online shoppers often worry about a number of issues, including the safety of their personal information, the reliability of the products they purchase, the clarity of the terms and conditions, the jurisdiction for filing complaints, and the lack of clarity in the product descriptions. "When it comes to cross-border transactions, the "country of origin" of a product is king in e-commerce." Customers are even more wary and distrustful now because the Consumer Protection Act of 1986 and accompanying rules are inadequate. Emphasizing the necessity for digital payments, the 2016 demonetisation strategy of the Indian government prioritized the safety of online transactions and consumers engaging in e-commerce. Consequently, on July 20, 2020, the “Consumer Protection Act of 2019” became law, replacing the Consumer Protection Act of 1986. On July 7, 2020, rules pertaining to online purchases were put into place to address issues related to online shopping. But it was clear that developing India had to build confidence with online shoppers if it wanted to connect to the global market and bring in more investment.<sup>5</sup>

Even though India does not have a specific law that regulates internet shopping, people are nevertheless using the Consumer Protection Act, 2019 to challenge things they bought online. Anyone who offers technology that enable product sellers to market or sell their wares to consumers, as well as the buying and selling of digital items [s.2 (16)] and services conducted entirely over digital or electronic networks are all encompassed by the Act of 2019. Virtual markets and auction houses are also governed by the Act. “Section 2 (17) of the Act, 2019” is praised as an all-encompassing regulatory framework that would boost consumer interest and investment in e-commerce through the centralization of devices in the new law, in contrast to the Rules, 2020. In an effort to ensure that consumers' rights are protected in all forms of contemporary retail commerce, the

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<sup>5</sup> Kim, J. Y., & Park, H. S., *Intellectual Property Issues in E-Commerce: A Legal Perspective*, 13 JOURNAL OF INTELLECTUAL PROPERTY LAW 265-288 (2015).

Act of 2019 seeks to shift the legal precedent from caveat emptor to caveat seller. In addition, business-to-consumer (B2C) e-commerce was officially welcomed by the Act since it encompassed e-commerce.

Simplifying the complaint filing process will allow consumers to address issues and register complaints online, which is a win-win for everyone. Online shopping has been a boon to consumers since the COVID-19 pandemic. The new Act relies heavily on the new consumer protection regime to inform the E-Commerce Rules, 2020. With consumers already facing travel limitations and increasingly depending on online shopping, the E-Commerce Rules, 2020 couldn't have come at a better time, right in the middle of the pandemic. Without a doubt, the grievance redress mechanism in The Rules, 2020 is a balanced step toward e-market neutrality, greater openness, stronger penalties, and a fair distribution of responsibilities between online businesses and their suppliers. Timely resolution of refund requests is required regardless of the return policies of e-commerce companies. Customers, however, are wary of doing business with dishonest companies because they are so used to being victims of daily online fraud and unethical trade practices. "The Information and Technology Act of 2000 and the Legal Metrology Act of 2009", together with their regulations, are two further statutes that are relevant to online transactions.<sup>6</sup>

## 2.2 Analysis of consumer rights in the digital marketplace

Worldwide, consumer protection is one of the most pressing concerns in the e-commerce industry. The term "e-commerce" describes a system that facilitates the buying and selling of goods and services through the Internet. Saving money, being more competitive, and better organizing the production process are all ways in which e-commerce boosts productivity and expands consumer choice. Electronic commerce (or "e-commerce") refers to commercial activities conducted entirely or partially through the Internet, including but not limited to marketing and advertising as well as the ordering, invoicing, and payment processes. This definition is based on the 1999 principles put out by the Organization for Economic Cooperation and Development (OECD). Among other things, the OCED-1999 standards acknowledged three crucial aspects of online consumer protection.<sup>7</sup>

The ability to shop online must be available to all buyers. Additionally, in order to foster customer trust and confidence in online shopping, it is crucial to continuously enhance consumer protection measures that are both transparent and effective. These measures will help prevent online scams, deceptive advertising, and unfair business practices. Third, developing efficient channels for redress requires the full attention of all parties involved (the state, companies, consumers, and their representatives). International financial dealings are the main focus of these rules.

<sup>6</sup> TIM WU, THE MASTER SWITCH: THE RISE AND FALL OF INFORMATION EMPIRES 106 (Vintage 2011).

<sup>7</sup> Li, W., & Wang, Q., *Legal Implications of Cross-Border E-Commerce: A Case Study of WTO Regulations*, 24(1) INTERNATIONAL JOURNAL OF LEGAL STUDIES 89-112(2016).

Electronic commerce can involve transactions that take place within a country's borders or between countries around the world. Inevitably, there are six e-commerce types that function internationally: B2C, B2B, C2C, B2A, and C2A stands for business-to-administration and consumer-to-administration, respectively. No matter the model, it is the consumer's responsibility to safeguard his interests in the marketplace. The paper's primary emphasis, however, is on the most important aspects of B2B and B2C e-commerce.

Two international organizations that work to safeguard consumers and encourage fair trade are the OECD and the UNCTAD. Since its founding in 1960, Consumer International (CI) has grown to become an alliance of 250 consumer organizations from more than 100 countries, standing out for consumers' rights in policy meetings and on a worldwide scale. In addition to the International Consumer Protection and Enforcement Agencies, the European Consumer Cooperation Network (ECC-Net), the Asia-Pacific Economic Cooperation Electronic Consumer Directing Group (APECSG), and the Iberoamerican Forum der Konsumer Protection Agenturen (FIAGC) are among the most prominent international organizations that work to foster fair competition in domestic and global markets.<sup>8</sup>

A global membership organization of consumer protection authorities from 64 nations (including India's 2019 participation) and six observation authorities (COMESA, EU, GPEN, FIAGC, OECD, and UNCTAD), ICPEN has been in operation since 2002 in its current form. Financial services and product safety are not regulated, but it does deal with consumer protection enforcement concerns of coordination and collaboration, trends in consumer protection, and best practices in consumer protection law sharing. Together with the Federal Trade Commission (FTC), ICPEN addresses global internet fraud through the econsumer.gov enduring effort.

Consumers still value the convenience and variety of online purchasing, according to research on the expansion of the e-commerce market, particularly after 2015. Online shops will expand their presence as more and more people opt to buy and return things locally. Online shopping is booming over the world, with a CAGR of 15% from 2014 to 2020 and another 25% predicted for 2020–2025. Research on online retail shows that by 2020, approximately 60% of the population will have access to the internet, and that roughly 42% of the population owns a smartphone. Users fall into three age groups: those between 25 and 34 (31%), 35 to 44 (24%), and 18 to 24 (22%). With its extensive network and infrastructure, the Asia-Pacific area is responsible for more than 70% of the world's e-commerce. On its own, China is responsible for \$740 billion, while the United States contributes more than \$560 billion. An analysis of internet buyers from around the world. Regardless of location, consumers are increasingly making transactions that span international borders. Although 90% of customers used e-commerce sites by July 2020, 74% made an online purchase and 52% did it using a mobile device.<sup>9</sup>

<sup>8</sup> JONATHAN ZITTRAIN, *THE FUTURE OF THE INTERNET AND HOW TO STOP IT* 156 (Yale University Press 2008).

<sup>9</sup> Kumar, R., & Gupta, S., *Cybersecurity in E-Commerce: Legal Challenges and Solutions* 21(4) JOURNAL OF INTERNET LAW 45-67(2017).

### 2.3 Examination of various theories

In general, customers, who are often considered subordinate to their contracting partners, want protection. Consequently, recognizing their limited ability to negotiate, it is acknowledged that their interests must be protected. The thesis of "inequality of negotiating power" highlights the consumer's comparatively disadvantaged economic position in relation to suppliers. The principle of 'inequality in negotiating power' highlights the customer's economically disadvantaged position in relation to providers. The 'exploitation theory' aligns with the 'weaker party' argument.

The principle of 'economic philosophy' principally emphasizes the promotion of economic production and the preservation of wealth as a beneficial outcome. Consequently, contract law underwent significant modifications to address contemporary consumer transactions characterized by the absence of any time lapse between agreement and consequences. Hence, the 'economic theory' rationalizes the movement of goods and services via electronic transactions due to the superior adaptability and benefits offered by online marketplaces compared to in-person transactions. Furthermore, it is argued that a strong consumer protection framework can stimulate the development of reliability and confidence in electronic commerce. The 'incentive theory' is employed to explain consumer protection in electronic transactions.

Online shopping requires a higher level of trust compared to buying items in physical stores. From the perspective of behavioral economics, trust has traditionally been regarded as a catalyst for buyer-seller transactions that can establish strong and satisfactory trade relationships for customers. The function of trust is crucial in accurately understanding e-commerce client behavior. The concept of "safety net evaluation" explores the relationship between law and trust, proposing that law might contribute to the establishment of trust between two parties.

Trust, in the context of e-commerce, is the willingness of one party to be vulnerable to the acts of another party. The trustor, who is involved in networking, perceives trust as engaging in activities that require taking risks. Inadequate self-assurance may lead to ineffective agreements, costly legal safeguards, decreased sales, and ultimately, the collapse of a corporation. Trust is essential in mitigating the perceived risk of conducting online business and in making clients vulnerable to the inherent hazards associated with e-commerce. Although mutual advantage typically drives a transaction, trust serves as the guarantee or opportunity for the client to attain that profit. The degree of trust can vary between low and great. Engaging in low-risk behavior results in decreased trustor engagement, while engaging in high-risk behavior leads to increased trustor engagement. The theory of trust posits that the establishment of trust is contingent upon three key components: ability, kindness, and integrity (ABI model).<sup>10</sup>

<sup>10</sup> ORIN S. KERR, COMPUTER CRIME LAW 141 (West Academic Publishing 2019).

### 3. DATA PRIVACY IN E-COMMERCE

#### 3.1 Role of data privacy in E-commerce

Data privacy has transcended from being a mere trend to observe or even the "novel" standard. Gartner's latest forecast indicates that by the conclusion of 2024, current data privacy legislation will safeguard the data and privacy of 75% of the global population. Just one year ago, the percentage was 65%. In the year 2023, the United States will witness the implementation of five new data privacy regulations. Additionally, many worldwide data protection bodies, such as France's National Commission on Informatics and Liberty (CNIL), have declared an increase in the enforcement of compliance measures across different platforms. The prevalence of ecommerce has significantly increased in recent years and it is estimated to reach a value of US\$4.11 trillion by 2023. Although traditional brick-and-mortar shopping establishments are reopening, the rise of ecommerce is anticipated to continue to be robust. Data privacy is vital for ecommerce, just as it is for any other type of website or application. Moreover, it is subject to rapid evolution, much like other aspects of the industry. Companies require knowledge of optimal investment opportunities, the most effective data and marketing techniques to use, and the necessary evolution of their customer connections. Data privacy compliance not only ensures regulatory adherence but also fosters confidence, enhances consumer engagement, and facilitates revenue growth.

Cyberattacks garner significant media attention, and it is unsurprising that electronic commerce is a primary objective. In a 2020 Trustwave assessment, the ecommerce industry was listed as the second most targeted sector for cyberattacks that year, and this trend has persisted. Indigo, a Canadian shop specializing in books, music, and home items, recently had a cyberattack that was identified as a ransomware attack. It has been proven that employee data was compromised as a result. The company's website and ecommerce operations experienced a prolonged period of inactivity, lasting almost a week. It remains uncertain to customers whether their data was compromised as a result.

Companies acquire third-party data indirectly, bypassing their own channels. Data sources encompass advertisers, aggregators, and other entities, and can encompass many data types such as demographic information, purchasing indicators, data derived from third-party tracking technologies, and additional sources. This applies to interactions with several organizations and is often necessary to combine with other data from both internal and external sources in order to be useful.

First-party data is a primary source of customer data that corporations heavily depend on. This refers to the information that organizations get from the online actions of their customers and website visitors through various means, such as browser cookies and other tracking technology. These activities encompass



ecommerce browsing, shopping, and any other kind of site or app engagement. The obtained data may encompass IP addresses, browsing behaviors, purchasing preferences, duration of time spent on a specific page or the entire website, and various other details.<sup>11</sup>

### 3.2 The rise of ecommerce personalization

Another important aspect of this change in data strategy is personalization. These days, 70% of customers are expecting, and even more irritated by, individualized experiences in an effort to foster brand loyalty. Since zero-party data originates with the customer, it is primarily concerned with their preferences. A Preference Management Platform (PMP) centralizes this data for the purpose of applying best practices. Data may be collected, stored, and activated in a way that is consistent across all systems and tools, which increases its value. When used in conjunction with consent management, this data is used in line with the customer's preferences for how their consent is handled.

Customers desire more tailored experiences while simultaneously being more cognizant of and concerned about data protection. In order to stay afloat, businesses must provide exceptional, customized experiences while simultaneously satisfying customers' ever-increasing expectations. In addition to boosting engagement and client retention, this also promotes word-of-mouth advertising. For online shoppers to have agency, agency over their purchases, and agency over the individualized experiences they desire, preference and consent must coexist.

Although e-commerce spending was up due to the pandemic in 2020, 76% of customers switched stores, brands, or channels as a result of weaker brand loyalty (McKinsey, 2020). Brand loyalty is not something that online retailers can count on. Nonetheless, personalization—particularly when backed by data—can be an effective strategy to increase client base size and foster brand loyalty and engagement. However, just 15% of retailers had used personalization across all channels at that time, even though its worth had already been acknowledged and it had been listed as a high priority by 64% of the businesses polled.

To the present day, in 2023, 85% of companies are utilizing customisation. It is expected that the global market value will reach \$943 million by the end of this year, therefore it is only logical. However, are businesses gradually integrating their operations or are they encountering gaps and silos when undertaking preference management? How effective are e-commerce companies at segmenting, targeting, and centralizing their operations? How reliable is their data? Is the data usage accompanied by an auditable consent trail?

### 3.3 The value of conversion rate optimization

Undoubtedly, online stores aim to bring in more consumers, hold on to the ones they already have, and get them to spend more money. The need of converting visitors into customers is higher than ever before due to

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<sup>11</sup> Chen, L. H., *E-Commerce and Consumer Protection: A Comparative Study of Legal Approaches* 26(3) INTERNATIONAL JOURNAL OF LAW AND TECHNOLOGY 321-342 (2018).

the fact that consumer spending is beginning to fall as a result of economic uncertainty. Businesses should always aim to deliver their clients, both new and old, the finest service possible. To keep customers and get them to spend more, preference management is a must-have tool.<sup>12</sup>

The timing and manner of data availability to other systems can be managed by a preference center. Better and longer-term planning and strategy is made possible by more frequent and thorough data analysis, which also makes cost control easier. Integrating consent management processes safeguards consumers and the business by adhering to rules and consumers' choices, which in turn fosters confidence.

In 2022, DataGrail found that if customers learned their personal information wasn't safe with a merchant, 3/4 of them would stop shopping with that store. According to the data presented in the paper, the demographics of consumers who place a high value on supporting reputable brands are also the most economically powerful.

Businesses run the danger of failing to protect their customers' personal information and may even face fines if they do not. Retailers still bear a disproportionate share of the burden when it comes to data privacy, even though 80% of Americans think a federal data protection legislation should be in place.

Data privacy is turning out to be a major competitive advantage, which is great news. When paired with personalization, transparency with consumers becomes an effective marketing tactic. If customers are assured that their information will be maintained and utilized securely, for the purposes they have authorized, and to offer them with the benefits they desire, then many of them are willing to share their personal details.

All of these things are within the realm of possibility for online retailers, and when consumers have faith in a company, they are more inclined to give their consent to share more personal information and make additional purchases. In every respect, it is an effective formula.

## **4. BALANCING FAIR COMPETITION AND TECHNOLOGICAL GROWTH**

### **4.1 Concerns relating to Competition Law against the rise of Electronic Commerce**

As a consequence of digital commerce's emergence, which is defined by providing more wonderful facilities to consumers and having tools that increase sales by making it more agile and personalized owing to online searches, traditional marketing tactics have been impacted. The significance of free competition in the rapidly evolving industry of electronic commerce has been a topic of concern due to its meteoric rise in the last several decades.

Changes in technology have left their mark in many different areas and have significant ramifications for U.S. economic policy. So, the question of how the law will deal with these problems is crucial. How can we govern

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<sup>12</sup> YOCHAI BENKLER, THE WEALTH OF NETWORKS: HOW SOCIAL PRODUCTION TRANSFORMS MARKETS AND FREEDOM 99 (Yale University Press 2006).

the collection and use of personal data from consumers? What can be done to rein in monopolistic businesses? Despite the many benefits of electronic commerce, these issues go mostly disregarded by lawmakers and must not be addressed lightly.

Digital commerce has many advantages, but it's also clear that rules to prevent anti-competitive practices must be put in place. It will take time and a lot of research to put it into practice, though, and that's particularly true in poorer nations, where the theory of competition law has not progressed very far.

Modern consumer reasoning prioritizes ease of use and speed of delivery. People live in a very competitive culture where everything is handled according to time, and high-tech systems are becoming more and more required because of this. The conventional physical market is losing territory to digital media on a daily basis for to this precise reason; in extreme cases like the COVID-19 pandemic, this gap could widen.

In Indian society, it is becoming more frequent to see different sectors attempting to participate in online commerce. This is due to the fact that it is both a beneficial way to do business and a crucial tactic for survival in a market. As a result, manufacturers have had little choice but to change with the times, seeing the current trade model as an opportunity. According to whoever, a major drawback of modern businesses is their employees' inability to adjust to new technology. Even now, it's clear that customer acquisition techniques have concentrated entirely on digital platforms; anyone who doesn't adjust to the realities of online commerce has a huge obstacle to economic activity and may be kicked out of the market.

One major perk of online shopping is the time and effort saved compared to traditional methods of advertising. Customers are more likely to make a purchase when presented with visuals rather than text, and businesses can save money by promoting their sales and promotions online rather than printing out physical posters.

Businesses have wasted no time in enhancing this aspect and even demonstrating the many benefits that commerce may bring, all because entering electronic commerce signifies enormous market potential and implies the most recent tactics of economic globalization.<sup>13</sup>

This manner, customers have less hassles and more substantial benefits throughout the purchasing processes, which have been streamlined. Furthermore, there is no doubt that it has enhanced both the inclination to buy and the confidence of consumers in the goods they have acquired. In addition, it is essentially showcasing how businesses are working to make their internet channels more user-friendly and secure. Then, there's no longer any cause for alarm regarding the safety of online transactions; over the past few years, security has greatly improved, mostly due to the efforts of large technological companies (aiming to maintain a top ranking in their sales globally). Furthermore, a trusting environment has developed in this field as a result of better communication between producers and consumers.

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<sup>13</sup> Johnson, M. R., *Digital Markets and Antitrust: Navigating Competition Law in E-Commerce*, 132(4) HARVARD LAW REVIEW 567-589 (2018).

There are two main kinds of business models in the goods category. One is the marketplace model, where platform operators act as go-betweens for buyers and sellers and take care of order fulfillment, shipping, and returns. The other is the inventory model, which enables online stores to keep stock and sell to customers directly through the platform. Foreign direct investment (FDI) e-commerce businesses can use a marketplace model, but they can't keep stock and deal with customers directly. Along with connecting buyers and sellers, some goods-related e-commerce platforms offer a variety of related services, including storage, transactional support, advertising, warehousing, centralized payment processing, shipment, delivery, refunds, replacements, and more. Some operate in the business-to-business (B2B) wholesale sector, where they supposedly source products from manufacturers and brands and resell them to sellers, who might resell them to customers through the marketplace.

Platforms charge many types of fees. The commission amount varies between product categories, however some demand a fixed upfront cost in addition to a commission each transaction. Marketplaces that provide shipping options may also disclose shipping costs. Ads and subscription programs from customers also contribute to the bottom line. The online travel agency (OTA) market is a boon to the hotel booking industry since it allows clients to book rooms at any hotel in the world and read reviews to get a feel for how the different chains and independent hotels stack up. Online travel agencies (OTAs) rake in dough via advertising, hotel assurance, client programs, and commissions on each booking.

Location photography, price comparison, and business solutions are just a few of the supplementary services that OTAs offer to hotels. In India, e-commerce platforms that specialize in meal delivery have progressed from simple restaurant finding tools to full-fledged aggregators, forming partnerships with local eateries to process online orders and ship the food directly to consumers. Sites that allow customers to book tables online have also grown in popularity. In exchange for their delivery service, aggregators typically take a cut of the total order value, which can be either fixed or variable. Some even have a separate listing fee. Advertising, packaging, price analytics, menu and food photography, etc. are just a few of the supplementary services that platforms offer to restaurants. Raw resources for eateries are now being supplied via one respondent platform.

Improvements to purchasing procedures have been made in response to demands for higher quality and simpler processes. These improvements provide consumers with more assurances against any inconvenience that may arise during the acquisition of a good or service, as well as the opportunity to know in advance the form of distribution, organization, and, if needed, the conditions for the due process of return.

Users clearly spend a lot of time on digital platforms, which has been recognized as a key component in business expansion. This is because the internet provides great tools to reach potential customers with the offer, which leads many to believe that most commercial activity will be primarily conducted online in the coming years.

Developed nations, where businesses have been able to meet customer demands, are seeing the fastest growth in online shopping for these reasons.

Currently, the world's leading players in the field of communications and information technology are actively involved in technological innovation. This is happening with the goal of raising awareness about the significance of developing electronic commerce and, more specifically, of creating a set of multilateral rules that are considerate of and supportive of this development.<sup>14</sup>

We are heading towards a future when online shopping takes center stage in every market. Whether this reality will arrive soon or in the far future is uncertain. India and other Latin American states are developing nations, so it is essential that our laws and local competition laws be reviewed in light of their rudimentary institutions. On the other hand, there are industrialized nations that have effective legislation regarding this. Developing nations will have to wait for a challenging scenario in which efficient and well-established rules of the game are not in place before they can take benefit of digital commerce in a fair and appropriate manner.

#### **4.2 The challenge of Big Tech dominance and its impact on fair competition**

When illegal or unfair practices have an impact on the market, the goal of competition law is to regulate them. Its defining feature is the way in which public and private law interact with one another. It also specifies limitations for both natural and legal individuals, outlining the bounds within which they may and may not participate in the market without impeding competition. For instance, it forbids abusive behaviors and restricts the formation of certain contracts that have an impact on competition, either directly or indirectly.

For a market to thrive, healthy competition is essential, since it ensures that all participants benefit from it and that consumers and businesses alike are able to buy high-quality goods and services without unfair practices. This is a fundamental tenet of competition law that all market participants should keep in mind while making decisions.

Taking customers away from rivals is par for the course in any market; what constitutes unfair competition, however, is the use of tactics that go against the morality and ethics of those competitors.

Thus, Competition Law is established as an essential component of the market to ensure the liberty to provide and compete among economic agents. Nevertheless, the primary goal is to outline a functional economic system that guarantees both individual liberty and equitable economic growth (i.e., market equality for all).

For many years, economic policies and laws have adhered to the long-established principles of competition law. But, questions about the quality of regulation and the time it takes to adapt to technological changes have made competition law appear to be facing a formidable challenge in recent years, especially in developing nations where the market has become increasingly digital.

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<sup>14</sup> Ibid.

Large corporations, or "Big tech," have emerged as a result of technological advancements in the last several decades. The advent of these companies has shaken up traditional Competition Law, which has struggled to adapt to new developments like online shopping and the ability of technology to identify consumer interests. Because of a number of business methods, including the establishment of ties based on the exchange of information between major firms, Big Tech has now become a formidable market force.

While this does enable exponential economic expansion, it does make one wonder about the plight of small businesses that are being swamped by the recent surge in Big Tech, which has effectively become a monopoly due to its immense power. The reason why they face challenges to their sales and growth is because of the dominance of powerful firms in the technological and commercial realms, such as Amazon, Google, Facebook, and Apple. As a result, there is more discussion than ever before regarding the obligations of competition law in the face of these behemoths and the prerequisites for level playing fields in a market where digital technology plays a significant role.

Markets must consist of numerous rival businesses that are on an equal footing and can reap the benefits of lawful economic activity, according to competition law. Competition, according to classical liberal theory, is good for the market economy because it allows market actors to gain an advantage; this allows buyers to choose goods and services that suit their needs and wants, and sellers to set their prices and terms as they see fit.

Without most people noticing, the market has been shifting in recent years to digital platforms owned by tech companies. These platforms can now offer different goods or services based on consumer preferences, which are gathered through aggressive data gathering policies. Although this does not directly affect the market or competition, it is important to consider the consequences of a small number of firms gaining so much influence so quickly; this could potentially impair the market and other basic human rights.<sup>15</sup>

Modern consumers are enamored with big tech because of the convenience it provides in purchasing goods. But governments aren't doing anything about it since they still have big gaps in their understanding of how to foster a competitive market in the digital realm, thus this type of commercialization isn't regulated as much as physical economic activity.

In the short term, it was difficult to anticipate all of the Big Tech field's ramifications due to the sudden arrival of the business models backed by new technology. Market velocity and e-commerce company tactics make up its continual improvement process, which has resulted in astronomical sales growth aided by its many intelligent management tools.

Thus, numerous Big Tech companies have put themselves in the spotlight of monopoly claims, particularly in recent years, on the grounds that they can use their digital dominance to influence the market in their favor.

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<sup>15</sup> BRUCE SCHNEIER, DATA AND GOLIATH: THE HIDDEN BATTLES TO COLLECT YOUR DATA AND CONTROL YOUR WORLD (W. W. Norton & Company 2015).

Even if Big Tech doesn't see it this way, there appears to be good evidence that anti-competitive trade practices do happen. This is why the following paragraphs will discuss how this field of Competition Law has evolved, as well as provide examples of certain instances that illustrate the difficulties in creating a competitive digital market.

Another high-profile case involving a tech corporation occurred not long ago in the Cambridge Analytica scandal, in which the firm was accused of using Facebook users' private information for commercial purposes, with the goal of influencing their preferences through manipulation. In light of the 2016 US presidential election results, Facebook CEO Marck Zuckerberg had to face the Senate to explain what happened. It was an awkward session for Zuckerberg, who was criticized for building a "monster technological" that has become uncontrollable. In the UK, similar allegations have surfaced in relation to BREXIT, with Facebook's impact on the 2016 referendum's outcomes being questioned.<sup>16</sup>

Insofar as suspicion regarding the EU has grown in UK politics over the past decade—to the point where some even believe that there is influence in social media to inspire this sentiment—the beginnings of the referendum may be traced back to this period.

Therefore, the US government has recognized the need of seeking immediate regulations that promote digital market equality. This will help small businesses reach a wider audience and prevent Big Tech from abusing its data-gathering power to favor its own products and services over those of more diverse suppliers. While sanctions are perhaps the most convenient and expedited option, it is important to note that the real answer comes in a thorough reform of the legislation. When Big Tech begins to penetrate their economies more deeply, developing nations like India would do well to remember these and other important lessons learned from industrialized nations.

#### **4.3 Indian Competition Law in the Context of Emerging Technologies and E-commerce**

Nine chapters and sixty-six sections are consisted in the Competition Act, 2002. All of India is covered by it, with the exception of Jammu and Kashmir. The New Act, which encompasses issues such as Competition Advocacy, Prohibition of Anti-Competitive Agreements, Abuse of Dominant Position of Enterprise, and Regulation of Business Combinations, repealed the MRTP Act and expanded the regulatory outlook. According to its provisions, the Competition Commission of India (CCI) will be set up. The commission handles a wide variety of matters and provides opinions to statutory bodies; it is also a quasi-judicial authority. It offers its opinion on many issues pertaining to competition law and seeks to eradicate behaviors that have a negative impact on competition. Ensuring healthy competition in economic activity and implementing competition legislation are CCI's primary priorities, with a focus on consumer welfare.

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<sup>16</sup> Smith, A., *Regulating E-Commerce: A Comparative Analysis of Legal Frameworks* 18(2) JOURNAL OF INTERNATIONAL BUSINESS LAW 123-145 (2020).

CCI makes sure that various economic regulatory bodies communicate and work together. Doing so will guarantee that the regulations governing specific industries are compatible with those governing market competition. When big companies commit antitrust malpractices, smaller organizations often have no one to turn to for protection. CCI steps in as a monitor for these organizations. According to Section 3(1) and 3(2) of the Act, when it comes to the production, supply, distribution, storage, acquisition, or control of goods or provision of services, any agreement that causes or is likely to cause an Appreciable Adverse Effect on Competition (AAEC) within India will be null and invalid. The agreements are classified as either horizontal (among competing enterprises) or vertical (among firms at various manufacturing or production levels) in Section 3(3) and Section 3(4), respectively.

An 'Agreement' that creates or is likely to induce an AAEC within India is thus forbidden by the Competition Act, 2002. Therefore, it is critical to know when an agreement is formed from a contract or arrangement and when AAEC is required in India.

Every formal or written agreement, understanding, or action falls under the definition of "Agreement" in Section 2(b) of the New Act, regardless of whether it is enforceable or not. Upon reviewing the AAEC component, it appears that the Act does not provide a clear definition of this. Section 19(3) of the Act states that when deciding on the content of AAEC, the Commission must take into account issues such "creation of barriers to new entrants" and "driving existing competitors out of the market." This provision allows for an extrapolation. The agreements that might include AAEC in a vertical arrangement are defined in Section 3(4).

Agreements including tie-ins, exclusive supply, exclusive distribution, maintenance of resale price, and refusal to deal are all encompassed by Section 3(4). The primary criterion for classifying such agreements as anti-competitive in India is if they cause or are likely to induce an AAEC. So, while CCI can "presume" the presence of AAEC elements under Section 3(3), arrangements falling under Section 3(4) must be construed using the Rule of Reason analysis. Copyrights, patents, and trademarks are examples of intellectual property rights that the Competition Act of 2002 has acknowledged, protected, and exempted from the need for an AAEC, as are agreements pertaining to the export of commodities. Several decisions that CCI has issued in identifying violations of the aforementioned clause illustrate the significance of Section 3. An enterprise cannot abuse its supremacy, as stated in Section 4 of the Act.<sup>17</sup>

Consequently, knowing what "dominance" means is crucial. The capacity to monopolize a market or to significantly reduce competition in a given industry is what this term alludes to. So, it is not illegal for a business to become the market leader; what is illegal is for that business to misuse its position of power. The CCI now has the much-needed leeway to assess each case individually for abusive dominance use according to the criteria laid out in Section 19(4). The enterprise's size, resources, and market share are some examples of such metrics. Regulation of merger and acquisition activity, compliance with the Competition Act, and

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<sup>17</sup> Ibid.



disclosures thereof has been a hotly debated topic since the Raghavan Committee's establishment. There is a prohibition on any "combination" that causes or is likely to produce AAEC in India, as outlined in Section 5 and Section 6 of the Act. A broad definition of "combination" would include any and all mergers and acquisitions as well as corporate reorganizations. Any combination that above the monetary thresholds set by CCI is deemed to contain an AAEC element.

The monetary restrictions have been adjusted by CCI in response to changes in company and industry conditions. The CCI has further eased restrictions on mergers and acquisitions by establishing a De Minimis Exemption, which is subject to specific requirements. Timeliness is of the essence in order to ensure that applications do not impede the attainment of their intended business goals, as outlined in the Competition Act of 2002. In accordance with the Act, a combination case must be finalized within 210 days, after which it will be considered accepted.<sup>18</sup>

## 5. CONCLUSION AND SUGGESTIONS

### 5.1 Conclusion

The financial services sector is undergoing seismic shifts as a result of the quick pace of technological development. Innovations in technology hold great promise for revolutionizing the way businesses and financial institutions operate. Technology is revolutionizing the commercial and financial markets by making financial services more accessible, efficient, and affordable for everybody. As an example, the use of mobile banking in Africa shows how technology may enhance financial systems and increase access to credit. However, there are hazards associated with technology, such as legal ambiguities. For member nations to enjoy fintech's benefits while limiting its dangers, regulatory frameworks must be updated, as stated in the Bali Fintech Agenda (IMF 2018). Financial product trust and reliability can be enhanced by creating a predictable and adaptable legal framework that can handle technological advances in response to domestic circumstances. In order to foster economic growth and financial stability, it is crucial to have legal clarity and trustworthy legal solutions.

The widespread accessibility of the internet, along with the rising adoption of computers, tablets, and smartphones, has stimulated the expansion of e-commerce in numerous countries, including India. The rapid expansion of e-commerce has given rise to novel distribution tactics. It has provided consumers with more choices, exposing them to new types of unjust commerce and unethical business practices. The consumer wields significant influence and authority, and this recent reform, encompassing the implementation of two legislations (the Consumer Protection Act of 2019 and the Consumer Protection (E-commerce) Rules of

<sup>18</sup> ROGER L. MARTIN AND TONY GOLSBY-SMITH, DESIGN THINKING FOR THE GREATER GOOD: INNOVATION IN THE SOCIAL SECTOR 115 (Columbia University Press 2017).

2020), facilitates commercial transactions. Increased operating experience may give rise to potential legal complications in the future.

However, via the participation and guidance of the judiciary, the protection and well-being of online customers would facilitate the growth of India's e-commerce industry. With more operational experience, there is now a greater opportunity for future research to evaluate the effectiveness of the Act, 2019, and Rule, 2020 in addressing the concerns of e-commerce customers and protecting their rights. Given the significance of fostering trust and safeguarding consumer rights in the realm of electronic commerce, the government's legislative efforts to expedite online transactions also present numerous challenges.

To make technology innovation reach its maximum potential, yield predictable results, and reduce risks, commercial legislation may have to be updated. Some legislative changes may be necessary to improve the potential of technology, provide sufficient protection for market participants, and reduce risks because new technologies are affecting the bedrock of commercial law (such as registries, contracts, securities, company law, secured transactions, and insolvency). Questions including proof, enforcement, compliance with formalities, and the transfer of rights and assets should be addressed by such legal modifications, if they are necessary. New business models and practices in complicated activities like banking, investment, payments, and securities will be made viable by considering these basic problems and establishing clear and predictable legal norms. To be flexible and adaptable, any changes to the law should not affect any specific technology.

## 5.2 Suggestions

- Given the rapid advancements in technology, it is crucial to prioritize legal certainty in order to facilitate the creation of business models that adequately safeguard the interests of all involved parties.
- Legal frameworks should refrain from showing bias towards any particular technology and impeding the progress of emerging technologies. Authorities must vigilantly monitor technology advancements and evaluate the associated legal implications, while remaining receptive to the adoption of new technologies.
- A comprehensive reform of the judicial system is unnecessary and undesirable. Amendments to legislation should be discerning, focusing on areas where there is conflict between the law and emerging technologies.
- An efficient regulatory framework must take into account the international operation of emerging technologies and the necessity for cooperation among different legal authorities.

## BIBLIOGRAPHY

- Sharma, R., & Gupta, A., *E-Commerce and Antitrust Laws: A Comparative Analysis* 28 EUROPEAN BUSINESS LAW REVIEW 789-812(2014).

- LAWRENCE LESSIG, CODE: AND OTHER LAWS OF CYBERSPACE 185 (Basic Books 1999).
- JULIE E. COHEN, CONFIGURING THE NETWORKED SELF: LAW, CODE, AND THE PLAY OF EVERYDAY PRACTICE 88 (Yale University Press 2012).
- Kim, J. Y., & Park, H. S., *Intellectual Property Issues in E-Commerce: A Legal Perspective*, 13 JOURNAL OF INTELLECTUAL PROPERTY LAW 265-288 (2015).
- TIM WU, THE MASTER SWITCH: THE RISE AND FALL OF INFORMATION EMPIRES 106 (Vintage 2011).
- Li, W., & Wang, Q., *Legal Implications of Cross-Border E-Commerce: A Case Study of WTO Regulations*, 24(1) INTERNATIONAL JOURNAL OF LEGAL STUDIES 89-112(2016).
- JONATHAN ZITTRAIN, THE FUTURE OF THE INTERNET AND HOW TO STOP IT 156 (Yale University Press 2008).
- Kumar, R., & Gupta, S., *Cybersecurity in E-Commerce: Legal Challenges and Solutions* 21(4) JOURNAL OF INTERNET LAW 45-67(2017).
- ORIN S. KERR, COMPUTER CRIME LAW 141 (West Academic Publishing 2019).
- Chen, L. H., *E-Commerce and Consumer Protection: A Comparative Study of Legal Approaches* 26(3) INTERNATIONAL JOURNAL OF LAW AND TECHNOLOGY 321-342 (2018).
- YOCHAI BENKLER, THE WEALTH OF NETWORKS: HOW SOCIAL PRODUCTION TRANSFORMS MARKETS AND FREEDOM 99 (Yale University Press 2006).
- Johnson, M. R., *Digital Markets and Antitrust: Navigating Competition Law in E-Commerce*, 132(4) HARVARD LAW REVIEW 567-589 (2018).
- BRUCE SCHNEIER, DATA AND GOLIATH: THE HIDDEN BATTLES TO COLLECT YOUR DATA AND CONTROL YOUR WORLD (W. W. Norton & Company 2015).
- Smith, A., *Regulating E-Commerce: A Comparative Analysis of Legal Frameworks* 18(2) JOURNAL OF INTERNATIONAL BUSINESS LAW 123-145 (2020).
- ROGER L. MARTIN AND TONY GOLSBY-SMITH, DESIGN THINKING FOR THE GREATER GOOD: INNOVATION IN THE SOCIAL SECTOR 115 (Columbia University Press 2017).