IJCRT.ORG ISSN : 2320-2882

INTERNATIONAL JOURNAL OF CREATIVE RESEARCH THOUGHTS (IJCRT)

An International Open Access, Peer-reviewed, Refereed Journal

REGULATING BIG TECH IN INDIA: ABUSE OF DOMINANCE IN DIGITAL MARKETS UNDER THE COMPETITION ACT, 2002

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1. INTRODUCTION / STATEMENT OF RESEARCH PROBLEM

The digital economy has experienced a tremendous growth in a world that has made fundamental changes in the nature of markets and competition. The online platforms like web search engines, social networks, e-commerce sites, and mobile apps stores have taken center stage in economic and social functions. They are owned and regulated by some small technology corporations, so-called Big Tech corporations, such as Google, Amazon, Apple, Meta and Microsoft.

These firms use multi-sided platforms, high levels of user data, and enjoy high network effects, which enable them to develop and maintain market dominance in digital markets. The digital markets, unlike traditional ones, are marked by the zero-price services, data-driven business models, and platform ecosystems, which complicates the analysis of competition.

The major law that regulates the competition law in India is the Competition act, 2002. It forbids anti-competitive agreement and misuse of preeminence as in Section 4. But the principles of traditional competition law used in the digital markets are proving to be harder to apply to the digital platforms because of the nature of the digital markets.

Self-preferencing, predatory pricing, tying and bundling, exclusive deals and data mining are some of the practices that Big Tech companies indulge in. This can inhibit competition, entry barriers as well as impairing consumer welfare. Monopolizing data, algorithmic decision-making, and cross-market

leveraging are also subjects of concern due to the prevalence of digital platforms.

Research Problem Statement.

The current competition law regime in India is undergoing serious threats when it comes to dealing with the abuse of dominant position in digital markets. Conventional methods applied to establish relevant market and to identify dominance are not completely applicable in digital markets. The emergence of Big Tech firms has brought a question of whether the Competition Act, 2002 is sufficient in purviewing digital-based platforms.

2. REVIEW OF LITERATURE

The aspect of competition in online markets has received a significant focus among academics, policymakers, and regulators in various jurisdiction. The growth of Big Tech corporations and the rise in their power in the digital ecosystem has prompted a reassessment of the classical tenets of competition law. The current literature presents the advantages and shortcomings of the competition law frameworks in terms of solving the complexities of the digital markets.

In his presentation on Competition Law in India, T. Ramappa gives an elaborate discussion on Competition Act, 2002 and introduces the concept of abuse of dominant position as it applies in India. He notes the significance of establishing the market of interest and dominance measurement consisting of market share, barrier to entry and economic power. But his work is mostly about conventional markets and not completely about the dissimilar issues of the digital landscape.[1]

V.K. Aggarwal explores the history of competition law in India and the institutional aspect of Competition Commission of India in controlling anti-competitive practices. He points out the shift in the MRTP regime to one of competition and the importance of flexibility when enforcing it. Though his work considers new changes in the market, it fails to address in detail data-driven dominance and platform economies.[2]

In her seminal article Elizabethan Antitrust: The Antitrust Paradox as Amazon, Lina Khan criticizes the core concept of consumer welfare of antitrust law. She claims that the current concepts fail to encapsulate

[1] T. Ramappa, Competition Law in India: Policy, Issues and Developments (Oxford University Press, New Delhi, 2014) 45.

[2] V.K. Aggarwal, Competition Law in India (LexisNexis, New Delhi, 2019) 82.

the competitive practices undertaken by digital platforms, especially those which are based on the amassing of data, verticalization, and predatory pricing. Her work has made a great impact on the discussion of regulating Big Tech around the world.[3]

One perspective on how competition law is influenced by algorithms and artificial intelligence is by Ariel Ezrachi and Maurice Stucke. They claim that algorithmic pricing and tacit collusion pose emerging regulation problems since the old tools of regulation need to be shown that an agreement was reached, which might not be the case in automatized systems. Their contribution brings into focus more technologically-informed regulation of competition.[4]

Organizations like the Organisation for Economic Co-operation and Development and United Nations Conference on Trade and Development publish reports that offer a wider view of the policy concerning digital markets. Hypothesis Data monopoly, network effects, and market concentration, as well as platform dependency, are among the main concerns identified in these reports. They highlight the fact that ex-ante regulation and collaboration between countries are necessary to create an effective regulation of digital platforms.[5]

Although there is an increasing literature surrounding digital markets, as well as competition law, the gap in this respect in the Indian context is still substantial. A significant part of the current research is devoted to either the classical principles of the competition law or the global trends, with little attempt to combine the two. Competition Act, 2002 does not receive a thorough analysis on the ways of adapting it to support the challenges of data-driven dominance, algorithmic practices, and platform economies.United Nations Conference on Trade and Development (UNCTAD), Digital Economy Report (2021). [6]

Hence, the current paper aims to fill this gap by critically examining the issue of abuse of dominant position in digital markets in light of the Competition Act 2002, but with an orientation towards the global events and recent regulation patterns.

3. STUDY OBJECTIVES.

1. To investigate the meaning of the abuse of dominant position in Competition Act, 2002.

[3] Lina Khan, "Amazon's Antitrust Paradox" (2017) 126 Yale Law Journal 710.

[4] Ariel Ezrachi & Maurice E. Stucke, Virtual Competition: The Promise and Perils of the Algorithm-Driven Economy (Harvard University Press, 2016).

[5] Organisation for Economic Co-operation and Development (OECD), Competition in Digital Markets (2020).

2. To analyze the characteristics of digital markets and Big Tech companies.
3. To examine the contribution of data and network effect in establishing dominance in the market.
4. To analyze important case laws relating to digital markets in India.
5. To determine problems with regulating Big Tech companies.

4. RESEARCH QUESTIONS

1. So what is considered abuse of dominant position in digital markets?
2. What are the effects of data and network effects in gaining the lead?
3. Can the tools of traditional competition law work in the digital markets?
4. What are the problems of Competition Commission of India?
5. What changes would be needed to regulate Big Tech companies in India?

5. RESEARCH METHODOLOGY

The current study relies on doctrinal approach to research, the main component of this approach is the systematic study of legal principles, the statutory and judicial decisions. This approach is based on secondary data sources and is especially applicable in legal studies because it allows conducting a thorough investigation of the current legal regime of abuse of dominant position in digital markets.

The study utilizes a very broad selection of secondary sources, such as standard textbooks regarding competition law, scholarly journal articles, case laws, government publications and reports of international organizations. The sources have been critically examined to comprehend how competition law has been changed, expanded and utilized in relation to digital markets.

An analytical and descriptive approach has been adopted in this research. Descriptive aspect entails the explanation of the legal provisions in the Competition Act, 2002, and the nature of digital markets, whereas the analytical aspect examines the effectiveness of the legal provisions to regulate Big Tech companies. This method makes it possible to get an in-depth knowledge of both theoretical and practical aspects of the topic.

Also, the study takes a comparative approach, studying developments in other jurisdictions, especially the European Union and the United States. This comparison can be utilized to find out the best practices and to achieve an insight into the functioning of other legal systems in the context of dealing with the problems of data monopoly, dominance of the platform and algorithmic practices.

The study does not entail any empirical or field-based research like, surveys or interviews. Rather, it relies completely on secondary data, published legal texts and authoritative materials. This is the

[6] United Nations Conference on Trade and Development (UNCTAD), Digital Economy Report (2021).

limitation of doctrinal research that does not impact the validity of the analysis because the research is devoted to the interpretation of laws and the evaluation of the policy.

In this way, the approach used in the research offers a systematic and holistic approach to the study of abuse of dominance in online industries within the Competition Act, 2002 and by integrating international law of competition.

6. DISCUSSION / ANALYSIS

6.1 Competition Law in India.

The legal framework of competition in India is mostly enshrined in the Competition Act, 2002 which replaced the MRTC Act, 1969; this was a major shift in the economic policy of India as it is in balance with the principles of competition law existing in the world.[7]

The Competition Act, 2002 is intended to serve various purposes, such as, averting practices which adversely impact competition, promoting and maintaining competition in the marketplace, safeguarding the interests of consumers and securing freedom of trade.[8]

Three main pillars of the Act under Section 3, anti-competitive agreements, under Section 4, abuse of dominant position, and the regulation of combination such as mergers and acquisition under Section 5 and 6 are of particular importance to digital markets.[9]

The main regulator of the provisions of the Act is the Competition Commission of India (CCI). The CCI has extensive powers, such as the power to institute investigations, investigate through the Director General, penalize, and issue cease-and-desist orders, but over the years, the powers have become more proactive in the treatment of anti-competitive behavior, especially in newly developed industries such as digital markets.

Nevertheless, the Competition Act, 2002 despite its positive sides possess some constraints when implemented to online markets. This framework is mostly of an ex-post nature, i.e. intervention can only follow the occurrence of anti-competitive behavior, which in the context of detailed digital markets can be swift to consolidation, and recovery of the lost competition at a later point in time can be

[7] The Competition Act, 2002 (Act 12 of 2003).

[8] Government of India, Report of the High-Level Committee on Competition Policy (Raghavan Committee Report) (2000).

[9] The Competition Act, 2002, ss. 3, 4, 5 & 6.

challenging.[10]

In addition, the traditional mechanisms to be applied within the context of the Act, e.g. market share analysis and price-based assessment, do not necessarily fit in the context of digital market, where services are frequently provided at no cost and competition is based on data and innovation, not on costs.

6.2 Digital Markets and Big Tech Ecosystem.

Digital markets mark a critical change in the traditional economic model, whereby the role played by technology, data, and platform-based business models are on the rise. Digital markets, in contrast to traditional markets, are multi-sided markets that match various groups of users, e.g., consumers, advertisers, sellers, and developers.[11]

These digital ecosystems are dominated by Big Tech corporations like Google, Amazon, Apple, Meta, and Microsoft which take advantage of their technological abilities, financial power and access to immense data volumes. Such companies tend to be at work on several markets at once, forming self-containing ecosystems that consolidate their dominance.

Network effects, i.e. the fact that value of a platform grows with the number of users, are one of the most significant traits of digital markets as more and more users join a certain social media platform, a greater value it acquires, which ultimately draws even more users to it. This gives rise to the winner takes most game and market is concentrated and dominated by a small number of large players.[12]

Data driven competition is another characteristic. Big data about users is collected, processed and analyzed by digital platforms, which can be used to enhance their services, customize user experiences, and create targeted advertisement strategies.

Data build-ups also bring about data benefits that pose extreme barriers to entry by new companies. New competitors might struggle to compete against existing platforms, which already have large datasets and sophisticated ability to analyze large amounts of data. This causes a decreasing competition and a rise in market concentration.

[10] V.K. Aggarwal, Competition Law in India (LexisNexis, New Delhi, 2019) 112.

[11] T. Ramappa, Competition Law in India (Oxford University Press, New Delhi, 2014) 67.

[12] David S. Evans, "The Antitrust Economics of Multi-Sided Platform Markets" (2003) Yale Journal on Regulation.

Moreover, digital markets are highly-entry barriers although the physical infrastructure requirements are relatively low. These obstacles occur because of network effects, economies of scale, access to data, technological complexity and well-known brands. Because of that, even a creative start-up can find it difficult to compete with a reliable and well-established Big Tech company.

The presence of platform ecosystem (where several services are networked) is another critical feature of digital markets. As an example, a company can run a search engine, mobile operating system, application store and a digital advertisement system. These mutually supporting services support one another and contribute to the overall business image.[13]

As a result, digital markets can be characterized by a high level of concentration, where a few large companies dominate large shares of the market. This level brings up fear about abuse of dominance, diminished consumer choice and impediments to innovation.

6.3 Establishing the dominance of the digital markets.

This aspect of establishing dominance in digital markets comes with definite challenges that make it unlike other market analysis. According to Section 4 of the Competition Act, 2002, dominance is determined through market share, size and resources of the enterprise, economic power, vertical integration and the barrier to entry, which are not always adequate in the digital market setting where competitive nature is totally different.[14]

Under digital markets, dominance cannot be evaluated based on market share, especially given that most digital markets are provided at zero price.Competition agencies need to factor in a wider range of qualitative and structural variables. Control over data is one of the greatest determinants since digital platforms have access to and process large quantities of user data, thus making it easier to enhance their services and secure a competitive edge over new entrants who do not have access to comparable datasets.[15]

The second key factor is network effects, wherein the value of a platform rises as its user base grows, and great network effects may result in a market tipping point, where a specific platform is supreme and its rivals cannot displace them. Intimately adjacent to this is the notion of ecosystems built on platforms, in which the primary players have dozens of interrelated services that support each other and increase the

[13] Jean Tirole, “Market Power and Regulation in Digital Markets” (2012) Economic Journal.

[14] The Competition Act, 2002, s. 19(4).

[15] OECD, Competition in Digital Markets (2020).

overall dominance.[16]

Dependence among users and this switching cost also is also important in the conclusion of dominance. The familiarity with a specific platform may lead users to get attached to this or that platform because of data storage, or no alternative available. The existence of high switching costs discourages users on one platform to switch to non-competitive platforms thus entrenching the dominance of dominant firms.

As an example, one might have an online platform that can be free yet dominant based on the sheer number of users, good network effects, and data control. This shows that the market power in the digital markets is no longer determined by the price alone.

Thus, regulators should adopt a dynamic and holistic view in establishing dominance which considers data control, technological advantage, user behavior and market structure. This paradigm is critical in a bid to rightfully evaluate the power of the market in the online economy.[17]

6.4 Domination in Digital Markets in Abuse of Dominance.

An abuse of dominance is the exploitation of a dominant enterprise by its dominance in the market so as to unfairly manipulate competition or harm the consumers. Section 4 of the Competition Act, 2002 also bans such kind of conduct and offers a guide of abusive practices which are present in digital markets because of specifics of platforms-based economies.

Self-preferencing is one of the most widespread forms of abuse where a digital platform offers its products or services above the competitors one, which results in less visibility to competing firms and an uneven playing field, especially in the situation where the platform is both a marketplace and a competitor.

One more important type of abuse is predatory pricing where major companies provide services at prices below or zero to wipe out other firms, which typically comes along with cross-subsidization as losses incurred in one area are counterbalanced by profit in another. This renders entry barricade.[18]

Another typical practice is the notion of tying and bundling whereby users or businesses must utilise

[16] Jean Tirole, “Market Power and Regulation in Digital Markets” (2012) Economic Journal.

[17] T. Ramappa, Competition Law in India: Policy, Issues and Developments (Oxford University Press, New Delhi, 2014) 45.

[18] V.K. Aggarwal, Competition Law in India (LexisNexis, New Delhi, 2019) 112.

several services as one. Example: A popular platform can mandate pre-installation of its apps before accessing its core service which not only limits consumer choice but also opportunity to other competitive firms.

Elements of a monopoly are also quite competitive. Online services can form agreements with sellers or service providers that limit them to competing services.

Denial of market access happens when a dominant platform denies competitors access to a vital infrastructure or services. In digital markets, platforms can be crucial by potentially restricting access to markets or users. Blocking out such access can be a good way of shutting out competitors.

The other type of abuse is the leveraging of dominance where a company leverages its dominance in one market to enter and dominate the other market. An example of this is through the use of dominance in search services by a company to market its own dominance in advertising services or in e-commerce services.[19]

Such practices are especially detrimental in the digital market since they can easily drive-out competition and result in monopolization over time. The domination is hard to be reversed due to network effects and data advantages. Thus, the abuse of dominance in digital markets needs to be addressed in a timely fashion, obtaining an understanding of the dynamics of platforms and acting accordingly.

6.5 Data and Algorithms Systems.

Information has turned out to be one of the most demanded assets of the digital economy and will be a core of competition in the digital markets. Online users and companies collect, process, and analyze enormous amounts of user data, such as search history, purchase behavior, location data, and social interactions, which help companies enhance the quality of their offerings, create personalized user experiences, and formulate targeted advertising strategies to increase their competitive edge.[20]

The buildup and management of massive data sets can also bring about what is referred as a data monopoly in which a small number of large firms have high informational barriers to new entrants since innovation and viable competition needs access to more or less equivalent data. The fact of data-driven

[19] Ariel Ezrachi & Maurice E. Stucke, Virtual Competition: The Promise and Perils of the Algorithm-Driven Economy (Harvard University Press, 2016) 89.

[20] T. Ramappa, Competition Law in India: Policy, Issues and Developments (Oxford University Press, New Delhi, 2014) 67.

dominance not only enhances the market power but also provokes several questions about privacy, consumer autonomy, and equitable competition.

Besides data, the growing utilization of algorithms and artificial intelligence (AI) has altered how the digital markets operate. Dynamic pricing, recommendations, content management and ranking have become common tools of algorithms and help to optimize operations and provide the consumer experience, though it leads to the new challenges of competition laws.

Another of these issues is algorithmic collusion, in which companies implement price setting algorithms, which automatically respond to competition behaviour and may end up in coordinated results without explicit agreement. Such coordination can be achieved without human intervention in the algorithmic setting, and becomes hard to detect and enforce.

Price discrimination: the other problem is that algorithms allow companies to offer various prices to various consumers depending on their preferences, behavior, or willingness to pay.[5] Although this can help to increase efficiency, it also leads to ethical questions related to fairness and exploitation of customers.

Also, complex algorithm use generates the lack of transparency and accountability problems. Most of these algorithms are black-box and hence the regulators find it hard to work out how the decisions are made and thus it becomes more difficult to regulate competition with anti-competitive practices.

In this way, algorithmic systems and data have radically transformed the way competition takes place within digital markets. Although they present considerable advantages, they also lead to new incidences of market power, and regulatory difficulties that should be handled by developing competition law frameworks.

6.6 Problems of digital market competition law application.

The use of conventional competition law principles in regards to digital markets is disadvantaged in a number of complex challenges. These obstacles occur because of the peculiarities of digital platforms, which are not that similar to traditional markets.

A limitation that is among the leading ones is the inability to define the market that is in question. Classical competition law has been based on price-related tests like the SSNIP test to establish substitutability. But when it comes to digital markets where possibly multiple services are provided at no cost, these tests are no longer effective, and competition authorities need to employ non-price measures

like quality, data, innovation, and user attention that can be harder to quantify.[21]

The way dominance will be determined is another significant challenge. In digital markets, the data control, the network effects, and the platform ecosystems instead of the market share play a key role in losing favor and power; thus, a more refined and fluid approach may not always be explicit in the current legal frameworks.

The rate of technological advancement also makes matters more difficult in terms of regulation. Digital markets are dynamic and new business and technologies are being generated. By the duration it takes a competition agency to investigate the competition, market dynamics might have shifted, making enforcement measures less useful.

Another relevant challenge is the cross-border quality of digital platforms. Competition law on Big Tech companies is implemented nationally, although they operate on a global level. This poses a problem of jurisdiction and restricts the effectiveness of individual countries in regulating multinational digital platforms. [1] Ten

Lack of technical expertise in regulatory authorities is another issue of concern. Digital market cases are associated with sophisticated technologies, including algorithms, artificial intelligence, and data analytics. Unless competitions authorities are provided with sufficient technical support, they might have problems in getting acquainted with and understanding these technologies and analyzing them.[22]

In addition, the lack of fast enforcement mechanisms is a significant constraint. It can also take several years before competition law proceedings can be concluded, compared to the swift changes in digital markets. Late entry can give a monopoly a chance to form a monopoly and remove the competition before regulation is put in place.

These difficulties underscore the drawbacks of the prevailing competition law system in dealing with the digital market problems. They emphasize the necessity of reforms, such as ex-ante regulation, technical expertise development, and increased cooperation with other countries.

7. CASE LAWS / CASE ANALYSIS

7.1 Matrimony.com Ltd. v Google LLC

[21] Ariel Ezrachi & Maurice E. Stucke, Virtual Competition: The Promise and Perils of the Algorithm-Driven Economy (Harvard University Press, 2016) 143.

[22] Richard Whish & David Bailey, Competition Law (9th edn, Oxford University Press, 2018) 102.

Matrimony.com Ltd. v Google LLC related to the Competition Commission of India investigating the accusation of a monopoly by Google online general web search in India in this part of the market. The informants argued that Google was biased in search because it promoted its offerings like Google Flights and Google Shopping instead of its rivals. CI delineated the market that was considered as online general web search services, and established that Google was in a dominant position since it had massive market share, had built strong network effects and its use was dependent by users. After the analysis, the Commission found that Google had been engaging in self-preferencing and manipulation of search results leading to a decreased visibility of its competitors and negatively impacting competition. This resulted in Google being found guilty of abuse of dominant position under Section 4 of the Competition Act, 2002 and was fined. The case is noteworthy because it set that digital platforms preferring themselves can serve as an abuse of dominance.[23]

7.2 MCX Stock Exchange Ltd. v NSE.

In MCX Stock Exchange Ltd. v National Stock Exchange of India Ltd., the Competition Commission of India was informed that NSE had misused its dominant status by providing the services in the currency derivatives market at no charge. MCX-SX claimed that NSE took advantage of its market dominance to destroy competition in a new emerging market in the stock exchange market. The CCI established the market in question and declared NSE powerful because of the market share and financial capabilities that it has. It believed that the pricing approach that NSE embraced was predatory pricing, in that it was meant to force the competitors out of the market. The Commission noted that zero price, in combination with cross-subsidization, may distort competition. In line with this, NSE was ruled to have improperly used the dominant status in Section 4 of the Act. The case is especially applicable to online markets where services are frequently offered free of charge.[24]

7.3 Google Android Case (CCI v Google)

In the Competition Commission of India case involving Google Android, the Competition Commission of India inquired about whether Google misused its technological dominance in the Indian mobile operating systems licensing industry. The Commission observed that Android had a dominant position because it was extensively used, and there were no viable alternatives to device manufacturers. Google had used restrictive terms with agreements like the Mobile Application Distribution Agreement (MADA) and Anti-Fragmentation Agreement (AFA) which provided that manufacturers were obligated to pre-install Google apps and even could not attempt to create alternative versions of Android. The CCI

[23] Matrimony.com Ltd. v Google LLC, Case Nos. 07 & 30 of 2012, Competition Commission of India.

[24] MCX Stock Exchange Ltd. v National Stock Exchange of India Ltd., Case No. 13 of 2009, Competition Commission of India.

believed these to be tying and bundling, unfair conditions, and stifled technical growth. It was also discovered that Google was using its control in the operating system market to enhance its presence in the search and browsers market among others. Heavy fines were fined and Google instructed to change its behavior. This example sheds light on the dominance in digital markets that is reinforced with the help of platform ecosystems.[25]

7.4 WhatsApp Privacy Policy Case.

The Competition Commission of India in the WhatsApp Privacy Policy case looked at whether the WhatsApp violated the right of its dominant role in the market in the over-the-top (OTT) communication business by implementing a privacy policy which required it to share its data with its parent company Meta. The Commission noted that WhatsApp was dominant with a large user base, network effects, and switching costs are high. The new policy was viewed as a sort of a take it or leave it assumption, because people had to accept the new policy to get to use the service. The CCI believed that such a practice can constitute an imposition of unfair conditions of Section 4 of the Competition Act, 2002. It further indicated that information exchange might give Meta the competitive edge in online advertising technologies. The case is influential because it lays down the intersection of data protection and competition law to accept that data is an important element in setting the market power.[26]

7.5 Case in Apple App Store.

In the irrelevant case with Apple App Store, Competition Commission of India investigated the claims that Apple misapplied its market dominant role in the service provision of the app store of the iOS device. They said that Apple made app developers adopt their in-app purchase system and appealed with commissions of 30 percent, besides banning the usage of alternative payment systems. The market discussed by the CCI was the combination of app store services in iOS devices and found out that Apple controlled distribution of apps by any means to its ecosystem. The Commission prima facie discovered that the actions of Apple can be equated to imposition of unfair terms, denial of market entry and dominance leveraging. The case also brings attention to the fact that app stores play a role of a gatekeeper in digital markets and that there are concerns on the concept of platform neutrality and equitable access of developers.[27]

[25] Competition Commission of India v Google LLC, Case No. 39 of 2018 (Google Android Case).

[26] In Re: Updated Terms of Service and Privacy Policy for WhatsApp Users, Suo Motu Case No. 01 of 2021, Competition Commission of India.

[27] · In Re: Apple Inc. and Apple India Pvt. Ltd., Case No. 24 of 2021, Competition Commission of India.

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8. FINDINGS OF THE STUDY

In the current work on the topic of Regulating Big Tech in India: Abuse of Dominance in Digital Markets under Competition Act, 2002, a number of valuable conclusions were drawn in regards to the examination of the legal provisions, the characteristics of the digital market and the case laws.

Among the main conclusions is the fact that the digital markets are quite different as compared to traditional markets. Digital markets, unlike traditional ones that are price-driven and production-driven, are network-based, data-driven business models, multi-sided platform and fast-paced innovation. All of these characteristics typically translate into market concentration, in which several Big Tech firms control the market. This means that the conventional competition law theories are not necessarily efficient in examining such markets.

The other key observation is that market share is not the sole key determinant of dominance in digital markets. Rather, aspects like data control, network effects, platform ecosystems, and user dependency are important. The power of Big Tech firms is associated with collecting enormous amounts of user data and using it to enhance their services and increase their market share. This establishes barriers to entry by potential firms and competition is restricted.

It is also revealed in the study that the Big Tech companies are often involved into anti-competitive activities, which include self-preferencing, pre-datory prices, tying and bundling, exclusive dealings, and market access denial. The practices pervert competition and lower the chances of the smaller players. The analysis of the case law in cases like Matrimony.com v Google and the Google Android case illustrates how digital platforms play with their dominance to advantage their services and create monopoly.

The other big discovery is that data has become an important source of market power. The monopoly of data enables the leading companies to obtain a competitive edge and preserve their market share. The paper emphasizes the need of data access to achieve innovation and competition and the absence of access inhibits new entrants.

The paper also concludes that algorithmic pricing and artificial intelligence are also providing new challenges to competition law. Algorithms may support tacit collusion and price coordination without any explicit understanding, which renders it hard to track anti-competitive practice by the competition authorities. This is a change in the old systems of cartelization to even more sophisticated, technology-oriented forms that use technology.

In addition to this, the paper also ascertains that the definition of the pertinent market in the digital economy is so tricky especially with the zero price services and multi-sided platforms. In digital markets, the traditional tests, including the SSNIP test, do not work, and competition authorities should base their attention on features other than prices, including quality, data, and user attention.

The other important discovery is that despite the Competition Commission of India making some proactive steps in regulating digital markets by applying different landmark cases. Nonetheless, the current legal system under Competition Act, 2002 is primarily ex-post in its approach and may not be needed to respond to the dynamics of digital market that happen at such a rapid rate.

The paper further notes that the international institutions like the European Union and the United States are converging to ex-ante the digital markets. This is especially the case with the European Union Digital Markets Act, which offers a proactive regulatory framework of gatekeeper platforms.

Lastly, the paper concludes that India is also having the reformation sense with the suggested Digital Competition Bill that is aimed at controlling the Systemically Significant Digital Enterprises and ensure that there will be no anti-competitive behavior in the digital markets.

To sum up, the paper concludes that the Competition Act, 2002 offers a solid framework on the area of competition abuse of dominance regulation but also needs to be significantly modified to respond to the risks of introducing Big Tech businesses and digital markets in the area.

9. RECOMMENDATIONS / SUGGESTIONS

As the study results have shown, the current framework of competition laws in India needs to be reformed seriously to be able to regulate Big Tech corporations and to effectively combat the issue of digital markets. Some recommendations are given based on the analysis as follows.

An ex-ante regulatory framework of digital markets is one of the most significant suggestions. The existing Competition Act, 2002 is more of an ex-post mechanism, that is, action is only taken after an anti-competitive conduct has taken place. Such delays in digital markets can enable monopolistic companies to wipe out all competition forever. Consequently, here India ought to be proactive, as is the current world trend in regulation.

The second crucial suggestion is the official acknowledgement of data as a type of market power. In deciding dominance, competition bodies ought to directly look into data control, data accessibility, and aggregation of data. Given that data is a key determinant in digital markets, inability to control data-driven dominance can result in monopoly formation.

Introduction of data portability and interoperability mechanisms is also recommended in the study. NPortability would enable the users to move their data across platforms, which would decrease switching costs. Interoperability would also allow the various platforms to communicate with one another and avoid reliance on larger powerful platforms, as well as allow competition.

The necessity of controlling self-preferencing by digital platforms is also high. The platform-mediated companies must not give preferences to their products or services compared to competitors. By maintaining platform neutrality, a level playing field will be created among all the market actors.

Regulation of the gatekeeper platforms, especially the app stores and large digital intermediaries, is

another reform of significance. The unfair conditions may not be subjected to business users by such platforms, including the requirement to use in-app payment systems and other restrictive contract monetary obligations. Fair access to digital infrastructure must be ensured.

The research also suggests the enhancement of institutional competence of Competition Commission of India. Digital market cases are characterized by complicated problems, e.g., algorithms, artificial intelligence, and data analytics. The CCI thus needs, to have technical experts, economists, and data scientists to better achieve its potential in controlling digital markets.

Also, quicker adjudication processes are required. Online markets are changing and swiftly so and any delays in the legal process can make the decisions irrelevant. New fast-track cases on digital competition ought to be implemented so that there is timely enforcement.

Another area identified in the research as instrumental is the issue of that of coordination between the regulatory bodies, especially between the competition bodies and the data protection bodies. The digital market is highly interconnected, and privacy and data protection issues are tightly bound to the element of competition, where it is the responsibility of the coordination of regulation.

Another important recommendation that needs to be made is international cooperation. National regulatory initiatives might not be adequate since Big Tech companies have a global presence. India ought to work together with the world competition bodies to make sure that digital platforms are effectively regulated.

Lastly, the research proposes encouraging innovation and competition by supporting startups and small enterprises. Policies must be crafted to lower entry barrier, a newcomers welcome and market power in the hand of a few big organizations should be discouraged.

Conclusively, the recommendations all point to an effort to establish a balanced regulatory framework which would foster competition, consumer protection and the creation of innovation in digital markets. These reforms should be effectively implemented to make digital markets competitive, fair, and dynamic.

10. CONCLUSION

The development of digital markets has greatly changed the competitive environment, which has led to the formation of strong technology-oriented companies that can be active in the various branches of jurisdiction. Big Tech corporations like Google, Amazon, Apple, Meta and Microsoft have become dominant players through their data control, good network effects, and technological advantages, as well

as integrated platform ecosystems. Although these channels have led to innovation, efficiency and ease to consumers, their increasing dominance has brought forth a major concern in abuse of dominant position and distortion of competition.

This paper has explored how Competition Act, 2002 has been used to control the abuse of dominance in the digital market. It has pointed to that despite offering a significant framework that can be used in dealing with anti-competitive practices, the Act was tailored towards the traditional market and thus limited in its applicability in digital markets. The distinctive features of digital platforms that include the concept of zero-price services, multi-sided markets, and data-driven competition complicate an effective application of the traditional tools of competition law.

The case laws analysis reveals that the Competition Commission of India has made significant initiatives towards combating anti-competitive practices within the digital markets. Cases like Matrimony.com v Google and the Google Android case are indicative of how Indian competition law is shifting to acknowledge such practices as self-preferencing, tying and data-driven dominance. Nevertheless, these instances also denote the intricacies of controlling digital platforms and the necessity to have more proactive and specialized regulatory frameworks.

The paper also notes that data has emerged as a powerful asset of the market in the digital markets. The possibility to control voluminous amounts of data supports companies in delivering improved services, building barriers to entry, and establishing a firm advantage. Likewise, artificial intelligence and use of algorithms are creating new challenges such as collusion of algorithms and lack of transparency, and are not sufficiently addressed by current legal regulations.

The other aspect that was classified in the study is that it is hard to determine the appropriate markets in the digital economy. Traditional tests based on price are not suitable for markets where services are offered free of cost. So competition agencies need to come up with fresh strategies that will take into account data, user focus and quality of services.

Existing trends abroad, especially in the European Union and the United States, where there is a move towards ex-ante regulation of digital markets also provide insights to the study. The Digital Markets Act developed by the European Union offers an example of how to control the gatekeeper platforms to avoid anti-competitive actions in their future. The Digital Competition Bill proposed by India demonstrates an analogous attitude and is a sign of a shift towards a more active regulatory model.

In light of these developments, the study concludes that while the Competition Act, 2002 remains a strong foundation for competition law in India, it requires significant reforms to effectively regulate digital markets. There is a need for a specialized legal framework that addresses the unique challenges posed by Big Tech companies, including data monopoly, platform dominance, and algorithmic decision-

making.

At the same time, regulation must strike a balance between promoting competition and encouraging innovation. Over-regulation may hinder technological advancement and investment, while under-regulation may lead to excessive concentration of market power and harm consumer welfare. Therefore, a balanced and forward-looking approach is essential.

In conclusion, regulating Big Tech companies is one of the most pressing challenges in modern competition law. India must adopt a comprehensive and adaptive regulatory framework to ensure fair competition, protect consumer interests, and promote innovation in digital markets. Effective regulation will not only curb abuse of dominance but also contribute to the sustainable growth of the digital economy.

11. REFERENCE

1. The Competition Act, 2002 (Act 12 of 2003).
2. T. Ramappa, Competition Law in India: Policy, Issues and Developments (Oxford University Press, New Delhi, 2014).
3. V.K. Aggarwal, Competition Law in India (LexisNexis, New Delhi, 2019).
4. Ariel Ezrachi & Maurice E. Stucke, Virtual Competition: The Promise and Perils of the Algorithm-Driven Economy (Harvard University Press, 2016).
5. Ariel Ezrachi & Maurice Stucke, "Artificial Intelligence and Collusion" University of Illinois Law Review (2017).
6. Hal Varian, "Market Power in the Digital Economy" Harvard Law Review (2019).
7. David S. Evans, "The Antitrust Economics of Multi-Sided Platform Markets" Yale Journal on Regulation (2003).
8. Jean Tirole, "Market Power and Regulation in Digital Markets" Economic Journal (2012).
9. Organisation for Economic Co-operation and Development (OECD), Competition in Digital Markets (2020).
10. OECD, Algorithms and Collusion: Competition Policy in the Digital Age (2017).
11. United Nations Conference on Trade and Development (UNCTAD), Digital Economy Report (2021).
12. European Commission, Digital Markets Act Report (2022).
13. Competition Commission of India, Market Study on E-commerce in India (2020).
14. Government of India, Report of the High-Level Committee on Competition Policy (Raghavan Committee Report) (2000).
15. Matrimony.com Ltd. v Google LLC, Case Nos. 07 & 30 of 2012, Competition Commission of India.
16. MCX Stock Exchange Ltd. v National Stock Exchange of India Ltd., Case No. 13 of 2009, Competition Commission of India.
17. Competition Commission of India v Google LLC, Case No. 39 of 2018.