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A Study on the Diverging Pricing Strategies in the Indian E-Commerce Industry

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ABSTRACT

The primary determinant of a potential customer's choice to acquire a good or service is its pricing. Retailers must take into account elements like manufacturing and operating expenses, sales targets, and competitive pricing. Even yet, pricing a new product or even an established product line involves more than just numbers. Particularly for e-commerce business owners, the cost of the goods can all too frequently determine success or failure. Price is a major consideration for every business in today's age of "throw-away" products and rivalry in just about every market sector you can think of. For reasons that will potentially involve an e-commerce retailer setting his or her price to maximise profits and to deter competition is always a danger to the essence of healthy competition. The OECD guidelines have specifically passed various pointers in their 2008 guidelines to prevent such a mishap from happening, especially in the competition sector. Manufacturers frequently make an effort to influence the prices that online merchants charge to final customers for their products under vertical price restraints. Price-based restraints can produce efficiency like many other vertical restraints, but they frequently represent one of the most immediate barriers to intra-brand rivalry. The usage of a minimum or fixed RPM in the e-commerce industry is frequently driven by manufacturer worries about free-riding on offline service provision as well as worries about aggressive discounting in online distribution channels that could deter customers. A brand's standing in the market or perceived prestige. In order to safeguard both wholesale price levels and retail price margins, pricing constraints may be used to reduce the effects of swift online price erosion. The concept of price parity in the e-commerce industry, especially to deter competition by barring the market players a healthy chance to sell their products and services, is on the rise in recent times. This paper aims to study the different forms of price parity being practised by e-commerce players and how the statute provides protection and promotion of healthy competition.

Keywords: *e-commerce operators, price fixing, OECD guidelines, price parity.*

I. INTRODUCTION

Initially, the e-commerce industry was not viewed as a distinct "online market," but rather as a continuation of the existing brick-and-mortar retailers and an effective method of distributing

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their items. The volume of business-to-company and business-to-consumer transactions gradually rose as the e-commerce industry gained popularity. As a result, distributors and vendors were more interdependent with and dependent upon e-commerce platforms, which raised the vertical restraints that these platforms imposed on distributors and suppliers in the form of various sorts of exclusivity restrictions. It is a truth that recent years have seen an exponential expansion in the e-commerce and digital marketing industries. Increased internet and smartphone adoption are to blame for this industry's expansion. The world's greatest annual growth rate of 51% is predicted for the Indian e-commerce sector, which will increase its revenue from USD 39 billion in 2017 to USD 200 billion in 2026.[2] The imposition of parity clauses by e-commerce platforms on vendors using their platforms was one of the primary competitive concerns noted by the CCI in the market analysis. The online food ordering and delivery industry and the online travel agency market were notably mentioned in the market report as examples of markets where similar parity clauses were common.[3] Parity clauses, in essence, forbid sellers/retailers from providing better rates or conditions on other platforms/marketplaces or on their own websites. Instead, they require them to give the lowest price and/or best terms on their marketplace/platform.

Anti-competitive behaviour is primarily observed and controlled because it fosters market rivalry. Large company mergers and acquisitions are governed by competition law, which also forbids contracts that limit free trade and competition. A dominating company's abusive behaviour in any field must be restrained by competition legislation.

The Competition Commission of India (CCI) was inspired by these very concepts when they conducted a thorough market analysis on the expansion of e-commerce in India. On January 8, 2020, the CCI turned in its report and made its conclusions public. The report addressed some particular topics that the CCI would actively watch and that have a high potential for corrupt business practices.

The Competition Act of 2002 is concerned with creating a stable and fair market. Its goal is to stop anti-competitive behaviour and encourage healthy competition. In order to safeguard the interests of consumers while also safeguarding the interests of sellers and their right to free trade, a fair marketplace is essential. The most recent changes have made it possible for e-commerce to become a dominant market platform. In the entire world, India has experienced the highest growth rate for e-commerce, at 51%. By 2020, it is anticipated to generate revenues

[2] https://www.ibef.org/industry/ecommerce
[3] MARKET STUDY ON E-COMMERCE IN INDIA, https://www.cci.gov.in/images/marketstudie/en/market-study-on-e-commerce-in-india-key-findings-and-observations1653547672.pdf

of 120 billion US dollars, up from the 39 billion acquired in 2017. By 2034, it might also overtake the US to overtake it as the second-largest e-commerce market.[4]

Parity clauses are often split into two groups based on their nature and implications. A "narrow" parity provision prevents the seller from presenting on its own website pricing and terms that are better than what the seller has offered to a specific platform. However, sellers are allowed to provide rival platforms with better rates and terms. A "broad" parity provision prevents the seller from providing competitive platforms or even the seller's own website with better rates or terms. As a result, the scope of coverage in wide parity clauses is broader than that in narrow parity clauses, which is how narrow and wide parity clauses differ from one another.[5]

II. PRICE PARITY IN E-COMMERCE

The platform parity clause forbids service providers from selling their goods on other platforms for "less money." In India, when the lowest price of the service is guaranteed by contract, there is a high degree of parity. The contract also implies that the same price shall apply across all platforms. Competitive issues could arise from these terms. As the CCI noted, the parity clause removes the incentive that any competing platform may employ to entice sellers to its platform.[6] The entry of any new platform that would have offered a cheap commission to suppliers on its platform is also discouraged. Thirdly, established platforms may reach an agreement and establish a standard of commission, raising commission rates across all online platforms. Additionally, from the perspective of the online platform, although they invest money in their web portals, consumers ultimately choose cheaper products after comparing them with a number of different online platforms.

It is safe to say that the limits put in place in the name of price parity have actually reduced competition and served as a de facto foreclosure for many new and established competitors. According to the EU's 2016 market analysis on the online hotel booking sector, Booking.com and Expedia's switch from broad to narrow limits actually increased the price disparity between OTAs and hotels for rooms.[7] After Booking.com parity clauses were outlawed, there was also a significant improvement in the observed pricing disparity between OTAs. Furthermore, one in five hotels claimed that at least one OTA they worked with had a contract with them requiring

[4] Tanisha Mishra, *Market Study on E-Commerce, a survey by the CCI- An Analysis, https://articles.manupatra.com/article-details/Market-Study-on-E-Commerce-a-survey-by-the-CCI-An-Analysis*
[5] Mathew and Shree, *India: Parity Clauses And The E-commerce Market In India- A Competition Law Perspective,* https://www.mondaq.com/india/antitrust-eu-competition-/971054/parity-clauses-and-the-e-commerce-market-in-india--a-competition-law-perspective
[6] *Ibid.,* 2
[7] Srishti Sharma, Price Parity amongst Intermediaries, Tag and Bench, https://tagbenchassociates.com/price-parity-amongst-intermediaries/

them to offer price parity with other hotels. Some even choose not to report any changes in their interactions with OTAs out of concern that they would be dumped by these OTAs. On the plus side, the report noted that with the implementation of the parity clauses of the large OTAs from wide to narrow, new companies have entered the market, and existing players have introduced new tactics and technology. Players like Google and Airbnb were also highlighted.

The CCI Market Study Reports refers to a platform's marketplace model when it enables transactions between buyers and sellers as well as order fulfilment through managing logistics, shipping, etc. And the inventory model is used when retailers are permitted to possess goods and sell directly to customers through their platform. Competition authorities all across the world have classified PPCs into broad and narrow restrictions. The latter is considered wide in nature because the hotel partners were required to maintain room and price parity between MMT-Go and other OTAs, including themselves. The former is aggressive because it prevents sellers from offering better terms of sale or charging lower prices on their own website as well as through other sales channels, such as MMT-Go.[8] The latter, a pro-competitive argument, prohibits vendors in some jurisdictions from lowering prices just on their websites in relation to offers or prices made available on the platform. This prevents sellers and customers from free-riding on the online platform.

III. PRICE FLUCTUATIONS IN AMAZON-FLIPKART

The Karnataka High Court's decision from June 11, 2021, was not appealed by the Supreme Court of India, according to an order it issued on August 9, 2021.[9] Amazon (and Walmart-controlled Flipkart) failed to persuade India's top court to halt an antitrust investigation into their alleged unfair business practices that affected both offline and online retailers in India. The case was filed when the informant, Delhi Vyapar Mahasang, highlighted the varied modes of price parity faced by the deep discounting and price fixing methods practised by e-commerce giants Amazon and Flipkart. In its prima facie order, CCI found instances of vertical agreements in the form of "preferred sellers" and "preferential listings" of such sellers on both Amazon and Flipkart in the context of violations of Section 3(4) of the Competition Act, 2002 (Act), in the inter-platform, intra-platform, and inter-channel distribution. This, considering the significant market power, was challenged before the Karnataka High Court.

The Delhi Vyapar Mahasangh, the informant, claimed that Amazon and Flipkart entered into several vertical agreements with preferred sellers, having a significant negative impact on

[8] Makemytrip India Pvt Ltd Mmt & Anr. vs Competition Commission Of India & ORS W.P.(C) 16963/202
[9] In Re: Delhi Vyapar Mahasangh v Flipkart and Amazon Case No. 40 of 2019

competition. The CCI was required to investigate and take these allegations into consideration regarding deep discounts, preferential listings, and exclusive tie-ups. All of these are a result of a previous pricing strategy used by Amazon in one way or another.

The service providers expressed grave worries about the platforms' aggressive discounting tactics that could permanently harm the value of their goods and their market share. According to the survey, many platforms that operate as pure marketplaces provide discounts above the costs set by the service providers. At times, the selling price on these online marketplaces is even less than the cost price. As a result, they are forced to either match online offers or risk having their search rankings drop.

When the CCI decided to launch its inquiry, it took note of the claims that the e-commerce companies were, in fact, using exclusionary strategies to stifle competition and were thus in violation of the Competition Act 2002.

The outcome of the order by CCI was the birth of the 2020 market study conducted by the CCI on e-commerce. Platform neutrality is understood as the practice of giving the platform's own or connected entities preference. The Anti-competitive agreements involved the incorporation of platform-to-business contract terms, unilateral contract term revisions and enactment of unjust or biased contract terms. These platform price-parity provisions prohibit merchants and service providers from setting cheaper pricing for their products or services on other platforms (broad parity) or on their own websites (i.e. narrow parity). Agreements stipulate that a specific product will be released exclusively on a single online platform, as well as those stipulating that the site will only feature one brand in a particular product category.

To align themselves with any stated policy, Flipkart and Amazon India must go through a difficult restructuring process. In light of this, the current CCI investigation will have the chance to evaluate even these restructuring efforts. There is currently no law that addresses the complexity of e-commerce business operations and governs their concerns. The ongoing inquiries resulted from such a void.[10] But in India, knowledge of the intricacies and technical aspects of e-commerce is still extremely young, and any misstep along the road might have a serious negative impact on the drive to make doing business easier. As mentioned earlier, regulators have looked into claims of anti-trust violations against the largest online retailers in a number of jurisdictions, including the US and the EU.

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[10] Manoj Kumar, *Amazon, Flipkart face risk of being legally exposed in India*, moneycontrol, https://www.moneycontrol.com/news/business/corporate-action/amazon-flipkart-face-risk-of-being-legally-exposed-in-india-7049971.html

IV. Price parity: forms and regulation from the perspective of CCI market study

The study reveals that the rise of e-commerce has been occurring at a rising rate and will continue to do so in a relaxed and adaptable environment. The three distinct industries have a very different range of E-commerce and the digital economy. Online travel agencies (OTA) and food services have deemed the value of platforms to be quite high and feel the need to increase their online presence, whilst the retail sector regards e-commerce as a main means of sales for only a few products, with others relying on physical retail.

The analysis indicates the increasing intensity of price rivalry across the categories analysed, supporting expectations for online trading. Price transparency has increased as a result of online trade. According to the report, the majority of the retail and hotel respondents monitor their rivals' prices and alter their own prices accordingly. It was discovered that prices changed often. In the case of items, it was discovered that the majority of the responding stores changed the price numerous times throughout the day, while some also reported price changes on a weekly basis and during promotional events. The majority of hoteliers claimed to make daily price adjustments. Only a small number of responding restaurants were found to monitor the prices of rival restaurants in the food service industry.[11]

The Market Study was fairly comprehensive and in-depth, giving the CCI much-needed insight into the country's present e-commerce environment. Although the CCI has refrained from labelling any measure as anti-competitive or justified in a proper context, it has advised business owners and enterprises to impose some self-regulation if they wish to conduct their respective businesses without any difficulties or obstacles. The CCI has identified and brought to light a number of issues in its report of the study.

Regarding all e-commerce platforms, the CCI has identified four key areas in its study that are of concern and will be closely examined by them in the future.

The data shows rising price competition across all of the categories examined, which is consistent with predictions for online trading. Online commerce has increased price transparency. The majority of the retail and hotel respondents, according to the report, keep an eye on their competitors' rates and adjust their own as necessary. It was found that costs fluctuated often. The majority of the responding retailers changed the price of the items many times throughout the day, and some additionally reported price adjustments once a week and

[11] Srishti Sharma, Price Parity amongst Intermediaries, Tag and Bench, https://tagbenchassociates.com/price-parity-amongst-intermediaries/

during promotional events, it was found. The majority of hotel owners reported altering prices every day. It was discovered that only a tiny percentage of responding restaurants kept track of costs at competing restaurants in the food service sector.

Platform price parity clauses prevent vendors from charging less for their products or services on other platforms. A platform requires sellers and service providers to contractually guarantee the lowest pricing for the platform.

Platform price parity clauses are referred to as "wide" if they apply to prices offered on all other platforms, including the seller's or service provider's own website. Platform price parity clauses are referred to as "narrow" if they prevent the seller's or service provider's ability to set a lower price on its own website without imposing any restrictions on prices on other platforms. According to the study's findings, "broad" parity is often present on online platforms in the service categories, such as online travel agencies and online food ordering & delivery platforms, that are active in India.

V. Outcome of the CCI's market study-an analysis

Market studies are essential instruments used by market regulators, often known as competition enforcement agencies, in all countries to comprehend important features and the operation of the markets. The next important aspect of any market study is to identify potential difficulties from the perspectives of competition and consumer interests. Market studies are "research projects," according to the International Competition Network, carried out to get a thorough understanding of how various markets, industries, and market practices operate.[12]

Market studies, according to the CCI, are a technique for "proactive market surveillance" that aids in the detection of competition issues arising from business firm practises and/or market structure characteristics.

The CCI has its own fair share of expertise in carrying out market research. The CCI's (and every other market regulator's) attention has rightly shifted to such digital marketplaces as markets become increasingly dependent on technology.

The CCI opened an investigation into Amazon and Flipkart shortly after the e-commerce industry research was published because of their practices of steep discounting, exclusive agreements with specific vendors, and preferential listing of such sellers on their respective platforms. Notably, the CCI had recognised these problems in its market research and

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[12] Joshi and Sethi, *How Should the CCI Market Its 'Market Studies'? A Case for Incentivizing Industry Participation, https://www.competitionpolicyinternational.com/how-should-the-cci-market-its-market-studies-a-case-for-incentivizing-industry-participation/*

recommended some self-regulatory actions for the platforms. The suggested self-regulatory solutions were designed to alleviate any imbalances in bargaining power and information asymmetry by emphasising transparency between platforms and corporate users. It is unknown whether or to what extent the CCI took additional steps to properly discuss the self-regulatory measures with the stakeholders in order to address issues that were raised during its investigation.

Market studies give competition agencies a chance to consult with the industry, promote competition, and ultimately assist in the development and maintenance of market practices that encourage healthy competition, prevent noticeably negative effects on competition in the markets, and protect consumer interests. By virtue of this collaborative approach, market studies continue to be a crucial instrument for diagnosing systemic problems that occur across numerous market sectors and industries, going beyond enforcement proceedings or merger control. If they are carried out in a more structured and effective manner and employed more scientifically, bearing in mind the distinct objectives set out in the studies, they may be a highly beneficial process for both the CCI and the markets.

VI. CONCLUSION AND SUGGESTIONS

E-commerce has unquestionably become more and more dominant in the digital age as a unique marketplace that offers the ideal platforms for merchants and consumers while also bolstering a nation's economy. A fair set of rules for competition must be established, though. The key is that both suppliers and e-commerce depend on each other. E-commerce is not subject to the same regulations that apply to brick-and-mortar establishments. The CCI, as a regulator, has a significant responsibility to play in maintaining a competitive environment with fair trading practices, and protecting the interests of large consumers, on a case-by-case and merit basis.

Price parity is often misused by the market players to their benefit in controlling and regulating competition to their benefit. Parity provisions could also promote competition. Parity clauses stop sellers and rival platforms from free-riding, enabling the welfare-improving investments that platforms undertake in promoting the products listed on the platform. The market share of the parties is another significant factor that the CCI may take into account while evaluating parity provisions. According to the CCI's decisional practice, there are only concerns about competition in a vertical connection where one of the market players has the potential to impose unfair limitations on the other. As a result, evaluating parity provisions under competition law involves striking a delicate balance between their pro- and anti-competitive impacts. The market situation in which they are entered affects the analysis as well. The market study conducted by the CCI will enable them to comprehend any new set of problems and recognise any potential new strategies while taking into account the findings from earlier studies and its own subsequent activities thanks to the market study that CCI completed.

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