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Abuse of Dominance in Digital Market with a Case Study of Google Meet Case

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ABSTRACT

Abuse of dominance in the digital market, often referred to as antitrust or competition law violations, is a topic of increasing concern and regulatory focus in many countries around the world. Due to absence of a specialized Act for Digital Competition, the Competition Act, 2002 deals with the regulation of any anti-competitive behavior in the Digital Sphere, in India. The Competition Commission of India (CCI) is the regulatory authority responsible for enforcing competition law in the country. Digital markets are characterized by a few dominant players who hold significant market power, and the abuse of this power can harm competition, consumers, and innovation. In this paper I have tried to give a brief analysis on how the big players of Digital Market are misusing their position of Dominance and practicing Anti-Competitive Behaviours. I have provided a critical analysis of the current situation while linking it with Landmark cases passed by the CCI and the Supreme Court. The paper also gives glimpses of the current new age techniques that are leading to increasing anti-competitive behavior in Digital Market while trying to provide the path of solution through a Separate Competition Act for Digital Market.

Keywords: Abuse, Dominance, Google Meet Case, Tying, Anti-Competitive Agreement, CCI.

I. INTRODUCTION

In the backdrop of globalisation and specially after the emergence of Post Covid platform, the world has acknowledged involvement of technology in every sphere of life. Technological advancement in India is also seen through introduction of governmental policies like 'Digital India which acts as a backbone empowering the Indian society to accelerate the power of technology, The benefits of Digitalisation has also been emphasised by **V. Anantha Nageswaran** who is the **Chief Economic Advisor to the Government** of India, said –

"Digitalization is not just about technology; it's about transforming how we do business, connect with others, and innovate for a better future."

However, with increasing penetration and dominance of digital world, there has been a trend of

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increasing abuse of dominant position to manipulate the digital market which has affected the economy of our country. The Article published by **OECD on Abuse of dominance in digital markets- contribution from India**², has highlighted how the major digital players like Uber, Swiggy, WhatsApp etc are misutilising their position through the anti-competitive practices.

(A) Literature Review

1) *Legal Treatment of Abuse of Dominance in Indian Competition Law: Adopting an Effects-Based Approach*³ – Payel Malik

The paper exhaustively analyses how India's anti-competitive practices should be regulated through the lens of effect base approach and how it has impacted the economy. It has drawn a comparison EU laws and has tried to establish the current digital market situation through analyzing the landmark judgments of CCI in Digital Market arena.

However, the paper did not cover the aspect on how the modern digital techniques are increasing anticompetitive behavior and thus harming the Indian economy.

2) *Indian Competition Law in the Digital Markets: An Overview of National Case Law*⁴ – Shilpi Bhattacharya and Pankhudi Khandelwad

The authors have focused on CCI's pattern to curb anticompetitive behavior in India while providing a Global Jurisprudential idea of Competition Law. The paper has taken case studies on various National Cases falling under Digital Competition Jurisprudence to give an idea of the current situation of Competition Law regulation in India.

However, this paper fails to address any possible solution which would cater solely to the needs for regulation in competition law in Digital Markets.

3) *Abuse of Dominance in Digital Platforms: An Analysis of Indian Competition Jurisprudence*⁵ – Tilottama Roychowdhuri

The paper delves into the debate of whether a separate Act is required for addressing the issues of the Digital Market. Roychowdhuri highlights the current Digital Market situation in the

² OECD, Abuse of dominance in digital markets- contribution from India, [https://one.oecd.org/document/DAF/COMP/GF/WD\(2020\)8/en/pdf](https://one.oecd.org/document/DAF/COMP/GF/WD(2020)8/en/pdf) (last opened 1st November 2023)

³ Payel Malik, *Legal Treatment of Abuse of Dominance in Indian Competition Law: Adopting an Effects-Based Approach*, 54, JSTORE, 435, 435-464 (2019)

⁴ Shilpi Bhattacharya, *Indian Competition Law in the Digital Markets: An Overview of National Case Law*, SSRN, 26, 26-35 (2021)

⁵ Tilottama Roychowdhuri, *Abuse of Dominance in Digital Platforms: An Analysis of Indian Competition Jurisprudence*, 1, COMPETITION COMMISSION OF INDIA JOURNAL ON COMPETITION LAW AND POLICY, 1, 1-27 (2020)

backdrop of the Uber case and role of predatory pricing in creating Abuse of Dominant position in Online Platform

However, this paper does not provide any information on the ne age digital techniques which are evolving to affect the Free Trade Market and Indian Economy. It also fails to highlight how CCI has adjudicated various cases curbing anti-competitive practices in various aspects of Online Digital Platform.

II. ABUSE OF DOMINANCE IN DIGITAL MARKET

Abuse of dominance, in the context of competition law, refers to the actions taken by a dominant firm or company that exploit its dominant position in a market to harm competition, consumers, or other market participants. The aim of competition law is to ensure that markets are competitive, which benefits consumers by promoting choice, innovation, and fair pricing. When a dominant firm engages in anticompetitive behavior, it can hinder these goals.

Digital markets are characterized by a few dominant players who hold significant market power, and the abuse of this power can harm competition, consumers, and innovation.

(A) Statutory Authority

Section 4 of Competition Act 2002 specifically deals with "Abuse of dominant position" and provides the legal framework for addressing anticompetitive behavior by dominant enterprises. It outlines the conditions under which a dominant enterprise's conduct may be considered an abuse of its dominant position and subject to regulatory action by the Competition Commission of India (CCI).

However, there's not presence of a separate legal provision for dealing with abuse of competition in digital markets. Thus, the Indian Competition Commission of India which is the adjudicating authority for competition market deals with outgrowing number of digital anti-competitive cases with the help of Competition Act 2002 as well as referring to EU and US competition law practice.

(B) Presence of Dominance : Prima Facia Case

In the context of abuse of dominance in digital markets, establishing a prima facie case is an important step in competition law enforcement. A prima facie case is the initial evidence that, if unrebutted, would be sufficient to prove a particular legal claim or violation. **Section 26** of Competition Act gives authority to initiate investigations by the Competition Commission of India (CCI) into alleged anti-competitive practices, only if there exists a prima-facia case made with reference to material produced before it. CCI has often closed preliminary cases as they

do not want to interfere in innovative techniques that are applied in digital market for attracting the buyers in the economy. In the case of *Vinod Kumar Gupta v WhatsApp*⁶, the court recognized that even though there is dominant position, however there's no abuse of such dominance as seen in Prima Facia Case. Thus, making the role of 'Prima Facia' Case very important for understanding abuse in digital market economy.

(C) Relevant Market

To understand whether there is abuse of dominance, the anti-competitive practices has to be applied in 'relevant markets' as defined in **Sec2** i.e where one product can affect the sale of another. The CCI has clearly distinguished between online and offline market. Online market is a separate channel for distributing the same products as sold in offline and hence it (offline) would not fall under relevant market for digital market. However, CCI through a number of cases has treated e-commerce as an extended part of offline stores and thus would fall under relevant market for offline buyers.

As seen in the case of *Ashish Ahuja v Snapdeal*⁷, CCI clarified that it is the customers choice for availing the channel or medium of purchase and hence online and offline versions should not be treated as relevant market.

III. THE GOOGLE MEET CASE

The landmark Case of *Baglekar Akash Kumar v Google*⁸, commonly known as Google Meet Case, dealt with the question of what actions can be considered as abuse of dominant position in Digital Market. In this case Google had announced integration of G-Meet app which is the video conferencing app, within Gmail Account. It was alleged in court that Google which enjoyed dominant position in the market of emails is trying to abuse it's dominance by using it's dominance to enter another market i.e the video conferencing market Hence violation Section 4(2) (e) of the Act is attracted in such a scenario.

Section 4(2)(e) – This section explains that an enterprise in a dominant position is prohibited from imposing conditions in the purchase or sale of goods or services that are unfair or discriminatory. Such conditions may be detrimental to other market participants, including competitors and consumers.

Decision of the CCI – In this case the court defined "relevant market" and held that Google did not violate any provisions under Sec4(2)(e) as –

⁶ Vinod Kumar Gupta v WhatsApp, [Case No. 99 of 2016]

⁷ Ashish Ahuja v Snapdea, [Case No. 17 of 2014]

⁸ Baglekar Akash Kumar v Google LCC, (2021) SCC Online CCI 2

- Firstly, the Gmail users were not mandated to use Gmeet as the only medium of video conferencing.
- Secondly Gmail users have the opportunity to not use Gmeet and opt for any other video conferencing app.

(A) Whether it is a case of Tying and Bundling in Digital Market?

Tying and Bundling has been seen as a common anti-competitive practice especially in the Digital Market. In the article published by **Computer law and Securities Review** highlights a **30% spike⁹ in Tying and Bundling Cases in Online** Platforms. It occurs when a company bundles or ties two or more products or services together in a way that forces customers to purchase them collectively.

In this case, to understand Abuse of Dominance Indian laws generally use the 4 Fold Test – Firstly, determine whether there exist dominant position Second, two separate products tied together Thirdly, one can not be consumed without the other and fourthly whether there's anti-competitive foreclosure. In this case, CCI judged it only on the basis of third parameter which failed to prove presence of abuse of dominance by Google through introduction of G-Meet in Mail.

(B) Critical Analysis through Recent Judgments

CCI has time and again analysed various cases to regulate anti-competitive behaviour within Digital Market. The *Matrimony v Google*¹⁰ was a landmark case where it was alleged that Google was prioritising its own services as compared to the third parties by promoting its vertical services like Youtube, Google Calendar etc by showcasing ads within the apps and pushing them through Google Search. It was held that Google had a dominant position in Digital market of Search Engine which it used to abuse the power for its own benefit by unfairly forcing users to use its own vertical services.

In the year 2019, CCI through the case of *FHRAI vs. MakeMyTrip & Ors.*¹¹, uncovered the ongoing anti-competitive practices happening between the Online Travel Agents i.e MakeMyTrip and GoIbibo. They were involved in Predatory Pricing along with accepting extremely high charges for tie-up with hotels offering illegal and unlicensed services.

Similar investigations were done against Flipkart and Amazon in the case of Delhi *Vyapar*

⁹ Daniel Manderscu, *Tying and bundling by online platforms – Distinguishing between lawful expansion strategies and anti-competitive practices*, 40, COMPUTER LAW AND SECURITY REVIEW, 42, 45 (2021)

¹⁰ Matrimony.com Limited Vs. Google LLC & Others [Case No. 30 of 2012]

¹¹ FHRAI vs. MakeMyTrip & Ors. [Case No. 14 of 2019].

Mahasangh vs. Flipkart and Ors¹². Where CCI was informed of vertical agreements being conducted by Flipkart with its “preferred sellers” to provide unfair advantages like special launch or preferential listing over the other sellers affiliated to the online marketplace.

In the recent case of **Uber India Limited v CCI**¹³, the Supreme Court acknowledged presence of predatory pricing in digital market and upheld that Uber was using its dominant position against the rest of the Online cab Aggregators through unfair pricing and hence was liable of hefty fine.

IV. THE NEW AGE MECHANISM OF ABUSE IN DIGITAL MARKET: CONTEMPORARY ISSUES

In the backdrop of Covid19, every country has showcased a sharp increase in participation of Digital Market. This has brought forward new issues related to anti-competitive practices, in digital market –

Forced Free Riding – Currently, any and every online platform is being used not only to cater to the specific service that it was originally supposed to be done, but presence of additional uses as forced free riding. This refers to a situation where one company or entity leverages another's data without permission or fair compensation. For example, a digital platform may access data generated by a third-party app without sharing the benefits or providing proper compensation.

Self-Preferencing - Self-preferencing in the digital market refers to the practice of a platform or dominant company favoring its own products, services, or content over those of competitors on its platform. This can have various implications for competition, consumer choice, and market dynamics. For Eg : promoting its own product at the top of the search result.

Privacy Policy Tying –A company often ties its privacy policy to the use of its products or services, essentially making the acceptance of the privacy policy a condition for accessing or using those products or services. For Eg : Agreeing to a Company's privacy policy before using a website, app or online service.

All these are new techniques which can be used to promote anti-competitive practices within online market economy.

V. SUGGESTION AND CONCLUSION

In the digital market, the abuse of dominance is a growing concern, especially given the market

¹² Delhi Vyapar Mahasangh vs. Flipkart and Ors. [Case No. 40 of 2019]

¹³ Uber India Systems Private Limited v CCI, (2019) 1 SCC 641

power held by some tech giants. **Chairperson of CCI, Mrs Ravneet Kaur**¹⁴ recognized the increasing rate of anti-competitive practices in Digital Market affecting the Free Trade Policy of India.

Competition authorities, like the CCI, play a vital role in ensuring fair competition and protecting consumer interests in this rapidly evolving landscape. They investigate and take action against companies found to be abusing their dominant positions to the detriment of competition and consumers. However, due to the absence of a specific Act catering to the competition Regulation in Digital Market, overburdens the CCI.

In the current era, where Digitalization is touching its peak, government is discussing to bring forward a **New Act focusing on Regulating Digital Competition Law**¹⁵ which would help in curbing the new age techniques developed in digital sphere that hampers free trade policy and the economy of India.

¹⁴ Banikinkar Pattanayak, ECONOMICS TIMES, Competition regulator bolstering tools to plug abuse in digital markets: Chairperson, <https://economictimes.indiatimes.com/news/economy/policy/competition-regulator-bolstering-tools-to-plug-abuse-in-digital-markets-chairperson-ravneet-kaur/articleshow/104364970.cms>, (last opened at 02nd Nov 2023)

¹⁵ BUSINESSLINE, Govt to decide on separate Digital Competition Law, <https://www.thehindubusinessline.com/economy/govt-to-decide-on-separate-digital-competition-law-says-cci-chief-ravneet-kaur/article67408546.ec>, (last opened at 02nd Nov 2023)

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