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Abuse of Dominance in Digital Markets: An Analysis of Indian Competition Law Enforcement

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ABSTRACT

The rapid expansion of digital markets in India has introduced new challenges for competition law enforcement. Unlike traditional one-sided markets, digital platforms operate in multi-sided ecosystems characterized by strong network effects, data-driven business models, and rapidly shifting market dynamics. This article critically examines the enforcement of Indian competition law, particularly the Competition Act, 2002, in addressing abuse of dominance in digital markets. It explores key concepts such as dominance, predatory pricing, and relevant market determination in the context of platform-based digital businesses. Through detailed case studies—including those involving Ola, Uber, WhatsApp, Facebook, Google, and SALPG—the paper highlights the Competition Commission of India's (CCI) evolving approach to defining market power and identifying anti-competitive behavior. It underscores the limitations of conventional economic tools in assessing dominance and market abuse in dynamic, technology-driven industries. The analysis points to enforcement inconsistencies, challenges in defining relevant markets, and the inadequacy of existing legal standards such as the average variable cost (AVC) test in capturing anti-competitive conduct by digital giants.

The paper argues for the development of tailored legal and analytical frameworks that incorporate behavioral economics, consumer lock-in effects, and platform interdependencies. It recommends expanding legal definitions, updating predatory pricing rules, and improving methodologies for evaluating digital mergers, data exploitation, and potential innovation suppression. Ultimately, the study emphasizes the urgent need for a distinct Digital Competition Law in India to ensure fair competition, protect consumer interests, and sustain innovation in the fast-evolving digital economy. With the Ministry of Corporate Affairs and the Committee on Digital Competition Law actively considering such reforms, the article anticipates the formulation of a dedicated legislative framework to strengthen India's antitrust regime in the digital age.

Keywords: Digital Markets, Abuse of Dominance, Competition Commission of India, Predatory Pricing, Platform economy.

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I. INTRODUCTION

The Digital Economy is a term that has been used to describe a congregation of markets that function using Digital Technologies (OECD 2012). The usage of the term 'digital economy' for the first time has been used by Don Tapscott in his book namely "The Digital Economy: Promise and Peril in the Age of Networked Intelligence" in the Year of 1995 that eventually resulted into the bestseller of the New York Times business. Since last few decades, the concepts of Digital Technologies have renovated the global business scenario. The main important elements of Digital platforms comprise the specifications of extensive series of markets, social networking sites, search engines and payment systems. To be precise, there is a difference between Digital market and traditional/undeviating business in different ways. The transaction platforms, makes it convenient for the firms to use price control on both the sides of the market in comparison to the market entities those operate only on one side of the market and are limited by its price structure.

If we see, the in the post-covid era, with the presence of globalisation the world has accepted and acknowledged the active participation of technology in every sphere of life. And this technology has advanced in India through the introduction of various policies by the Government like 'Digital India' that acts as the main support system for the Indian society to speed up the command and control of technology.

In India, one of the first cases involving two-sided markets was the MCX-NSE case. In its minority order, the CCI explained the concept of network effects. The CCI observed that network industries are different from the traditional markets as they operate on network effects, which mean that the value of a platform increases with the increase in the number of users. Further the costs and the prices in network platforms may not follow trajectories similar to traditional markets, hence cannot, under all circumstances, be analysed using traditional economic tools like normal supply and demand curves help determine prices in the market. Since multi-sided markets involve different consumer groups, defining these markets gets more complicated. Competition authorities often struggle to outline such markets because most competition laws were designed with traditional "one-sided" market logic in mind rather than "two-sided" logic. This paper will focus on key aspects of platform markets and dominance related to predatory pricing. These issues have become concerns in India and around the world.

II. BACKGROUND: *DOMINANCE, PREDATORY PRICING, AND DIGITAL MARKETS*

(a) Dominance –

The Competition Act, 2002, defines 'dominant position' as a strong position held by a company in the relevant market in India. This position lets it (i) work independently of the competitive forces in that market or (ii) influence its competitors or consumers to its advantage. Section 4 (1) of the Competition Act, 2002, states, "No enterprise or group shall abuse its dominant position." Section 4(2) explains that there is an abuse of dominant position under sub-section (1) if an enterprise or a group –

(a) directly or indirectly imposes unfair or discriminatory

(i) conditions in the purchase or sale of goods or services or

(ii) prices in the purchase or sale (including predatory pricing) of goods or services. In cases of abuse of dominance, competition authorities focus on making sure that the law's application does not limit efficiency. Firms can gain market power through efficient production or distribution methods, technological innovations, and better entrepreneurial efforts. Therefore, it is not dominance itself that is criticized, but the abuse of dominance through specific behaviours outlined in laws.

(b) Predatory Pricing –

Simply speaking, predatory pricing means below – cost pricing with the intention of driving competitors out of the market – the rationale being that once competition is eliminated, the predator can monopolise the market and recoup losses sustained during the period of predation. Cases on predatory pricing can be traced back to the early 1900s when the courts in the US were faced with issues of predatory pricing as a violation of the Sherman Act, 1890. However, for many decades, there was no clarity in the US as to what constituted a predatory price. Till the 1970s, the success rates for plaintiffs were fairly high as small businesses were sought to be protected against predation by large firms, as theoretically only a firm with sufficient reserves could engage in predation. This attitude changed in the 1970s due to the influence of the Chicago School. They were doubtful that predatory pricing could be a valid and lasting business strategy. This was reflected in decisions like *Matsushita v Zenith*, where the US Supreme Court declared that there is a consensus among commentators that predatory pricing schemes are rarely tried and even more rarely successful.

In India, Section 4 of the Competition Act, 2002 defines predatory pricing as a price that is below the cost of producing goods or providing services, as determined by regulations, aimed at reducing competition or eliminating competitors. The concept of cost is further detailed in the Determination of Cost of Production Regulations, 2009, set by the CCI. According to these regulations, costs are generally understood as "AVC used as a proxy for marginal cost." The

CCI has identified three conditions for predation. Firstly, that the prices of goods or services are below the cost of production; secondly this low price is charged with the object of driving out competitors from the market and thirdly there is a significant planning to recover the losses if any after the market rises again and the competitors have already been forced out.

(c) Digital Markets –

Until 2016, when defining a ‘relevant market’ for e-commerce companies and marketplaces like Snapdeal, eBay, Yepme, and Cloudfair, the CCI treated online and offline segments as different distribution channels rather than different relevant markets. This perspective arose from the CCI’s belief that the two segments differed in terms of discounts and shopping experiences. Buyers typically considered both online and offline options before making purchase decisions. If the price of the same product or service increased significantly online, consumers were likely to buy it from an offline channel, and vice versa.

In 2018, while reviewing a complaint against e-commerce companies that claimed ‘abuse of dominance’ through predatory pricing and preferential treatment for certain sellers, the CCI changed its initial stance. It recognized the potential for a distinction between online and offline segments, stating, “No doubt, to the end consumers, the distinction line between online and offline sellers is sometimes blurry, yet it cannot be denied that online marketplaces offer convenience for sellers as well as buyers. For the sellers, they save costs related to setting up a store, sales staff, electricity, and other maintenance charges. The benefits to buyers include the comfort of shopping from their homes, thus saving time and commuting costs while being able to compare multiple products.”

Following the MakeMyTrip case, the CCI has looked at the ‘relevant markets’ of certain online-only players in several digital market cases. For example, it defined the relevant market for (a) Google as ‘the market for Online General Web Search Services in India and the market for Online Search Advertising Services in India,’ (b) WhatsApp as ‘the market for Over-The-Top (OTT) messaging apps through smartphones in India,’ and (c) Apple as ‘the market for app stores for iOS in India.’

In later CCI orders related to cases that argued offline products or services could substitute for online options, the agency did not clearly apply the Relevant Market Test. It also did not specify whether all products and services considered interchangeable by consumers were included in the ‘relevant market’ definition.

III. EVOLUTION OF COMPETITION LAW IN INDIA

Competition is defined as “a situation in a market in which firms or sellers independently strive for the buyers’ patronage in order to achieve a particular business objective, for example, profits, sales or market share” (World Bank, 1999) Competition law plays a crucial role in promoting fair competition and protecting consumers in the marketplace. In India, the evolution of competition law has been a long and complex journey, characterized by several legislative and policy changes. The Monopolies and Restrictive Trade Practices (MRTP) Act, 1969 was the first competition law in India. It aimed to control monopolies and limit trade practices that harmed competition. The MRTP Act led to the creation of the Monopolies and Restrictive Trade Practices Commission (MRTPC) to oversee its enforcement². The MRTPC had the authority to investigate and penalize any group involved in monopolistic or restrictive trade practices³. However, many criticized the MRTP Act for not effectively tackling modern competition issues, indicating that a new competition law was necessary. After the economic reforms of 1991, globalization significantly impacted India. This change created a need to update the MRTP Act to align with the fast-changing economic environment. In response, the Competition Act, 2002 was introduced. This new act replaced the MRTP Act and established the Competition Commission of India (CCI) as the main regulator for enforcing competition law in the country.

The evolution of competition law in India is a complex and changing process that has seen significant changes over the past few decades. Several landmark court cases have influenced how competition law is interpreted and enforced in India. The current competition law framework is based on the Competition Act of 2002⁴. The Competition Act is enforced by the Competition Commission of India (CCI), a statutory body established in 2003. The CCI is a quasi-judicial entity that acts as a regulatory agency to prevent and control anti-competitive business practices in India. The CCI enforces the provisions of the Act and promotes competition in the Indian market. Since it was enacted, the Competition Act has undergone several amendments to meet emerging challenges and match global practices. In 2007, the Act was amended to regulate mergers and acquisitions that might negatively impact competition. In 2009, the Act included provisions related to anti-competitive agreements, abuse of dominance,

² Parthaprati Das, Development of Competition law in India, IPLEADERS BLOG

<https://blog.ipleaders.in/competition-law-india/>

³ Mohd Aqib Aslam, *Monopolistic and Restrictive Trade Practices, 1969*, **Legal Service India** <https://legalserviceindia.com/legal/article-7043-monopolistic-and-restrictive-trade-practices-act1969-an-overview.html>.

⁴ Soumi Bandyopadhyay, *From MRTP to Competition Act: An Evolution of Competition Laws in India*, 2 **J. Legal Res. & Juridical Sci.** (ISSN 2583-0066) (Issue 3).

and competition advocacy. A major highlight in the development of competition law in India is the growing emphasis on promoting competition and tackling anti-competitive practices in the digital economy. In 2019, the CCI published a report on e-commerce in India. The report stressed the need for a fair playing field in the online marketplace and the importance of regulating competition in the digital economy.

IV. CASE STUDIES OF ABUSE OF DOMINANCE IN INDIAN DIGITAL MARKETS

On 3rd September 2019, the Supreme Court of India reopened the investigation into the Uber case. This happened after the court dismissed an appeal filed by Uber against the previous order from the Competition Appellate Tribunal (COMPAT). Before looking at the Apex Court's order and its impact on Competition Law, it's important to briefly go over the history of the disputes. Since 2015, the Commission has faced several allegations about Ola and Uber, which operate on an aggregator model. This model is a typical example of a two-sided platform that benefits multiple parties. The companies do not own any vehicles; instead, they use the Internet and a smartphone app to connect drivers with customers seeking taxi rides. Out of the fare paid by the passengers, Ola and Uber keep a percentage, and the rest goes to the driver, who makes money based on the number of trips completed. Allegations against these companies included claims of abuse of dominance through predatory pricing and other unfair practices. The CCI's rulings in the Ola and Uber cases show the difficulties in regulating platform markets⁵. The CCI dismissed the claims in nearly all the cases, mainly because it found that Ola and Uber did not hold a dominant position in the market. The Commission's decision sparked a lot of discussion. Since there are many disputes with similar claims, it is important to concentrate on the key points of the CCI's decision in *Meru v Ola/Uber – Hyderabad, Mumbai, Kolkata and Chennai* had cases where the CCI grouped several complaints against Ola and Uber, dismissing them on June 6, 2018. The author will then analyze the order given by COMPAT in an appeal filed by Meru against Uber in a similar market. *Meru v Ola/Uber – Hyderabad, Mumbai, Kolkata, and Chennai cases* Key Issues and Findings – The Determination of the Relevant Market the Commission's determination of the relevant market in these cases mirrored those in previous cases on the same topic. The Commission defined the relevant product as the market for 'Radio Taxi Services.' It considered factors like convenience, time savings, point-to-point pick-up and drop-off, round-the-clock availability, and predictability regarding expected waiting or journey

⁵ The Competition Act, 2002, Sec 19(6) provides that "the Commission shall, while determining the relevant geographic market, have due regard to all or any of the following factors; namely – (a) regulatory trade barriers; (b) local specification requirements; (c) national procurements policies; (d) adequate distribution facilities; (e) transport costs; (f) language; (g) consumer preferences; (h) need for secure or regular supplies or rapid after - sales services"

time. The Commission stated that for some commuters, radio taxis were not interchangeable with other modes of transport like auto-rickshaws, suburban trains, metros, and private vehicles. Regarding the geographical market, the Commission noted that radio taxi services were very localized. A commuter would generally depend on local transport within the city rather than look beyond it. Therefore, the geographical markets were Hyderabad, Mumbai, Kolkata, and Chennai.

The issue of dominance -

Three important points were raised regarding dominance. First, it was claimed that the companies were dominant individually because they had high market shares. Second, they could be seen as collectively dominant. Third, they might be considered dominant as a group due to shared investors. Regarding the first point, the CCI noted that the market share calculation was based on research conducted by a private firm, Tech Sci. Without questioning the reliability of this report, the Commission pointed to its previous decisions. It stated that high market shares alone do not necessarily indicate dominance. While market share is an important factor in assessing competitive constraints, it is not a definitive measure of dominance. Additionally, there are no clear criteria for determining market share thresholds or a standard time frame that applies in all cases. Under the Act, no numerical threshold is set for assuming dominance. Therefore, the CCI dismissed the claims of dominance in the market by OLA and UBER based on market shares. Regarding the third issue, it was claimed that Ola and Uber were dominant as a group due to shared investors like SoftBank, Tiger Global Management LLC, Sequoia Capital, and Didi Chuxing. Shared investors could mean more financial resources. The CCI looked into whether these shared investors might reduce competition between the two companies. According to the CCI, the two main concerns with common ownership would be an increase in price and a decrease in quality. Another concern was the potential for "coordinated effects," which might allow the companies to collude and earn profits together⁶. The CCI noted that common ownership might weaken competition. Based on these points, the CCI decided that Ola and Uber's dominance could not be proven. Without proof of dominance, issues of abuse would not come up. Therefore, the CCI concluded that there was no case to start an investigation into the matter.

Facebook and WhatsApp Case -

Experts know from e-commerce market research that CCI is more aggressive in launching

⁶ Geeta Gouri & Kalyani Pandya, The Indian Competition Law Experience—Its History and Its (Digital) Future, Indian L. Rev. 276, 276–300 (2020), <https://doi.org/10.1080/24730580.2020.1843316>.

inquiries. 169 Following media reports indicating that WhatsApp had updated its terms of service and privacy policy, CCI has already launched a *Suo Moto* investigation¹⁷⁰ against the company. In order to share user information with Facebook and its subsidiaries, users must now agree to new terms. Relevant market analysis According to CCI, WhatsApp is primarily an over-the-top (OTT) messaging app that has an underlying connection to a smartphone device and mobile number, but it also allows users to communicate individually or in groups. Text messaging and sharing of images, videos, and locations are dependent on mobile internet. In the meantime, Facebook is a social application that connects many users at a time and they get the access to messaging, video calls or messages by sending various pictures, notifications that paves the way for creating and joining various groups⁷. In terms of the relevant geographic market, the motivation behind OTT Communication Apps for smartphones does not change with changes in regions; however, competitive conditions, players, and regulations may vary in different countries. These social network apps connect a large number of users and offer them messaging (or text), video calls/messages, photos, and the ability to join groups. India is the pertinent geographic market for analysis since the competitive conditions are the same throughout the country. According to the Commission, WhatsApp is the most popular app in India. Second, the CCI initially believed that new terms and conditions that were added to data-sharing agreements needed to be examined in a market setting to determine the extent and consequences of it. It directs DG to look into it. Unexpectedly, Facebook and WhatsApp challenged this order in writ petitions submitted to the Delhi High Court (Single bench), which rejected their arguments. An appeal against the aforementioned order was once more filed with the division bench, but it was dismissed. Finally, the Supreme Court heard this case through special leave to appeal. However, in this instance, Facebook and WhatsApp also proved to have wasted their time. The Supreme Court decided that the DG investigation is lawful and that the CCI is an independent authority.

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⁷ *Ibid.*

of images, videos, and locations are dependent on mobile internet⁸. Facebook, on the other hand, is a social networking app that connects a lot of people and offers them video calls and messages, images and give them the option to join groups, receive notifications, and other features related to the relevant geographic market. The goal of OTT communication apps for smartphones is the same regardless of the location, but the players, regulations, and competitive landscape may vary across nations. India is the pertinent geographic market for analysis since the competitive conditions are the same throughout the country. According to the Commission, WhatsApp is the most popular app in India. Two, the CCI was initially of the belief that new terms and conditions, which were included in data-sharing agreements, needed to be examined in a market setting to determine their impact and extent. It directs DG to look into it. Surprisingly, this order was to be contested by Facebook and WhatsApp through writ petitions submitted to the Delhi High Court (Single bench), which rejected the aforementioned Facebook and WhatsApp arguments. An appeal was filed against the aforementioned order once more, but it was dismissed by the division bench. Finally, this was brought before the Supreme Court through special leave to appeal. However, in this instance, WhatsApp and Facebook also proved to have wasted their time. The Supreme Court declared that the DG investigation is lawful and that the CCI is an independent authority.

V. COMPETITION LAW AND ABUSE OF DOMINANT POSITION

The Indian Competition Act of 2002 defines abuse of dominance as the ability of an enterprise to operate in a way that affects competitors, consumers, and the relevant market. In other words, when a company holds dominance, it negatively impacts competitors, consumers, and competition. To assess whether an enterprise is dominant, it is crucial to determine the relevant market, including both the relevant product market and the relevant geographic market. The recently enacted Competition (Amendment) Act of 2023 defines the relevant market as the market that includes all products or services that consumers consider interchangeable due to their intended use, prices, and characteristics. It also states that production or supply is seen as interchangeable by the supplier if switching production between products or services can be done easily and without extra costs or risks in the short term, especially when there are small and lasting price changes. For a market to be effective there should be alternatives available, allowing consumers to substitute products without facing high costs. Likewise, suppliers should be able to switch their products easily. This provision aims to protect the interests of both

⁸ Jain, S. N. "LEGAL RESEARCH AND METHODOLOGY." *Journal of the Indian Law Institute* 14, no. 4 (1972): 490-498. <http://www.jstor.org/stable/43950155>

consumers and suppliers. Therefore, it is vital to understand the relevant product and geographic markets to determine dominance accurately⁹.

In *East India Petroleum Pvt Ltd (EIPL) v South Asia LPG Company Pvt Ltd (SALPG)*¹⁰, the Competition Commission of India (CCI) decided that protecting a dominant entity's commercial interests at the expense of competition goes against the purpose of the Act. The case involved parties engaged in terminal services for oil marketing companies (OMCs). SALPG owned the necessary infrastructure. EIPL claimed that SALPG did not allow it to use the blender independently and insisted it also use its cavern, which led to higher costs. Consequently, OMCs had to use SALPG's services. The parties attempted to negotiate, but these efforts failed. Eventually, EIPL felt it had no choice but to approach the CCI. The CCI ruled that SALPG must allow the use of its infrastructure, provided safety and other requirements are met, but it cannot insist on mandatory use of the cavern. Additionally, the CCI imposed a penalty of INR 19,20,70,000. Thus, unfair conditions in transactions, conditional acceptance of obligations are prohibited as abuse of dominance¹¹. Under the Indian Competition Act 2002, the CCI has significant powers to regulate competition. Specifically, Section 19 of the Competition Act 2002 gives the CCI the authority to investigate the dominant position of an enterprise. When assessing this position, the CCI must consider several factors, including market share, the size and resources of an enterprise, vertical integration, consumer and competitor dependence, market structure, market size, and entry barriers. Furthermore, according to Section 16 of the Competition Act, the Central Government can appoint a Director General (DG) to help the CCI with these investigations. Upon receiving information or a referral from the Central Government, State Government, statutory authority, or on its own, if the CCI believes there is a preliminary case, it can direct the DG to investigate further. Conversely, if the CCI determines there is no preliminary case, it can close the matter and issue an order accordingly, as stated in Section 26 of the Indian Competition Act 2002.

VI. ABUSE OF DOMINANCE IN INDIAN DIGITAL MARKETS

First off, there is no distinct law on digital competition in the Indian legal system. However, the idea of a distinct competition law that applies to digital markets is still being discussed. In light of this, CCI handles cases involving digital competition by utilizing the Indian Competition Act of 2002 and citing other competition laws from the US and the EU. 146 Although CCI has broad

⁹ Article 11 of Regulation 1/2003. Community competition rules are in fact Article 101, 102 of TFEU which aim to maintain undistorted competition in internal market.

¹⁰ Case No. 76 of 2011, Competition Comm'n of India (July 3, 2018)

¹¹ <https://www.mondaq.com/india/antitrust-eu-competition-/739328/cciimposes-penalty-on-south-asia-lpg-company-ltd-for-abuse-of-dominant-position--a-classic-case-of-denial-of-essential-facility> Accessed on 11.05.2023)

discretion, its interpretation and application of the law have been inconsistent and uncertain. In *Matrimony v Google*¹², the Matrimony provides an online platform for people seeking marriage alliances. It has accused Google of creating an unfair marketplace by favoring its own services and partners, which goes against Section 4 of the Competition Act. Along with its search services, Google also offers vertical services like YouTube, Google News, and Google Maps. Google started mixing these vertical services with its search results. For instance, when a user searches for a song on Google, they get links to videos of that song on YouTube. It was also claimed that Google's own sites mainly show up in search results. Additionally, Google's acquisition of software products to support its vertical integration indicates a desire to limit competition. The Commission noted that while the Act does not specify a market share threshold for presumed dominance, Google's market share, which exceeds that of its closest competitor, clearly shows its dominance in the relevant market.

Prima Facie Case

According to Section 26 of the Competition Act, the CCI directs the Director General (DG) to conduct an investigation only if there is sufficient initial evidence based on the material presented to it. Several cases have been closed during preliminary reviews because the CCI did not want to interfere with innovative markets¹³. In the case of *Vinod Kumar Gupta v WhatsApp*¹⁴, the CCI determined that WhatsApp is a dominant player but decided to drop the case, citing no abuse of its dominant position. The CCI overlooked the network effects that WhatsApp benefits from, which make it difficult for users to switch to other platforms. Network effects also serve as a barrier to entry since competitors or new players must attract a large number of users to switch from the existing platform¹⁵.

VII. CHALLENGES AND ISSUES IN ENFORCEMENT OF COMPETITION LAW

- In view of the dynamic nature of competition, and especially the need to preserve incentives to invest and innovate, finding the appropriate scope of competition enforcement in digital markets is a controversial issue. Some believe that competition authorities should not intervene in fast-moving, technology-driven industries, as the cost of intervention would generally outweigh the potential benefits. At the opposite end, others argue that a timely

¹² In re: Case Nos. 7 & 30 of 2012, Competition Comm'n of India, <https://www.cci.gov.in/antitrust/orders/details/746/0>

¹³ Shilpi Bhattacharya & Pankhudi Khandelwal, *Indian Competition Law in the Digital Markets: An Overview of National Case Law* (July 29, 2021), <https://ssrn.com/abstract=3897291> or <http://dx.doi.org/10.2139/ssrn.3897291>

¹⁴ CCI case No. 99 of 2016, <https://cci.gov.in/antitrust/orders/details/338/0>.

¹⁵ Sinha & S. Srinivasan, *An Integrated Approach to Competition Regulation and Data Protection in India*, 9 *CSI Transactions on ICT* 151, 151–58 (2021), <https://doi.org/10.1007/s40012-021-00334-7>

intervention is needed; although in certain cases this cannot be enough to prevent or discipline market power of digital giants¹⁶, a broad consensus emerged, that competition law plays a significant role in the digital economy, particularly as these markets grow up. To prevent and discourage anti-competitive behavior that would otherwise impede the process of dynamic competition, competition law enforcement may be required.

- Competition authorities may encounter a number of difficulties when implementing competition law, which could have an impact on their use of both empirical tools and the conventional analytical framework. Some of the primary difficulties will be reviewed by turn in the next section.

- The application and enforcement of competition law in India are beset by a number of difficulties. These issues, which stem from a number of causes, present major obstacles to accomplishing the goals of fostering fair competition and safeguarding the interests of consumers. The intricate and ever-changing Indian market is one of the main obstacles. Because of its enormous population, wide range of industries, and regional differences, evaluating market structures and anticompetitive behavior becomes intrinsically difficult.

1. How to define the relevant market?

The relevant market's boundaries are typically used to evaluate market power and analyze the effects of competition. Conventionally, the first step is to define the relevant market, which forms the basis of the analysis that follows. However, as previously stated, digital companies often redefine market boundaries or create new markets, so this traditional approach isn't always applicable in digital markets. For example, traditional analytical tools frequently give a static view of the relevant market and may not be effective when services are provided for free, like on a social network. A modified version of the SSNIP test is suggested by a number of authors. By taking into account product, geographic, and other factors, the Small but Significant Non-transitory Increase in Price Test (SSNIP Test) seeks to identify the pertinent market. time, and place. Starting with a single product as the smallest market definition, this test expands it to include other comparable products based on a substitutability analysis. Until a hypothetical monopolist could profitably raise the price by 5 to 10 percent, the SSNIP test keeps broadening the definition of the market¹⁷.

This means end-users cannot or will not switch to other products or regions because of a price

¹⁶ M. Kadar, *European Union Competition Law in the Digital Era (2015)*, presented at OECD Hearing on the Digital Economy (2012)

¹⁷ Dr. Tilottama Raychaudhuri, *Abuse of Dominance in Digital Platforms: An Analysis of Indian Competition Jurisprudence*, 1 CCI J. Competition L. & Pol'y 1, 1–27.

increase. Also, suppliers from different products or regions cannot easily change their production to compete with the hypothetical monopolist. If the price is zero, a 5 to 10 percent increase still results in zero, so the test fails. The modified SSNIP test should consider the two-sided nature of the market and include the network effects between both sides. In a two-sided non-transaction market, we need to look at the profitability of raising prices on each side. In a two-sided transaction market, it's crucial to evaluate the profitability of increasing the overall price level, which is the sum of the prices paid for the transaction by both parties. How to assess market power? Under the traditional framework, after defining the relevant market, authorities typically rely on quantitative indicators, like concentration ratios, market shares, price levels, or profit margins, to determine if a firm is dominant. Because of the unique and ever-changing nature of digital markets, we cannot establish market power based solely on high market shares. In innovative markets, high market shares do not always indicate market power, as incumbents are often challenged by new entrants. Thus, there is no guarantee that market share will stay high for long. Therefore, market power or dominance in digital markets, like the definition of the relevant market, can change quickly over a relatively short time. How to distinguish anticompetitive motives from normal business strategies? Along with assessing dominance, it can be hard to determine if market power leads to competition issues through exclusionary or exploitative actions. Similar to vulnerable and weak market positions, digital business models can easily blur the lines between pro-competitive and anticompetitive practices. Because of this, competition authorities need to find ways to differentiate anticompetitive behavior from normal business strategies. Currently, there is still no empirical evidence on how algorithms affect actual prices and the level of competition in real markets. This is an area where future research will be valuable to inform the policy choices governments will face. However, as more processes become automated and more transactions go digital, we can expect the use of algorithms to become more common in the future. With that, challenges are likely to arise for agencies when enforcing standard antitrust tools, as well as an increase in the risks associated with collusion.

2. How to evaluate mergers?

Because the acquisition of a smaller company may reduce future competition, evaluating mergers that impact the digital space can be especially difficult. The possibility of being purchased by a larger company can also encourage businesses to innovate, even though it is unclear what the long-term effects of some recent mergers by digital multi-platform operators will be. The dynamic equivalent of acquiring a maverick competitor who can always start a price war, however, might be acquiring a potential disruptor. Therefore, expanding the

definition of a maverick competitor in a dynamic setting would be necessary for a merger involving a small business¹⁸.

VIII. RECOMMENDATIONS AND POLICY IMPLICATIONS

Creating New Instruments for evaluating Competition

Since digital markets are always changing, each situation must be examined separately. To improve comprehension and evaluation of these markets, some general mechanisms could be created. These includes –

- Development of tools to define markets where many sales happen through barter transactions and to assess the quality-adjusted price paid for a good or service exchanged in a barter transaction with little or no monetary value. In digital markets, barter payments are common. For example, customers share their personal information and preferences. The platforms then engage in targeted advertising and sales based on this information. If digital markets are profitable, it suggests that information has a market price and is more valuable than the cost of services.
- Mechanisms to evaluate potential competition from new firms and future innovators. In digital markets, high concentration levels, network effects, and control over data make it difficult to remove a firm once it gains dominance.
- Defining two interrelated markets in the case of platform markets. Market definition is tricky in platforms, which have multiple sides. Since users on different sides may have different interests, defining a single two-sided market in every case can complicate the analysis.
- Mechanisms to address and evaluate how technology platforms can exploit consumer biases and keep consumers attached to their platforms by making it hard for them to switch to alternatives. Recent Google decisions in the EU have tackled various strategies used by digital platforms to keep consumers locked in and have provided valuable insight into behavioral economics and consumer choices.
- The law on predatory pricing needs to be expanded. Predatory pricing laws have been designed to prevent over-enforcement. For digital platforms, the average variable cost test is outdated since the marginal cost of goods or services can be close to zero.

¹⁸ Competition Commission of India, *Market Study on E-Commerce in India: Key Findings and Observations (2020)*, https://www.cci.gov.in/sites/default/files/whats_newdocument/Market-study-on-e-commerce-in-India.pdf.

Therefore, the law must be updated to effectively address anti-competitive practices in these markets.

- The analysis should begin with a review of the company's business model, which explains how a business generates profits and how other businesses or business models might steal those profits. Relying less on traditional indicators like market shares or profit margins and more on indicators that provide information about contestability, such as the existence of entry barriers, the availability of alternative routes to reach end users (including the presence of measures aimed at locking-in end users), and the level of innovation in unexplored technologies/services, this approach enables better accounting for interdependencies between multiple platforms and the interactions between firm conduct and market boundaries.

IX. CONCLUSION

The Indian legal system for addressing abuse of dominance in digital markets is still developing. The Indian digital sector has grown, but there are many anticompetitive practices by big tech companies and dominant players. Without a clear legal framework for the digital market, the Competition Commission of India (CCI) is doing its best to manage the anticompetitive behaviors of these dominant groups. CCI has ruled on several cases related to digital markets, including those involving WhatsApp, Facebook, and Google. Despite recent developments, CCI orders, and market studies, the Indian legal system urgently needs a digital competition bill. There is hope for progress in this area, as the Ministry of Corporate Affairs and the Committee on digital competition law are collaborating to create a digital competition law. This law aims to regulate dominant companies and control their abuse of dominance to ensure fair competition in digital markets. There is an expectation that India will soon have its own Digital Competition Act.
