

Abuse of Dominant position in digital market: An analysis under the Competition Act, 2002

¹Deeksha Upadhyay, ²Aditi Mishra

¹*Quantum University*

²*Assistant Professor, Quantum University*

Abstract—The rapid evolution of digital markets has changed a lot the way we understand competition law with a great focus on market power and dominance. In sharp contrast to regular industries, digital ecosystems are mainly set up through a platform-based business model where besides the economic transaction, the collection and processing of user data have become very important. Moreover, network effects that increase the value of platforms as more users join them and data concentration are factors that have enabled dominant firms not only to strengthen their position but also to affect consumer behavior. Therefore, one of the key issues is the extent to which the Competition Act, 2002 is capable of dealing with the concept of abuse of dominant position.

Here a study is presented on how Indian competition law can adjust to the changes that are happening in digital markets. The paper looks at evolutions of multi-sided platforms like e-commerce marketplaces, search engines, and app-based services, which typically provide goods or services free or at very low prices but monetize their business by collecting data, targeted advertising, and controlling algorithms. A setup like this makes the whole process of identifying market power quite challenging where the competition is no longer indicated mainly by price. The research throws light on some major issues such as algorithmic pricing, self-preferencing, exclusive agreements, and data-driven entry barriers. In addition, the research discusses how heavy investments and dominance over digital infrastructure lead to market concentration and create barriers for the newcomers. A comparative perspective is also adopted for recognizing worldwide regulatory practices and pointing out the gaps in the Indian legal system.

In the end, it is mentioned that maintaining fair competition in digital markets cannot be achieved without a legal framework that is both dynamic and capable of evolving, in order to effectively deal with the intricacies of data-driven economies and the dominance of platforms.

Index Terms—Abuse of Dominant Position, Digital Markets, Market Power, Platform-Based, Business Models, Data Collection and Processing, Network Effects, Data Concentration,

Algorithmic Pricing, Self-Preferencing, Exclusive Agreements, Data-Driven Entry Barriers, Market Concentration, Competition Law, Competition Act, 2002

RESEARCH QUESTION

To what extent does the Competition Act, 2002 effectively regulate abuse of dominant position in digital markets driven by data concentration, platform-based ecosystems, and network effects?

I. INTRODUCTION

Rapid expansion of the digital economy has changed the structure and operation of the contemporary market fundamentally and quite significantly. It has put the competition law principles that have been traditionally accepted and followed to the test. Over the last few years, players of the digital space including e-commerce marketplaces, search engines, and app-based service providers have emerged as the main players of the industry who operate in the highly complex ecosystems of multiple sides. Physical industries have been focusing on prices only to determine competition between players, but the digital sector has been found to be driven by other factors that aren't related to prices, such as data control, network effects, and platform-based business models. The notion of "dominant position" has been redefined and questions regarding its meaning and regulation under the Competition Act, 2002 have come up quite reasonably in this regard. The Competition Act, 2002 especially Section 4 thereof, intends that enterprises should be prevented from misusing their dominant position in such a manner that it is detrimental to the competition. However, the enforceability of these legal provisions against digital markets is fraught with difficulties and complexities.

Digital platforms usually offer a variety of services in exchange for no money at all whereas they can make a big economic profit by means of collecting personal information, putting advertisements that are tailor-made to the needs of the customers, and making decisions based on algorithms. Such a change makes the traditional evaluation of the market power that relied on price as the main factor of dominance difficult. What is more, it is the control over user data, technology infrastructure, and consumer engagement that has become the key elements of determining market power.

Besides, digital markets are greatly determined by network effects, which mean the more users join a platform, the higher its value will be, and this mostly results in market concentration and 'winner-takes-most' scenarios. On the one hand, these conditions lead to very high barriers to entry for new players. On the other hand, well-established companies are allowed to strengthen their dominance. Apart from that, self-preferencing, exclusive agreements, and algorithmic pricing are practices that have come out to be new kinds of anti-competitive behavior, which in turn have led to concerns about the transparency and the accessibility of the market. Such changes have brought to the fore the question of whether existing competition law regimes are capable to deal with them effectively as they were mainly built upon traditional market structures. The Competition Commission of India plays a very important role in this changing environment. As the main

regulatory body, the CCI has the responsibility to find and deal with the abuse of dominant position. Although the Commission has tackled the competition issues in digital markets quite well, it is still not clear if their methods are sufficient and consistent, especially when it comes to defining relevant markets and measuring dominance in the tech industry. Considering this, this paper is an attempt to look at how far the Competition Act, 2002 really controls the misuse of dominant position in the digital markets which are characterized by data concentration, platform-based ecosystems and network effects. It is a paper which attempts to analyze the weaknesses of the current legal provisions, study the enforcement practices and discuss the requirement for a regulatory framework which is more adaptable. It also offers a critical engagement with the current challenges and comparative perspectives so as to contribute to a wide discussion on competition law reform to meet the needs of the digital economy realities.

II. LITERATURE REVIEW

Recently digital markets have evolved at an unprecedented pace and, as a result, have deeply challenged the old ways of competition law, especially in how we look at market power and the abuse of dominance under the Competition Act, 2002. This change has led to an intensive scholarly discussion on whether the existing laws are sufficient to deal with the complexities of data-driven economies. Current writings highlight that digital markets are structurally different from traditional markets because they depend on platform-based business models, multi-sided interaction, and non-price competition¹. For example, services are often delivered without charging any money, but the companies make money by collecting data, advertising to target audience, and using algorithms to process data². According to research done by Crmer, de Montjoye, and Schweitzer, the gathering and control of huge sets of data has become the main way in which firms can exercise market power. Thus, it makes sense that the focus should first be on price analysis in order to gauge market power. However, this focus could be expanded to include considerations of data dominance, network effects, and user lock-in mechanisms³. Furthermore, network effects are among the most important elements that characterize digital markets. They create a situation in which the more users a platform has, the more valuable it becomes to each one of them. This, in turn, results in a "winner-takes-most" situation and very high barriers to entry for new competitors⁴.

The system ends up favoring big tech firms because they combine platform control with direct competition, using their own tools to keep rivals out. This isn't just about size - it's about how they structure operations so that every feature serves their interests, giving them both the ability to set rules and enforce them without facing fair competition⁵.

¹ OECD, *Rethinking Antitrust Tools for Multi-Sided Platforms* (2018).

² OECD, *The Role of Data in Competition Policy* (2019).

³ Jacques Crémer, Yves-Alexandre de Montjoye & Heike Schweitzer, *Competition Policy for the Digital Era* (European Commission, 2019).

⁴ David S. Evans & Richard Schmalensee, *Matchmakers: The New Economics of Multisided Platforms* (2016).

⁵ Lina M. Khan, *Amazon's Antitrust Paradox*, 126 *Yale L.J.* 710 (2017).

Indian courts struggle with applying Section 4 of the competition Act, 2002, since determining whether a company holds dominance is slow and outdated when dealing with fast-moving online services. That said, identifying where a business actually operates becomes nearly impossible when platforms connect dozens of services under one roof.⁶ Without clear prices to measure fairness, regulators cannot judge if companies are abusing power, mostly when data access and algorithms become the real tools for blocking smaller players⁷. As it happens, even free apps often build barriers through hidden controls that make entry tough for new competitors. Some scholars believe that this difference in decisions is because the Commission does not have an approach that is suitable and specific to digital markets, therefore it had to base its reasoning on the common principles which are equally applicable to all markets but may not well capture the realities of technological development⁸.

In fact, it has been widely recognized that many of the anti-competitive activities which are common in traditional markets are carried out, as well as a number of new ones that are peculiar to digital markets such as algorithmic pricing, self-preferencing, exclusive agreements, and data-driven entry barriers⁹. To illustrate, algorithmic pricing has drawn serious attention to tacit collusion issue on the part of the pricing algorithms who may be able to coordinate the market behavior without any explicit human intervention thereby going beyond traditional notions of agreement in the competition law¹⁰. On the other hand, self-preferencing practices in which platforms give priority to their own products or services over those of competitors have been a target of criticism due to the fact that such practices lead to unfair competition and barrier of market access¹¹. Exclusive arrangements and preferential treatment of certain sellers contribute to the problem by reducing consumer choice and strengthening the position of dominant firms¹². Also, researchers have pointed to data-driven entry barriers as a major hurdle for new entrants, given that access to huge datasets is often a prerequisite for effective competition in digital markets, thus resulting in a structural disadvantage for smaller companies¹³. Moreover, data accumulation by large firms results in feedback loops that buttress their market power, thus making it progressively harder for competitors to dislodge these dominant players, according to Stucke, Grunes, and other scholars. Investment in and control of the digital infrastructure by major players has also been a subject of significant debate within the literature. Authors point out that although substantial investments in technology and innovations are essential for the growth of digital platforms, such investments can also lead to market concentration and insularity from competitive forces.

The practice of "killer acquisitions," where big players buy potential competitors to get rid of any future competition, has been identified as the source of a number of worries, especially with regard

⁶ Whish & Bailey, Competition Law (2018).

⁷ OECD (2020).

⁸ Shreyas Narla (2023).

⁹ OECD (2020).

¹⁰ Ezrachi & Stucke, Virtual Competition (2016).

¹¹ European Commission (2017).

¹² OECD (2019).

¹³ Stucke & Grunes (2016).

to start-ups and emerging tech¹⁴.¹⁶ This nexus between investment and competition has brought forth major policy questions about how to weigh encouraging innovation and preventing monopolistic behavior¹⁵. Some authors have even put forward a call for tighter merger controls to counter these practices, emphasizing the tension between progress and market fairness.

Comparative research reveals more about changes in the regulation of the digital space, for example, the European Union, which has laid down ex-ante rules to fix the digital market structure problems¹⁶. The European Commission having a forward-looking attitude, amongst other things, launching the Digital Markets Act, shows a change in mindset towards regulations that prevent, rather than punish, non-competitive behavior in that, for example, platforms could be ordered to take certain actions before any misconduct happens¹⁷. It has been proposed by the academics that this line of thinking could be of great help to India where at present the emphasis in the Competition Act, 2002 is mainly on ex-post enforcement and such an enforcement pattern might not be adequate for the velocity at which changes are taking place in the digital sphere¹⁸. Nonetheless, in India, regulatory practices along these lines, if taken up, would be a matter of a serious debate and have faced criticism for possibly over-regulating and harming innovation and economic growth¹⁹.

India's enforcement actions rarely show clear results, In particular when measuring outcomes across different tech sectors²⁰. Data privacy rules often clash with competition policies, and few studies actually track how they interact in real-world settings²¹. The way dominance is defined online - Mainly on platforms serving multiple user groups, is still murky²². Scholars debate whether new regulations should target data access or pricing structures. With little clarity on which approach works best²³. As it happens, cross-market behaviors complicate traditional market power assessments. So far, no single model captures how companies influence users through both services and information flows. That said, even well-known legal systems end up falling short when applied to fast-changing digital environments²⁴.

Generally speaking, the studies reveal that although the Competition Act, 2002 lays down a basic structure for dealing with abuses of dominant positions, its enforcement in the case of digital markets is likely to be complicated by aspects of data concentration, network effects, and platform-based business models²⁵. The legal setting in place, even though it is theoretically adaptable, needs a deeper and more tech-savvy interpretation to tackle the regulation of new types of anti-

¹⁴ OECD, Killer Acquisitions (2020).

¹⁵ Kwoka (2015).

¹⁶ European Commission (2022).

¹⁷ Digital Markets Act (2022).

¹⁸ OECD (2021).

¹⁹ Scott Morton Report (2019).

²⁰ Narla (2023).

²¹ Stucke & Grunes (2016).

²² Evans & Schmalensee (2016).

²³ Cremer Report (2019).

²⁴ OECD (2020).

²⁵ Competition Act, 2002.

competitive behavior effectively. Academics are still debating whether just patching up the existing laws will do the trick or totally new regulatory changes will be needed.²⁶ However, it is pretty much agreed upon that competition law has to evolve at the same speed as the digital economies that are being transformed rapidly²⁷.

III. RESEARCH METHODOLOGY

This research paper is mainly doctrinal (analytical) in nature focusing on the abuse of dominant position in digital markets as per Competition Act, 2002. The study's main source is secondary resources like statutory provisions, case laws, academic literature, policy reports, and commentaries on competition law and digital markets. The research first of all comprehensively studies the legal provisions relating to abuse of dominance with a special focus on Section 4 of the Competition Act, 2002. It goes on to discuss how traditional legal concepts such as relevant market, dominance, and abuse are given new meanings in the context of digital platforms. Besides, the study has also reviewed judicial decisions and orders of the Competition Commission of India to understand the law's actual implementation. On top of this, the research takes help from academic papers, international organization reports, and comparative legal analyses to highlight issues such as data concentration, network effects, and platform-based business models. A comparative approach has been used to look at regulatory changes in other countries, especially concerning digital competition frameworks, to help pinpoint deficiencies and propose measures for the Indian scene. The study is qualitative and primarily concerned with a critical discussion rather than collection of new empirical data. It aims to assess whether the legal provisions at present are sufficient and capable of curbing anti-competitive behaviors in digital markets. Besides, the use of only publicly accessible secondary materials and the continually changing regulatory environment of digital markets that might lead to ongoing legal and policy changes represent some of the study's limitations.

On the whole, such a method offers deep insights into how competition law and digital markets are interlinked. Further, it lays down a solid groundwork to assess if there is a need for legal and regulatory changes.

IV. CASE LAWS

The issue of misuse of dominant position in digital markets is a topic that has increasingly been discussed through judicial and regulatory decisions. These decisions reflect the evolving interpretation of competition law under the Competition Act, 2002²⁸. These cases provide us with an in-depth comprehension of how fundamental legal principles are being reshaped to address the problems of data-driven and platform-based economies. In this regard, a very prominent case is

²⁶ Cremer Report (2019).

²⁷ OECD (2020).

²⁸ Competition Act, 2002

Google LLC v. Competition Commission of India (Android Case)²⁹, in which the court held that Google had imposed restrictive conditions on the manufacturers of mobile devices for the preinstallation of its apps such as Google Chrome and Google Play Store. The key issue for the regulator was whether these tying arrangements constituted an abuse of dominant position. The Competition Commission of India found that Google had exploited its dominant position by monopolizing the Android operating system to the detriment of competition.

This example is very important in the context of digital markets as it shows that through practices like ecosystem control and preinstallation, a company can dominate the market without even touching the price element directly. This, in turn, highlights non-price factors such as data control and platform control.

One such decision that made a significant impact on the law of digital competition in India is the case of Matrimony.com Ltd. v. Google LLC, popularly known as the Google Search Bias case³⁰. Here, it was alleged that Google manipulated its search algorithms to elevate its own services above those of competitors. CCI ruled that this behavior is an abuse of dominant position as it leads to unfair competition in the online search market. This judgment highlights the issue of a firm favoring its own products, a concern that is central to the enforcement of competition law in the digital environment. It shows how controlling the algorithm can have a major impact on market results and limit consumer choice. The issue that the tribunal examined in MCX Stock Exchange Ltd. v. National Stock Exchange of India Ltd³¹. was, whether the National Stock Exchange having offered its service at zero price to eliminate competition was a case of predatory pricing. The tribunal was of the view that such pricing tactics amount to abuse of dominant position. This case might not be involving a digital market per se but it is very much relevant as it lays down that selling below cost price and/or at zero price can be anti-competitive which is extremely important in the digital markets where the free-of-charge model of services is very common.

Besides, in Delhi Vyapar Mahasangh v. Amazon Seller Services Pvt. Ltd. & Flipkart Internet Pvt. Ltd.³². it was alleged that the top e-commerce platforms were involved in deep discounting, giving preferential treatment to a few select sellers, and signing exclusive agreements. The CCI observed a prima facie case and directed an investigation. This matter is significant as it plainly exhibits how dominant platforms, data superiority, preferential arrangements can distort competition and raise entry barriers in digital marketplaces.

Lastly, in Fast Track Call Cab Pvt. Ltd. v. ANI Technologies Pvt. Ltd. (Ola Case)³³, the CCI looked into charges of predatory pricing and abuse of dominance against Ola, but it opined that Ola was not dominant in the relevant market. This case is notable for pointing out the challenge of determining the relevant market and proving dominance in the case of digital platforms, where the players operate in overlapping markets and user bases.

²⁹ Google LLC v. Competition Commission of India (Android Case), CCI Order (2022).

³⁰ Matrimony.com Ltd. v. Google LLC, CCI Order (2018).

³¹ MCX Stock Exchange Ltd. v. National Stock Exchange of India Ltd., COMPAT (2011).

³² Delhi Vyapar Mahasangh v. Amazon Seller Services Pvt. Ltd. & Flipkart Internet Pvt. Ltd., CCI Order (2020).

³³ Fast Track Call Cab Pvt. Ltd. v. ANI Technologies Pvt. Ltd., CCI Order (2017).

V. FINDINGS AND OBSERVATIONS

Looking at abuse of dominance in digital markets under the Competition Act 2002 it is clear that although the law lays out a basic structure for controlling anti-competitive behavior, its implementation in the digital economy raises a number of very tough challenges. A main conclusion, for example, is that conventional criteria for measuring market power, namely relying on price mechanism, no longer suffice to check dominance in digital markets. Digital platforms, for instance, may offer, as part of their business model, free-of-charge services to users but make money through the gathering of user data, targeted advertising and use of algorithms. The traditional notion of market power therefore needs a major expansion to include that control over data, user engagement, and technological infrastructure are all factors affecting market power which are not related to price. Even more importantly, the role of collecting data and of network effects in a platform reinforcing its dominant position is highlighted. Thanks to strong network effects, digital platforms, for instance, rely on the principle that an increase in users raises the value of the platform, leading to a self-reinforcing cycle and to market concentration. This basically leads to "winner-takes-most" scenarios which almost certainly pose challenges for new entrants to competing effectively.

As a result, having a dominant position in digital markets does not simply depend on how much of the market a company controls but it is closely related to how much data they control and how they use that data in different services.

Also, the paper reveals that figuring out the "relevant market" for the purposes of digital sector is quite tricky. To begin with, unlike conventional markets wherein the players are well delineated, digital platforms not only serve multiple interconnected markets but also cater to different groups of users, which makes the task of drawing clear boundaries really challenging. Consequently, this uncertainty often leads to difficulties in applying the concept of dominance under Section 4 of the Competition Act, 2002. Besides that, looking at how things have been going, it seems that the Competition Commission of India (CCI) has been trying to figure out the best way to deal with the new digital reality; unfortunately, without a set digital-specific framework, the decisions have been all over the place.

Besides that, the authors point out that new types of anticompetitive behavior have surfaced which are characteristic of digital markets. Among the most highlighted practices are self-preferencing, algorithmic pricing, exclusive agreements and giving preferential treatment to certain sellers. All these have seriously raised issues as to how fair the markets are and whether people do have accesses. Quite often these kinds of behavior are so subtle and so technologically advanced that traditional competition law methods can hardly detect and regulate them.

VI. SUGGESTIONS AND RECOMMENDATION

Considering the difficulties encountered in regulating the abuse of dominant position in digital markets, it gets a lot more critical to provide more workable solutions by leveraging existing provisions under the Competition Act, 2002 to the changing dynamics of data-driven economies. The Act clearly works as a good base. But, additional interpretation with modification of structural components are needed to make the Act more effective in digital markets.

For instance, one of the simplest ways to start would be to revise market power assessment way by taking traditional price-based measurement as only one among several indicators. Apart from prices, competition authorities would also need to include factors like data control, user engagement, network effects, and technological capabilities when identifying dominance. This will lead to a more grounded measurement of market power in the cases where digital platforms are the ones that offer their services almost without any charge to the end users.

The third is that revisiting the 'relevant market' notion is mandatory when dealing with multi-sided platforms. Digital enterprises appear in multiple markets that are highly interrelated and So, strictly defined markets become a poor characterization of the world. So a more flexible and responsive way should be worked out, which among other things, will consider cross-market interactions and ecosystem-based dominance. Thirdly, developing digital-specific guidelines is a quite a pressing matter for the Competition Commission of India. For example, clear guidelines on the topics such as self-preferencing, algorithmic pricing, data-driven entry barriers, and platform neutrality would help the consistency of the enforcement and decision-making could be less ambiguous. A further critical suggestion is the implementation of ex-ante regulatory mechanisms like other jurisdictions. This means that apart from solely based on ex-post enforcement (taking action after harm has occurred), regulators must also intervene and regulate dominant digital platforms by imposing certain obligations beforehand. Such obligations may include prohibiting unfair data practices, requiring the disclosure of algorithms, and limiting preferential treatment.

Besides, invigorating the merger control regulations is highly necessary as it is related to "killer acquisitions", a situation whereby dominant firms buy potential competitors to get rid of future competition. Besides turnover thresholds, mergers' assessment should also focus on factors like data acquisition and possible competition effects. Data monopolies and consumer harm often go unaddressed because competition law lacks lesson into how data drives market power. That's why integrating data protection rules helps regulators spot unfair practices earlier. Regulatory bodies struggle to keep up with fast-evolving digital platforms. The Competition Commission of India must hire experts in data science, artificial intelligence, and digital economics to interpret these new business models right. Anti-competitive behavior spreads across borders quickly. By working with other countries and studying their laws, India can adapt proven tools to local conditions instead of starting from scratch. In summary, a well planned and anticipatory regulation is essential to guarantee that competition law progresses with the emergence of new technologies. If following these suggestions, India will be able to establish a competitive digital environment that not only encourages innovation but also protects consumer interests and market integrity.

VII. CONCLUSION

With the fast growth of digital markets, our traditional notion of competition law and market dominance has been changed a lot. Different from ordinary markets, digital platforms are based on data and platform-driven business models whereby the market power is greatly influenced by elements like network effects, user data, algorithmic control, and the technological setup. Because of this, the idea of abusing a dominant position as the Competition Act, 2002 has attained a new level that calls for a more flexible and tech-savvy interpretation. This paper goes on to explain that even though the Competition Act, 2002 lays down the basic legal provisions to curb anti-competitive behavior, the issue of its enforcement in digital markets is still very complicated and difficult. The standard ways of determining dominance, in particular those which rely on the patterns of pricing and market shares, are very often not good enough in digital ecosystems where services are generally offered free and the main source of competitive advantage is data concentration and network effects. That's why, it is quite a challenge to figure out what market is relevant and how to recognize abusive behaviors on digital platforms. The study also points out that activities like self-preferencing, algorithmic pricing, exclusive agreements, preferential treatment, and data-driven entry barriers have become significant issues in digital competition law. Judgments and regulatory orders on the likes of Google Amazon Flipkart, and Ola show that the Competition Commission of India has made significant moves in uncovering anti-competitive behaviors in digital markets. Yet, without a unified digital-specific system and with technology evolving swiftly, daunting enforcement challenges keep on arising. And, research finds that being the market leader in digital markets does not merely rest on having a strong economic position but also on having control over digital ecosystems, consumer data, and technological innovation, which together have led to higher market concentration and formidable entry barriers for new entrants, so harming fair competition and consumer welfare. That is why competition law and policy must constantly change to keep up with the digital economy reality effectively. To ensure fair and competitive digital markets, it is necessary to strengthen regulatory instruments, come up with digital-specific rules, encourage enforcement in advance and bring technological know-how into competition analysis. To sum up, preserving competition in the digital age goes beyond complying with legislation; it is an economic and social obligation as well. A competition law system that can change with the times and is proactive in recognizing future developments is indispensable to reconcile innovation, consumer welfare and market fairness in the digitally-oriented world.

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