



DIGITAL ECONOMY IN THE WORLD OF COMPETITION LAW

Dr. Arti Aneja, Assistant Professor, (Competition & Corporate Law), Campus Law Centre, Faculty of Law, University of Delhi

Abstract- Digital Economy has undoubtedly made an enormous imprint on our day to day social and economic activities. The term can be broadened in its scope that can include all markets focussing on digital platforms and technologies in order to execute various types of trades revolving around data, services and goods. The expansion and development in the digital sector have contributed to the effortless digital trade on platforms that we experience today which go far beyond the rudimentary definitions of “Digitalisation”.

Keywords: Digital Economy, Digitalisation, Digital Market

I. INTRODUCTION

Digital Economy has undoubtedly made an enormous imprint on our day to day social and economic activities. The term can be broadened in its scope that can include all markets focussing on digital platforms and technologies in order to execute various types of trades revolving around data, services and goods. The expansion and development in the digital sector have contributed to the effortless digital trade on platforms that we experience today which go far beyond the rudimentary definitions of “Digitalisation”. This article intends to analyse the major stakeholders of the Digital Market with the objective to address the issues and challenges posed at Competition and Anti-Trust authorities. Further, with reference to formerly recognised sectors and pre-existing assertions made by competition authorities, eminent scholars and academic personalities, the article intends to convey recommendations and provide inputs to combat the above mentioned challenges.

II. SEARCHING THE WEB, SOCIALIZING OR MAKING A PURCHASE- ITS ALL DIGITAL

The article shall elaborate upon the advent and expansion of digitalisation and the evolution of the digital markets by identifying and analysing the key factors that led to the creation and expansion of Digital Markets.

The first and foremost factor that led to digitalisation can be credited to Search Engines and their popularity in the latter part of the 90s and early 2000s. These corporations have emerged as multi-billion dollar business models. Google, the industry leader, stands at 77% dominance of the market share statistics, which are calculated with the number of visits to the website per day and is followed by other engines such as Baidu, Yahoo and Bing!. These search engines earn the majority of their revenues through the advertisements they offer and with enormous numbers of website visits per day, they are by far the most lucrative advertising choice for consumers as well as the vendors. The users agree to the usage of their search data as the terms of usage for these search engines mostly because for reasons of ease of access, while there have been several concerns regarding the legality of such data to be used by third party companies. In response to such allegations of data misappropriation, Google contends that the access to such data is crucial for its operational capabilities and to providing the user with a personalized experience. Google being an advertising company also analyses search-query logs for the purposes of revenue generation, particularly for precise targeting and increased efficiency of its advertisements. Behavioural Advertising forms a dominant characteristic right in the algorithm of the Google Engine that sets it ahead of the herd and makes it the most used search engine on the planet.

The second factor that led to the expansion of digital platforms as means of commerce is the sharp rise in popularity of Social Media. The medium was first introduced as a means of staying in touch with acquaintances, friends and close ones thriving to bring people closer and make connections that are time zones apart. Social Networking platforms vary in their purposes too, Facebook, LinkedIn and Tinder can be taken as examples that cater to a same demographic of users, yet they provide very contrasting services. Facebook prioritises the social connection between people, LinkedIn focuses on professional relations and Tinder caters to the romantic needs of their user base. These Platforms have been under Anti-Trust surveillance for the cutting edge competition of their efforts in procuring and advancing technologies to conquer the market.

The third factor that directly contributed to the growth of digital economy is the advent of platforms that facilitated E-Retail and E-Commerce. The advancement in the telecom sector with faster and reliable network speeds, and overall adoption of internet culture have been some of the key triggers behind the rising popularity of E-commerce in India. It is expected that the volume of commerce through E-platforms can be in direct competition with physical retail vendors in the next 5 years. The Online markets consist of four types of vendors service providers. The first being vendors providing services to end-user in digital form, for example, Netflix, Hotstar etc. The second category of vendors facilitate the search and purchase of good such as Amazon, E-bay, Craigslist etc. they also include travel and hotel booking sites such as Expedia and Make My Trip. The third category comprises of a digital market that exists at the wholesale level where transactions take place between businesses, for example, Reliance e-Biz. The fourth category comprises of online auction sites such as E-Bay, which has been a market leader in the online auction market.

III. CHALLENGES TO COMPETITION AND ANTI-TRUST LAWS

In reference to the above categories of Digital Markets and the background of their major stakeholders, the article shall now summarise in brief about the various hurdles for Ant-trust agents faced by Anti-Trust agencies in analysing Digital markets in contrast to traditional markets.

The definition of Digital Markets includes two categories//platforms that are One sided and the other being multi faceted. The prior includes platforms that serve are operated by a single class of consumers and the latter encompasses the markets where the platform serves two consumers simultaneously. Then there are platforms that cater to the trade demands of multiple parties at once, such as operating system providers like Windows and Mac OS, E-commerce platforms such as E-Bay and they include Social Networking platforms as well. Thus with the advent of multi faceted platforms such as Google and Facebook, traditional yardsticks for investigating and enforcing Anti-Trust Laws have been rendered ineffective thus calling for a need to be altered accordingly, starting with as rudimentary initiatives like the very definition of markets and the redrafting of the scope and ambits of Ant-trust laws for the E-Commerce platforms. However, the course of adapting is a slow and continuous process and the present day analysts still haven't addressed several grey areas that envelop transactional as well as non-transactional Digital Markets. Further in the course of inspecting the Multi faceted platforms there lies the possibility of inability in identifying certain hidden facets to the trade and thus, the organisations that are involved in them. The matter is further worsened by the very dynamic nature of the Digital Marketplace as several newer markets are created as companies venture into diversifying their services. It has been recommended that it is enough to determine a single market as long as all transactions of different platforms take place simultaneously.

Thus leading to raising concerns in terms of assessing the circumstances where there has been alleged use of Dominance and abuse. It requires a different a nuanced interpretation of similar cases with identical *prima facie* facts. The primary objective of Competition Law in India is to ensure healthy competition and create a conducive space for newer players to enter in order to ensure a steady progress of innovation.

Innovative competitors suffer unimaginable hardships to survive in markets with active anti-competitive practices. One of the most debatable anti-competitive practices . Since a majority of digital platforms function on data and its trend as developed by the users. This data is then collected and utilised for the purposes of behavioural advertisements which means selective advertising. Dominant service providers with huge amounts of accumulated data through the years thus making it easier for them to indulge in said exclusive agreements in order to establish monopolistic status in the market.

IV. TOWARDS A COHERENT REGIME

In terms of the market description challenge, the strategy based on fair substitutability needs to be reversed in cases involving the digital economy. It is proposed that when identifying the applicable sector, the competition authorities should take a far more holistic approach. Failure to do so would almost certainly result in erroneous approvals or rejections, which could damage market competition and innovation.

To keep up with the needs of a changing economic climate, benchmark tests and market research tools must be revised. One of the most commonly used methods for this reason is the SSNIP test. Furthermore, the authorities should accept all externalities levied on the remaining parties, with the introduction of a

slightly different SSNIP test that measures the effect of a price adjustment on the firm's overall profitability. However, several questions remain unanswered, such as when one side of a platform subsidises the other, or what happens when one side of a platform subsidises the other. A dominant market position is characterised by the European Court of Justice as a position of economic strength expressed in an economic undertaking that gives it the ability to prevent effective competition in the particular market due to its power of action. It should be obvious that the most relevant issue for competition policymakers is the analysis and interviews or quasi of any dominant player's role in the market.

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Google, Facebook, Skype, and eBay clearly dominate their respective markets, leaving no room for any competitive advantage. It is evident that there will be compelling counter-arguments focused on innovation incentives to any claim made in favour of a firm's market supremacy.

V. CONCLUSION.

In the modern day digitalized economy, key major players such as search engines, E-commerce platforms and social media networks play a dominant role. However, the tactics and techniques of the trade used by these key players have been constantly debated through time in the purview of principles of competition and anti-trust laws so as to hold their strata as they do today. The present tools have somehow been rendered ineffective when it comes to market analysis in so far as investigating these modes whether to be in coherence with the relevant laws.

Competition Law has been a relatively new branch of law for the governance of the market and an attempt to keep India's market free from monopolistic practices. Consequently, the digitalisation of the economy as well has been a curious concept for India as of yet as its markets thrive to find new possibilities for trade and commerce. Thus this area of untapped potential requires thorough attention in order to prevent anti-competitive practices which are a likely consequence to the situation. Various other factors including the dynamics of the digital market, lack of appropriate machinery to determine abuse or dominance effectively and various others contribute to the formation of a legal grey area, which is no different to the Global landscape.

There is no immediate need for structural changes to the law, however, a more refined perspective is required in order to study and investigate into digital market platforms. It is necessary that the business model be referred in order to trace the sources of revenues for the particular player, in so far as investigating of anti-trust activities are concerned. Inspiration can be derived from abroad, especially from European Union anti-trust laws and their regularly released mandates which may be applied to the Indian market, of course with certain case sensitive alterations. Thus with the advent and innovations of newer possibilities in the field of digitalised economy, one must expect several more challenges in the future that shall require the adoption of a dynamic approach in order to ensure a smoother transition of commerce as it enters into total digitalisation.

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