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The Strife of Virtual Reality: Competition and New Age Markets

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ABSTRACT

This article will provide a detailed understanding of the current scenario of the changing trends of competition in the Indian economy. The authors launch into the article by giving a brief introduction to the role of digitalization and updated technology and their effect on the competition in various markets. Competition is a dynamic concept and is subject to different interpretations. There is an emphasis placed on the Competition Laws of India and the OECD (Organisation for Economic Co-operation and Development) principles to provide for a better understanding of the reader. This article further dwells into the challenges that are faced in promoting healthy competition in a digital economy. This is followed by a brief on the method of regulating competition in market structures and other policy measures in casting a positive effect on competition in the digital economy. The authors have then outlined the challenges faced by developing countries and probable responses and remedies. Finally, the authors conclude by stating how the promotion of competition in developing countries such as Germany and the European Commission are already leading the way to it and the effectiveness of their administration.

I. INTRODUCTION

One of the common things in the 21st century is competition. Competition is the basis of any market. It is not static and changes over time as competitors match each other in an area to satisfy the needs of customers at large. The customers value the product/service which forms the basis of competition and perceives a difference between competitors. The traditional markets have gone through a lot of change and the digital market has captivated a major portion of the current market. The major competition issues in the prevailing digital economy and the regulations made to curb anti-competitive practices in the market will be discussed here.

Huge technological companies have transformed the business landscape globally. Competition in the digital markets is different from the traditional markets in a few ways. The competition issues in the digital market are more complex as it includes platform-based business models

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and multilateral markets. As there is a lot of interconnection required in the digital economy unlike the other economic sectors co-ordination and co-operation between firms could be unavoidable. Digital platforms provide several benefits but also possess a colossal amount of consumer data that grants market power. This not only raises competition-related issues but also issues regarding privacy and consumer protection. Advances in communication, data processing, and other market spaces are not merely affecting industries already in existence, but also have an adverse effect on the global value chains, thereby permitting entry of new products and services and preventing traditional products. These trends in economies help deliver benefits and kindle economic growth but they may also increase competition concerns and given rise to a need for new regulative measures

II. CHARACTERISTICS OF DIGITAL ECONOMY:

The primary three characteristics about digital economy are

1. Extreme returns to scale,
2. Network effects, and
3. Role of data.

Extreme returns to scale: The production cost of digital services is relatively much less than the number of customers served. Large retailers are always efficient than the lesser one, especially in the digital globe, this circumstance is pushed to the extreme situations. Information once created can always be transferred or transmitted to a multitude of persons³. This transmission of information serves cheaply to users and rises slowly than number of quantity of users.

Network externalities: It is a situation where the service of a product has one user and the others are using the better product. Positive externalities are when there is an increase in the number of users for the better product. Usually in the e-commerce industry, consumers chose the better platform as they might get few benefits which they might not get from the other competitor. Example – Amazon prime members get two-day delivery option for few products and one-day delivery option for specific products. This makes the consumer use the same product frequently. As a consequence, it is difficult for the new entrant to provide better quality at a lower price than the incumbent and it has the task of convincing the users to migrate to its services.

³ According to <https://newsroom.fb.com/company-info/>, Facebook has 65,000 users per employee as of 30th September 2018

Role of Data: Data has become supreme product in the new age market. Business leaders with so much information out in the world, must be able to delve through the noise and get the right information which will help them make the best decisions about the company's strategy and growth. Eminent platforms have expanded to other businesses with the objective of accessing more data. Example: Google gives its android to smartphone manufacturing companies free of cost, thereby enabling it to collect user data⁴ such as passwords, mail-ids, text messages, user preferences, etc. It also provides many other services such as video uploading and sharing, online payment applications, cloud computing and thereby extracting additional consumer data. It also improves the quality of the search engine services and data sold to advertisers for proper targeted advertising making Google captivating for both users and advertisers.

III. COMPETITION IN THE DIGITAL ECONOMY: MAJOR MARKET PLAYERS

Market dominance in the 20th century was majorly established by the automotive industry. The growth of the automotive industry depended on the use of physical resources such as raw materials, labour, and capital. The situation now is very much different as the dominance is enjoyed by the Big 3 Technological companies - Apple, Facebook, Amazon whose combined online market share is increasing day by day. Google holds about 80% of market share in the field of digital engine services, (Statcounter,2017)⁵, at the same time social media site Facebook holds about 2 billion and active users (Facebook,2016)⁶. Analogously the e-commerce giant Amazon holds about one-third of the online transactions. In 2016 Apple, manufacturer of high-grade electronic devices earned the ninth highest revenues in the world (Fortune, 2017) and there was an estimation that it had made more than 80% of profit in the smartphone market globally. This shows that data is a crucial element of the business models in digital platforms, and market power is conferred to such platforms who have control of such data⁷.

Amazon has been able to establish dominance as an online retailer by its willingness to sustain losses and allowing itself to participate in below-cost pricing. The company has done this by translating its dominance into major bargaining power in the delivery sector, using it to beneficial conditions from third party delivery companies. This thereby enabled Amazon to broaden its dominance over other competitors establishing its own physical service known as

⁴Nicholas Carlson, *Why Google Gives Away One Of Its Most Valuable Assets Away For Free* (Dec 31, 2013, 02:57 AM), <https://www.businessinsider.com/chart-why-google-gives-away-android-2013-12?r=US&IR=T>

⁵ http://gs.statcounter.com/search-engine-market-share_

⁶ <https://investor.fb.com/financials/?section=secfilings>.

⁷ OECD (2019), *"Vectors of digital transformation"*, OECD Digital Economy Papers, No. 273, OECD Publishing, Paris, <https://doi.org/10.1787/5ade2bba-en>.

the fulfilment by amazon service⁸. Retail competitors have two obnoxious choices: either somehow try to compete with Amazon at a prejudice or become subservient on a competitor to manage delivery and logistics.

The market power of digital platforms is further ingrained through vertical integration. Dominant platforms such as Amazon and Apple have expanded their businesses vertically into markets both upstream and downstream. They become competitors to traders and users that use their platforms. These kinds of expansions not only expand its business but also enhances the capacities to collect more data and strengthen their competitiveness. Online commerce promotes greater transparency, makes business easy by dissemination of valuable symmetric information. There are very low entry barriers and there is an opportunity to flourish without hurdles by reducing the power concentration in the hands of one player making it look like perfect competition. This rapid growth is motivated by Big data & analytics and self-learning algorithms. Big data is the voluminous amount of data and big analytics is the ability to design algorithms that can easily access information. These algorithms probe both market and personal data to market data to match shelve prices. This leads to relying on artificial intelligence and algorithmic pricing in order to sustain competitive pressure. A classic example of this is the Google case recently adjudicated upon by the Competition Commission of India (CCI). The competition commission during February 2018 imposed a penalty on Google for abusing its dominant position in the advertisement and online search services⁹. It was found that google was engaging in ‘search bias’ by displaying specialized results – Google’s treatment was preferential of its own sites over competitors. As the search result algorithms of google run on technology company itself, this process is to be mostly to be biased favouring its own sites. Google possesses the flexibility to interrupt the self -learning algorithms and garble the ranks displayed on the SERP (Search Engine Results Page) to its benefit¹⁰.

IV. REGULATION:

There are concerns about the presence of abuse of the market power by various prominent platforms, the extent of control they have on data and the repercussions caused to the society apart from that of consumers. Some platforms out of these have obtained a dominant place over the others and have become indispensable in the lives of consumers, resulting in a restriction

⁸ United Nations Conference on Trade and Development, *Competition issues in the digital economy*, (10-12 July 2019) https://unctad.org/meetings/en/SessionalDocuments/ciclpd54_en.pdf

⁹ Nidhi Singh, *Virtual Competition: Challenges for Competition Policy in an algorithm driven market*, (September 11, 2018) <http://competitionlawblog.kluwercompetitionlaw.com/2018/09/11/virtual-competition-challenges-competition-policy-algorithm-driven-market>

¹⁰*Id*

of choices for the consumers who eventually use the same platforms. This also shows an unwillingness on part of the consumers to switch between platforms. Such platforms are often compared to utilities in the sense that users feel they cannot do without them and so have limited choice but to accept their terms of service¹¹. Another concern that the commission seeks to address is the concept of neutrality. To ensure neutrality amongst competitors, one way is to apply the essential facilities doctrine to the platforms that are dominant. This is identical to the regulation in the telecommunications sector wherein existing firm operates or owns the infrastructure and has its own telephone or mobile operator but still is bound to provide access to the other operators at a fair rate. Applying the essential facilities doctrine here would help prevent any kind of abuse by the platforms operating similar kinds of infrastructures, for example, the Apple application store (Appstore) or the Amazon marketplace, while permitting them to maintain the benefits of scale. Another prominent way of approaching it is to restrict the dominant player from competing with those business platforms that depend on it. For example, Amazon sells products on its own store as the platform and it also competes with other independent sellers whose products are on the same platform. It is therefore plausible for it to exclude or drive its competitors out by predatory pricing or any other technical method. Another major and much-debated idea brought in is to break up the dominant digital platforms, including those large technology companies, in order to mitigate the concentration of dominance in a particular platform¹². This subject has moved beyond competition circles too, for example, election campaigns in some countries, with proposals for breaking up large technology companies to promote competition and safeguard small businesses¹³.

V. POLICY MEASURES

Policy measures in general play a vital role in casting a positive effect on competition in the digital economy while specific legislations adopted by the ministries with respect to trade and the economy also have an impact. For example, the Government of India as a policy decision introduced a legislation, the New E-commerce Rules in 2018 seeking to promote honest competition in the online market but also in order to prevent any form of restrictive practices by any online e-commerce platform like Amazon, Flipkart etc. According to these new rules,

¹¹ Select Committee on Communications, United Kingdom, (March 9, 2019), *Regulating in a digital world*, Second report of session 2017–19, <https://publications.parliament.uk/pa/ld201719/ldselect/ldcomuni/299/299.pdf>

¹² David Dayen, (Dec 26, 2017), *Big tech: The new predatory capitalism*, *The American Prospect* <https://prospect.org/health/big-tech-new-predatory-capitalism/>, and Tim Wu, (November, 2018), *The Curse of Bigness: Antitrust in the New Gilded Age*, <https://globalreports.columbia.edu/books/the-curse-of-bigness/> (Columbia Global Reports, New York).

¹³ Ben Brody and Molly Shuetz, *Warren Calls for Breakup of Tech Companies Like Amazon, Facebook* (March 8, 2019 7:34 PM) <https://www.bloomberg.com/news/articles/2019-03-08/warren-has-plan-to-split-tech-cos-like-amazon-n-y-times-says>.

which are effective ever since 1st February 2019, e-commerce platforms are prohibited from selling any products from those companies in which they have equity interest; those platforms that are required to provide services, including fulfilment, logistics, warehousing, advertisement and marketing, payments and financing to sellers on the platform at arm's length and in a fair and non-discriminatory manner; and they are also not permitted to mandate any particular seller to exclusively sell their product on their platforms¹⁴. These rules were brought out subsequent to complaints from the fellow retailers and traders that huge e-commerce platforms used their control of inventory and chose to create a completely unfair marketplace through their exclusive sales agreements that permitted them to sell some of their products at low prices. These new rules brought in by the Government are aimed at preventing any sort of anticompetitive or abusive practice (including predatory pricing) undertaken by the large e-commerce platforms which may result in the detriment of the small and medium-sized online traders who are also in the same business.

VI. CHALLENGES SPECIFIC TO DEVELOPING COUNTRIES AND POSSIBLE RESPONSES:

Challenges in developing countries are related to assisting local start-ups to enter the digital world where the weak usually end up losing to the strong. Developing countries could work together at the regional level within the trade and economic boundaries. Such territorial arrangements could facilitate intra-territorial trade and could ensure wider markets for local companies. E-commerce, competition, consumer protection policies and rules at the lower level may be more efficacious in solving unfair practices by global digital platforms; the mergers of digital companies ensuring that the powerful remain fair and open to weak companies under fair terms and conditions¹⁵. Comparatively most developing countries have very few and inexperienced authorities with limited resources for dealing with competition cases in a strenuously growing global economy. The rules of the game for platforms need to be clearly set out through regulation, so that there is less need for ex-post competition law enforcement by competition authorities, so that regulations could pre-empt some of the competition concerns ex-ante. Considering the limited resources available to the competition authorities particularly in developing countries, it is important to reflect on such a policy response. Dominant platforms and E-markets are global and affect globally. Therefore, the efforts of locals at the regional level would be equal to the effects, online platforms have on the

¹⁴ Ministry of Commerce and Industry, India, (Dec 26, 2018) , *Review of the policy on foreign direct investment in e-commerce*, Press note No. 2, https://dipp.gov.in/sites/default/files/pn2_2018.pdf.

¹⁵ *Id*

economies¹⁶. Regional frameworks may help the new start-ups to learn from the experiences of more experienced competition agencies within a region. Further, networks such as the International Competition Network and international organizations such as UNCTAD, through the Intergovernmental Group of Experts on Competition Law and Policy, can provide additional assistance and support.

VII. CONCLUSION:

The challenges presented by merger regulations in the digital economy cannot be overemphasized. In as much as the digital economy has resulted in disruptive technologies which have benefited the consumers, they need to be closely monitored in order to ensure that the benefits are not eroded by anti-competitive tendencies. At the same time, care has to be taken to ensure that innovation is not hindered by unnecessary regulation. This will require competition authorities to move fast to develop competition tools relevant to address competition matters in the digital economy. This challenge is not just daunting for developing countries but developed countries as well. However, the developed countries can lead the way as they have resources for such exercises. Germany and the European Commission are already leading the way and the effectiveness of the tools they are developing remains to be seen.

¹⁶ *Id*