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Competitive Advantages and Competition Issues: Analysis of E-Pharmacy Market in India

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ABSTRACT

With the continuous development in the e-commerce market and medicines being a necessary good, the introduction of the e-pharmacies has proved to be a support and advantageous at the time of global pandemic Covid-19. The utilisation of e-pharmacies by patients is on the rise due to the benefits of privacy and ease. Moreover, there are some competitive advantages in the e-pharmacy market when compared to the brick and mortar system, which suggests the long term presence. The competitive advantage when analysed from Porter's Model indicates that the cost leadership and differentiation strategies have been adopted by the e-pharmacies instead of focus strategies. The current market situation of the e-pharmacies when compared to the brick and mortar system manifests the development of potential competition issues due to the amalgamation of e-commerce and pharmaceutical market, currently, the two of the most anti-competitive markets in Indian jurisdiction based on the filed information. The paper highlights the competition issues due to the competitive advantages and data availability in the e-pharmacy market. The identified potential competition issues include fixed trade margins, constraints in the supply chain, preferential treatment, the tying arrangement between doctors and pharmaceutical companies, resale price maintenance data masking, and countervailing power. However, the steps can be taken beforehand, such as advocacy, the inclusion of data privacy, sharing of the algorithm used with the government organisations, and keeping track of the contracts in the supply chain to improve the condition of the market.

Keywords: e-pharmacy, competition issues, competitive advantage, data protection, e-commerce

I. INTRODUCTION

The Indian Pharmaceutical Industry holds the 3rd rank worldwide for the production of pharmaceuticals and 14th by value. The domestic network includes 3,000 drug companies and more than 10,500 manufacturing units (Indian Brand Equity Foundation, 2020). However,

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physical pharmacies have created some challenges, such as privacy, high prices, time-consuming and, accessibility (Chordiya & Garge, 2018). Due to the growth in the internet penetration in India and the increase in the usage of smartphones, the e-pharmacy market has attained a market size of US\$360 million in 2019 and is expected to increase to US\$2.7 billion by 2023 (Healthworld.com, 2019). The Covid-19 pandemic has also resulted in the progression of e-commerce pharmacy or e-pharmacy business. The e-commerce industry too contributed to the growth of e-pharmacy as it plays the role of the platform with wide choices for consumers and improved reach of sellers. The Indian e-pharmacy or online pharmacy market follows three different types of business models, such as inventory led hybrid model (online/offline), franchise led hybrid model (online/offline), and marketplace. Marketplace model or platform model is where a zero inventory model is followed and the e-pharmacy company works as a platform for buyers and sellers. The inventory-led hybrid model of e-pharmacy is where the company owns the inventory of drugs and other multiple sellers are also included on the platform and the buyer is free to choose. Finally, in the franchise led hybrid model, the company has brick and mortar franchise stores and also sells online (Financial Express, 2020). With the support of these business models and struggles faced by the customers in the physical purchase of medicines, the online market is expecting growth in the future. However, in 2019, the health ministry has revised the draft for regulating the e-pharmacies and said that they cannot stock the drugs and have to operate through the retail chain of chemists, although, the approval of the draft is still in process (Abrar, 2020).

Currently, the e-pharmacies are being regulated with the Information Technology Act, Drug and Cosmetics Act and Rules of India, Pharmacy Act 1948, Indian Medical Act 1956, and Narcotic Drug and Psychotropic Substances Act, and others. However, these regulations do not regulate the online sales of medicines and e-pharmacies. Drugs and Cosmetics Rules, 1945 is in process of amendment to regulate the e-pharmacy market, in which 'e-pharmacy', 'e-pharmacy portal' and 'sale by way of e-pharmacy' have been defined. Moreover, in the new draft rule, e-pharmacies are being restricted to sell the habit forming drugs, tranquilizers, narcotics drugs, and psychotropic drug. The complaint redressal mechanism has also been introduced to keep the quality, quantity, and supply of medicines by e-pharmacy in order. However, the draft rule is still pending for approval. The e-pharmacies will be an advantage with this new rule as a single specific rule will be applied to them for regulation and it will help them in smooth operations (Parikh & Sunjay, 2020).

The main focus of this paper is to analyse the competitive advantages in the e-pharmacy market in comparison to the conventional pharmacy stores. The competitive advantage of the

market has been evaluated based on Porter's model of competitive advantage. The paper also descriptively outlines the potential competition issues in the market, as it is a hybrid of e-commerce and pharmaceutical market, which already have numerous competition issues recorded in different jurisdictions, including Indian jurisdiction. Finally, the paper proposes approaches to minimize the competition issue in this market.

II. COMPETITIVE ADVANTAGE MODEL OF PORTER

Figure 1

Three generic strategies of competitive advantage model of Porter

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		COMPETITIVE ADVANTAGE	
		Lower Cost	Differentiation
COMPETITIVE SCOPE	Broad Target	1. Cost Leadership	2. Differentiation
	Narrow Target	3A. Cost Focus	3B. Differentiation Focus

Figure 1-3. Three Generic Strategies

Note: (Porter, 1985)

Competitive advantage is the gain or benefits over the competitors by offering customers different types of discounts or by incorporating the new strategy in the business. As explained in Porter's competitive advantage model, three strategies can be adopted by an organisation, to gain competitive advantage. Cost leadership is a broad scope strategy that consists of a focus on low costs, economies of scale, technology and, preferential access to raw material. The second broad strategy is differentiation which emphasises uniqueness in the services or the product. Finally, the third strategy is "Focus" which is a narrow strategy, in which the organisation concentrates on a narrow or targeted segment. The cost focus strategy applies the concept of cost advantage and the differentiation focus strategy emphasises differentiation in the targeted segment to exploit the special need of the buyer. Porter also explains that the organisation has to identify the type of strategy that will benefit them or due to the

combination of all the strategies, the organisation will be stuck in middle (Porter, 1985). So, organisation has to identify the “Economic Moat”, a term introduced by Warren Buffet, which refers to the continuing competitive advantage strategy based on which the organisation will defend its position in the marketplace (CFI, n.d.). The following section will identify the competitive advantage strategies of the e-pharmacy market and the potential economic moat of the industry.

III. COMPETITIVE ADVANTAGES IN E-PHARMACY MARKET

E-pharmacies follow broader strategies as targeted strategies are for a small group of consumers and all the consumers who require medicines are attracted to or focused by the e-pharmacy. Moreover, under broader strategies, e-pharmacies work on cost leadership instead of differentiation, as medicines are not differentiated products and generic medicines are also available in the market. The product sold by online pharmacies is also not differentiated as the same product is accessible in the conventional pharmacy and due to some legal constraints, the online pharmacies in India are not allowed to sell special types of drugs mentioned above. However, e-pharmacies have differentiation services as the online services provided by them are different from physical pharmacies due to ease of the internet. So, the competitive advantages experienced by e-pharmacy under cost leadership and differentiation strategies are numerous.

Firstly, the online pharmacies work on the inventory-based business model or platform-based business model due to which the operational cost which includes the capital for brick and mortar setup, the rent, the qualified employees, workplace equipment, local marketing are not incurred or incurred on a low scale. Moreover, the online services provided by e-pharmacies reduce the transaction time per customer, which finally reduces the cost. Secondly, online pharmacies operate on a large scale when compared to one local pharmacy in our area. They also secure venture capital and funding on the regular basis due to which they extensively market themselves and also sell the medicines at discounted rates, the fashion followed by all the e-commerce websites. The funds also help them with releasing various schemes such as free delivery or discounted medical testing. Thirdly, the marketing strategies of the online pharmacy focus on the large customer base, regardless of the geographical boundaries. Due to the pandemic Covid-19, customers preferred to order online, as they do not have to go to the pharmacy, wait for the chance, or travel to another pharmacy in case of non-availability of the medicine on the particular pharmacy. With the wide customer base and also coverage of the pharmacies by the platform-based e-pharmacy, the customers had the advantage of

home delivery with less waiting time. Fourthly, the economies of scale achieved by these online pharmacies due to their large customer base are one of the competitive advantages they experience over the brick and mortar system. Fifthly, the online pharmacies provide additional services such as reliable diagnostic services, information about the medicines such as usage, side effects, precautions, and warning. These services are provided free of cost for the sake of customer education by online pharmacies, which is a marketing strategy working in the direction of competitive advantage. E-pharmacies also provide the services of consulting registered doctors online with minimum fees. Sixthly, e-pharmacies help in saving medical costs to the customers as they provide an option to buy generic medicines too, unlike the brick and mortar pharmacies.

Being operated online, e-pharmacies experience some technological advantages that brick and mortar pharmacies do not encounter, which are considered as the differentiation strategies. Online transactions and orders provide them with the advantage of gathering data. The data can later be used for data analytics, which supports the marketing of the online services. The available data can be advantageous for regular updates to the customer for ordering medicines, the stocking of the medicines which are in demand and, the development of a predictive algorithm for future use. The data can also be beneficial for analysing the pattern of order of certain drugs and their over use leading to addiction. The promotion of the digital health system by the Indian Government in which delivery of services and education through online mode is the principal concept will be proved as a competitive advantage too. The low presence of doctors and pharmacies in the rural and semi-urban area with the promotion of digital health system will direct a path towards online pharmacies and online consultation with doctors. The privacy and easy access provided to the customer is an advantage for the patients and a competitive advantage for the online pharmacies possible due to the operation over the internet. The online pharmacies also come upon the two-sided network effect, where the increase in the number of consumers or patients increases the number of registered pharmacies or *vice versa*.

The combination of competitive advantages experienced by the online pharmacy can result in an economic moat and it indicates sustainability in the long run. The advantage of lower-cost due to online operations, the wider geographical reach, the 2-sided marketplace network effect can later result in economies of scale and could be proved as the economic moats of the online pharmacies as these are the key competitive advantage. The following section explains the current competition issues in the pharmaceutical market and e-commerce market while highlighting the competition situation and potential competition issues in the e-pharmacy

market.

IV. POTENTIAL COMPETITION ISSUES IN E-PHARMACY MARKET

The e-pharmacy market in India is a growing market and expected to penetrate 70 million households in India by 2025 (Sharma, 2020). Currently, the market is in the consolidating phase. The merger and acquisition phase in the e-pharmacy has started with Medlife acquiring Myra. The recent development in the merger and acquisition is Reliance acquiring a majority stake in Netmeds and the approval of the merger of Medlife with rival Pharmeasy by the Competition Commission of India (“CCI”) (S.H. & Bhalla, 2020). Amazon has also launched Amazon pharmacy to mark its entry into online medicine. Flipkart too partnered with 1mg to enter the market and reap the benefits of early entry with an existing presence (Healthcare executive, 2020). With the new entries, regular approvals for the acquisition and merger in the e-pharmacy industry and business models like e-commerce, the initiation of competition issues in the same market is not so far.

The CCI has dealt with 55 antitrust cases in the pharmaceutical industry till 2018-19 (Competition Commission of India, 2019) and numerous antitrust cases in e-commerce. The competition issues in these two markets have been discussed and noticed on the regular basis. The recurrent competition cases in the pharmaceutical industry are of vertical integration under section 3(4) of the Indian Competition Act, 2002. The allegations in antitrust cases in the pharmaceutical industry are majorly about fixed trade margins, constraints on distribution of drugs, prohibition on retailers from giving discounts to customers, constraint on the appointment of stockists or wholesaler, tying arrangement between doctors and pharmaceutical companies, resale price maintenance and exclusive supply agreements (Gulati, n.d.). The market study done by CCI on the e-commerce market reveals that there are competition issues in the e-commerce market such as platform neutrality, preferential treatment to sellers, platforms' production in direct competition with the other brands, black-box nature of the algorithm used, the countervailing power and superior bargaining position of the platform which result in the anti-competitive contract terms with business/sellers. The other issues which were highlighted were biased search results based on commission rates, deep discounting, data masking by aggregators from sellers, platform price parity clause, and exclusive agreement (Competition Commission of India, 2020).

The competition issue of fixed trade margin can exist in the e-pharmacy market as the supply chain includes retailers and the platform has the competitive advantage of network effect. So, the trade margins can be fixed by the online pharmacy platform, for selling the drugs at

cheaper rates and provide added discounts or deep discounts to the customer to attract them on the online platform, as done in the e-commerce market too. Furthermore, the constraint on the distribution of drugs on the retailers by the platform can be applied in the form of preferential treatment to the offline pharmacies and commission rates. The large scale of customers and wide geographical reach which cannot be achieved by the local pharmacies provides the advantage to online pharmacies following platform model, to develop constraints in the market and give preferential treatment to selected brick and mortar pharmacies, from where they are earning high commission. However, drugs being a necessary good, where the knowledge of the customer is limited and there is no option of choices, the online pharmacies cannot follow the preferential treatment based on ratings and ranking of the stores, as the model of the online pharmaceutical industry does not work on the choices of the customer but the necessity and prescription of the doctors. Online pharmacies can also constraint the retailers from giving discounts in the offline market as a price parity clause and can provide deep discounting to the customers based on lower operational costs and regular funding. The regular funding acquired by the e-pharmacies, which cannot be secured by brick and mortar system due to small geographical reach and non-technological advancement in the selling and purchase system, supports the e-pharmacies in providing additional discounts by achieving cost leadership in the market. However, the competition concern is related to predatory pricing and not deep discounting where the company intends to lower the prices for the exclusion of the competition and later on to increase the price for covering the losses covered. The issue of predatory pricing in the pharmaceutical industry has been highlighted by the National Centre for Pharmacoeconomics Ireland, where it has been alleged that the companies are providing additional 40% to 60% discounts in negotiation to bring the new drugs to the market (Eustace, 2019). Though, this competition concern can be developed in both offline and online pharmaceutical industry and can only be proved if the firms are dominant in the industry as this competition issue is per se anti-competitive.

The constraint on the appointment of stockists and wholesalers placed by the associations in the brick and mortar system can be avoided in the online market if the e-pharmacy operate on a wholesale model, as they will be in direct contact with the pharmaceutical company without the requirement of an association, however, if they operate in the platform market, they can operate in the form of association and can constraint the members to stock the medicines of certain companies. Moreover, the allegation of the tying arrangement between doctors and pharmaceutical companies has not been substantiated yet, but the allegation has been investigated thoroughly. This issue in the e-pharmacy market can be avoided as they work on

the e-prescription given by the doctors approached by the patient and doctors cannot predict the site or pharmacy from which the patient will be buying medicines due to the wide reach of online companies. However, the online pharmacies provide additional services such as online doctor's consult with the service of buying drugs online at discount, where the collusive activity with the incentive to prescribe the irrational and expensive brands can work. Though, the chances are minuscule as the patient can buy drugs from offline pharmacies, where no benefit will be derived by doctors due to lack of records. Moreover, the allegation of the resale price maintenance by the pharmaceutical companies can play a role in improving competition in the market, as it prevents from providing additional discounts by the retailers and free-riding on the services provided by the full-service retailers. Due to resale price maintenance, conventional pharmacies can improve their services by providing extra care to patients, monitoring the drug utilisation, responding to symptoms of minor ailments, and others (Chordiya & Garge, 2019). In addition to this, online pharmacies can also work on the additional benefits provided such as confidentiality, approved drugs, range of choices, time-saving, and knowledge on usage of drugs, which will create an environment of competition in the market based on the services and not discounts.

The exclusive supply agreement is an anti-competitive arrangement evident in the pharmaceutical market and e-commerce industry too. The exclusive supply agreement in the e-pharmacy market can exist but are not per se anti-competitive as it can develop efficiency in the market too. The issue of black-box nature of the algorithm and availability of big data to the online sellers can persist in the online pharmaceutical market too as the data can indicate the drugs or personal care items used in abundance and accordingly the profit can be generated, whereas, the offline sellers do not have access to the quantity and quality data. Currently, the online pharmacy market in India is a growing market and do not have a dominant position, to develop the issue of countervailing power and thereby abusive contracts cannot be analysed, however, with the increase in the market share of online pharmacy and the introduction of digital health campaigns in India, there could be a possibility of unacceptable contracts for the sellers by the platform, with superior bargaining position. The presence of e-commerce firms such as Amazon and Flipkart in the e-pharmacy market can result in providing a competitive advantage to them by using their essential position in one market to enter another where the product is a necessary good and quality of the good is a matter of consumer concern. However, this competition issue is per se anti-competitive and can only be proved if the firm has dominance in the e-commerce market and the purchase of drugs from the e-commerce site is forced on the consumer.

V. WAY FORWARD

The potential competition issues highlighted above have been identified by taking into account the current issue in the pharmaceutical and e-commerce industry. The online platform results in technological advancement with competitive advantages over brick and mortar. Advocacy can be one of the approaches selected by the authorities to curb the issues. Moreover, the ex-ante steps can be taken instead of ex-post. The merger approvals in the online pharmaceutical industry can be taken with more caution as the combination of the industry can result in anti-competitive activities due to an increase in market share. Additionally, amendments to Drugs and Cosmetics Rules, 1945 can include the rules to define the accepted model to be followed by the e-pharmacies and keep a tab on the contracts in the supply chain of e-pharmacies, such as contract between pharmacies and platform and contract between doctors registered on platform and online pharmacy based on Contract Law, Competition Law, and Information Technology Law. The regulation to disclose the algorithm executed by the platform to restrict the preferential treatment can also be one of the ways forward. Moreover, predatory pricing can be kept under control by the government by capping the maximum discount which can be provided by brick and mortar as well as e-pharmacies to customers. Protection of data should also be ensured to reduce the masking of data and development of countervailing power by the platforms. Moreover, the private information of the patients should also be protected. However, the regulations and decisions should be taken by ensuring the balance between advantages and potential competition issues in the market.

VI. CONCLUSION

In conclusion, it is submitted that the anti-competitive practices distort, restrict and prevent the competition in the market due to which there is an adverse impact on the interest of consumers and freedom of trade. The pharmaceutical market is vulnerable to anti-competitive agreements and the combination of e-commerce with it can result in instigating potential competitive issues. The competitive advantages experience by the industry when compared to the brick and mortar system, are also substantial to mark an impact on the consumers. India, being a developing country, with only 11 years old competition law and also new to the digital market and its effect on trade and consumer welfare, need to be cautious of the e-pharmacy market. Legislations have to be brought in to protect the interest of the consumers and the offline pharmacies to resolve the issues mentioned above. The e-pharmacy law and the competition law should be amended according to the current situation of the market.

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