Indian antitrust chief economist warns of data-related merger challenges – CUTS New Delhi

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- Data privacy not an antitrust issue in India
- Competition authorities should intervene before market tips

Data sharing and data driven M&A are key concerns for the Indian antitrust authority, the Competition Commission of India's (CCI) chief economist and advisor has said.

Data-driven acquisitions have emerged as a concern as competition lawyers and economists attempt to demonstrate that such transactions result in no appreciable adverse effect on competition (AAEC), said Payal Malik, the head of the CCI's economics division.

Malik was responding when asked about challenges currently facing competition authorities at the 6th CUTS-CIRC Biennial Conference on Competition, Regulation and Development in New Delhi on Monday (2 December). Transactions are tailored to "hoodwink authorities and get data advantage," she said.

Discussing challenges posed by the online economy, Malik advised competition authorities not to jump in but to collect more empirical evidence and gain a better sense of what is happening. This is because many M&A transactions are structured so that the anticompetitive effect is not evident, she said. Vetting mergers in the digital space becomes difficult, "because sometimes the standard tool-box gives answers which are contrary to intuition", she said.

A second concern Malik identified was that of platforms being intermediaries and not sharing data. Transaction platforms – such as Amazon, Uber, Ola and Booking.com – tend not only to capture data, but can also transfer and monetize data over networks or the internet.

Data privacy today is not an antitrust issue in India, Malik said, since "we tend to depend on other instruments" to enforce that issue.

Competition authorities should not intervene too early to avoid disrupting technological development, former commissioner of Hong Kong's Competition Commission, Thomas Cheng, told the same panel. Acting after the market has tipped would be too late, he added. The ideal approach would be for competition authorities to act where technology is no longer nascent but before the market tips, he added, emphasizing the need for regulating big tech companies, citing Uber and Google as examples.

PROPRIETARY

Sector: Internet / Ecommerce
Topics: Abuse Of Dominance/Single Conduct, Merger Review

Grade: Confirmed

Companies
Amazon.Com, Inc.
Alphabet Inc (Parent Of Google Inc Among Others)
Booking.Com BV
ANI Technologies Private Limited
Uber Technologies, Inc.

Agencies
Indian Competition Authority - Competition Commission Of India (CCI)

There are no files associated with this Intelligence

Large tech companies such as Uber have the ability to charge consumers through personalized pricing, Cheng said. While this constitutes price discrimination, the issue may also have implications on predatory pricing, he added, saying: “It's possible that we will see predation more often with the ability [of big tech] to engage and personalize pricing.”

Tech companies such as Google can collect data – and derive power – through different operations across multiple markets, said Cheng. A competitor would find it difficult to gather a similar data set as Google as it would mean having to enter multiple markets at the same time, which causes tension, he said.

Cheng added that consumer welfare standards need not be adapted or changed for competition law enforcement in the digital economy. Ultimately consumers play a similar role be it in the digital economy or the offline market as they buy, consume and drive the demand side of the market, he explained, adding there is no reason for the standard to be abandoned or adapted.

by Freny Patel in New Delhi and Joyce Chen in Hong Kong
