



Competition Concerns in E-Commerce

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BACKGROUND

- **Digitalisation** – a disruption of traditional market structure; losers and winners
- **Growing inequality and digitalisation**
- **Digital economy has special characteristics**
 - Increasing returns to scale; Economies of scale
 - Multi-sidedness; inter-connectedness
 - Massive data collection and use; network effects
- Those who control digital eco-system, corners most gains; **platforms are *de facto* regulators**

.....BACKGROUND

- **E-commerce can reduce inequality, potentially**
 - MSMEs & farmers as suppliers
 - Penetration of education and health services
- **Optimal regulation**
 - Promoting the e-commerce ecosystem, mitigating risks and maximising gains (inclusive digital economy)
 - Timing of regulatory intervention is also key
- **Many consumer-facing interfaces**
 - Data, privacy, cyber-security (consumers trust)
 - Consumer welfare concept
 - Transactional, core consumer protection issues



COMPETITION CONCERNS IN E-COMMERCE

CONTEXT

- Data-driven' business models: consumer/users' interactions generate valuable set of data/information
- Emergence of digital market economy is giving rise to new set of competition concerns
- Competition concerns in e-commerce are, generally, divided into two broad categories –
 - Infrastructure
 - Transactional

INFRASTRUCTURE ISSUES

ACCESS TO INTERNET

- Any restriction or discrimination in access to Internet could yield anti-competitive effect
- Trouble might aggravate when ISPs are also content providers (competitors)
- ISPs vertically integrating with content providers: giving special treatment, such as free, easy or fast connectivity over that for other competitors.

....INFRASTRUCTURE ISSUES

ACCESS TO DATA

- Competitive advantage: moved from production and distribution to information (data) and its management
- ‘Network Effect’ and interactions in two-sided markets, coupled with the use of algorithms creates a ‘winner takes all’ situation
- Example: competition between search engines – Google and Bing
 - Greater number of interactions at Google perpetually enhanced its quality of search, attracting more users
 - Now even if Bing improves its design, it will not be able to perform like Google, because of lack of ‘interactions’: ‘winner takes all’ situation
- One of the most contentious issues: ensuring access to such information/data

TRANSACTION ISSUES

RELEVANT MARKET

- Whether online shops and traditional brick and mortar shops constitute the same market?
- Competition Commission of India: services provided by online marketplace platforms – as a relevant product market
- Exclusive marketing arrangements between e-portals and manufacturers/suppliers:
 - do not create any entry barriers in the market
 - as the manufacturers/suppliers are free to sell their products on their own websites as well as the physical market

....TRANSACTION ISSUES

EXCLUSIVE AGREEMENTS

(Manglani vs. M/s Flipkart India Private Limited and Other, CCI)

- Alleged that e-portals have been indulging in ‘exclusive agreements’ with sellers of goods/services: consumer is left with no choice
- Consumer has either to accept the terms and conditions of the e-portal in totality or opt not to buy the product
- E-portals submitted that exclusivity, if any, is limited to online portals and not *vis-à-vis* brick and mortar stores
- CCI did find presence of exclusive arrangements: could not establish any appreciable adverse effect on competition

....TRANSACTION ISSUES

PLATFORM NEUTRALITY

- Platforms' own private label products being in direct competition with other brands in the same product categories
- A set of platforms' 'preferred sellers' enjoying preferential treatment from the platforms

PLATFORM TO BUSINESS CONTRACT TERMS

- Unilateral and arbitrary increase
- Compelled to use platform's hired fleet; restrictions on using own fleet

....TRANSACTION ISSUES

DEEP DISCOUNTS

- Discounts are discriminatory
- Discounts imposed by platforms adversely affects the business models of the service providers
- Discounts push prices to below-cost levels in certain product categories and impair the offline small retailers' ability to compete
- Assessment of discounts for antitrust
 - evaluation of market power of the enterprise offering the discounts
 - nature of the discounts
 - intent/rationale behind the same and effect on competition

CONCLUSION

- Good number of developing countries, ecommerce is still at a rudimentary stage
 - policy space to pursue strategic partnership, either North-South or South-South
- Key role of Regional CAs to protect competition
- Need for Capacity Building of Cas
- Undertake Market Studies
- Ensuring competition on the merits to harness efficiencies for consumers

FURTHER READING

- CUTS: Discussion Paper: E-Commerce in the Context of Trade, Competition and Consumer Protection in India - <https://tinyurl.com/yyr8omq4>
- CUTS: Discussion Paper - Competition Concerns in Crossborder E-Commerce Implications for Developing Countries : <https://tinyurl.com/y4gobxj6>
- CUTS: Competition Impact Assessment Toolkit : <https://tinyurl.com/y6zj34wu>
- CUTS: India Competition and Regulation Report, 2019, <https://tinyurl.com/y5pxdwpc>
- CCI: Market Study on Ecommerce in India, Competition Commission of India : <https://tinyurl.com/y3n3xanz>

THANK YOU

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