RES MILITARIS
REVUE EUROPEENNE D ETUDES EUROPEAN JOURNAL OF MILITARY STUDIES
Social Science Journal

UNVEILING EVOLUTION: KEY MILESTONES IN INDIA'S COMPETITION LAW AND POLICY ON ABUSE OF DOMINANCE

Ms. Shilpa Das
Ph.D. Scholar, Law Faculty, University of Delhi, Delhi, India

Mr. Ashutosh Singh
Ph.D. Scholar, Law Faculty, University of Delhi, Delhi, India

ABSTRACT

The Competition laws have experienced a variety of revisions, including institutional, procedural, and substantive alterations. Given that technical improvements are far more significant and faster now than they were in earlier years, India stands on the verge of effective Competition Law enforcement years after its original adoption and its active enforcement. In this paper, the author reviews all the changes made in previous years. The "control" and "material influence" definitions, settlement and obligations, and all the developments and cases surrounding Digital payments and markets are only a few of the changes that have been made with respect to the abuse of dominance. The author will also discuss the market research conducted by the Competition Commission of India. The effect of Google's decision following the CCI's penalty against it, as well as how Indian law can be consistent with EU laws and the Digital Markets Act, which raises the question of whether we need a separate competition Act, will also be explored.

I. Introduction

The year 2022 was a significant one for Indian competition law. Also in The Competition (Amendment) Act, 2023, which was approved by both houses of the Indian Parliament, obtained presidential assent on April 11, 2023, making these recent times significant for Indian competition legislation. This moment had been building for over five years. The Amendments are the result of significant discussion between the Parliamentary Standing Committee on Finance, the Competition Law Review Committee (CLRC), and input from numerous stakeholders.

II. Structural Change

1. The ‘deal value ’threshold

One of the changes made in the Amendment is "deal value" threshold (DVT), which will cause a notification to be sent to the Competition Commission of India (CCI) in situations where the total cost of a transaction (i.e., an acquisition, merger, or amalgamation) exceeds INR 20 billion, (the value of a transaction includes all valuable consideration, whether direct, indirect, or deferred), and the company that is targeted in question has "substantial business operations in India.

According to the Ministry of Corporate Affairs' testimony before the Standing Committee[1], DVT is largely designed for the digital and new-age markets, where the target organisations may have low resources and little income, but may possess substantial capabilities in terms of data, technology, innovation, etc. In contrast, the Amendment's wording does not limit the use of DVT to any one industry. Regulators have received notifications from the pharmaceutical, real estate, and other industries in Austria and Germany (where deal value/transaction size thresholds have been enforced). Indian stakeholders have suggested that a DVT that is applied universally might increase transaction costs for parties and the CCI's administrative workload. Where the DVT is violated, the de minimis or small target exemption—an unconditional exemption given to transactions where the asset value in India does not exceed INR 3.5 billion or the income from India does not surpass INR 10 billion—will not be applicable. It's still ambiguous, though, if additional exemptions listed in Schedule I of the CCI's combination restrictions would still be valid in cases when the DVT is broken.

The CCI will need to provide clarification on a number of interpretational issues, including: (i) whether the worldwide transaction value (rather than the transaction value specific to India) would be taken into account; (ii) whether the transaction value for a round of fundraising with multiple investors would be based on the investment amounts of each investor or the overall size of the investment round; and (iii) how transactions that consider post-closing adjustments will be taken into account. While the CCI may be able to anticipate some of these questions and answer them in its rules, many of these problems are likely to be resolved through the CCI's decisional practice after the

[1] Standing Committee on Finance (2022-2023), Seventeenth Lok Sabha, The Competition (Amendment) Bill, 2022, Ministry of Corporate Affairs. Available at :https://prsindia.org/files/bills_acts/bills_parliament/2022/SC Report_Competition (A) Bill, 2022.pdf (last visited on August 2, 2023)

law is put into effect. Furthermore, it is likely that the rules and explanations provided by the CCI share fundamental concepts with the procedures for calculating DVT in countries like Germany.

2. Definition of 'control[2]'

Secondly, the Act's definition of "control" is important for determining whether a transaction has to be reported and for the CCI's substantive evaluation of the transaction. The definition of "control" under the present framework is "control of the conduct or administration by a number of enterprises, either collectively or individually, over a different company or group; or one or more groups, either collectively or individually, over another group or enterprise.[3] Currently, the term "control" is defined in an ambiguous and circular manner, referring to "control over the operations and management of an enterprise or group," without elaborating on the specific rights that may constitute control.

Over time, the CCI has expanded its definition of "control" to include "material influence," which is regarded as the lowest level of control. It depends on the facts, the foundation for an investor's board position, the unique rights it has access to, etc., to establish if an entity has substantial influence. By replacing the current concept of control, the Amendment formally recognises the "material influence" threshold. And according to CCI decisional practise, "control" has come to encompass "material influence" throughout the years. Material influence denotes the existence of elements that allow a person or business to have a say in the operations and administration of another business, such as board representation for investors, unique rights the investor may have, potential adverse rights, etc.

According to the Amendment Act and in accordance with CCI decision-making procedures, the term "control" has been officially changed to denote the capacity to have "material influence" over an organisation or group of entities' management, affairs, or strategic commercial choices.[4] Although the new term harmonises the Act with the CCI's method of decision-making, it does not make it clear when an entity is considered to have "material influence." The CCI should give an illustrative list of rights to make clear what qualifies as "material influence," according to the CLRC's report. In accordance with these suggestions, the CCI could soon pass regulations defining a specific set of rights that qualify as "material influence" (although the CCI is probably not giving this a high priority).

[2]Avaantika Kakkar and Kirthi Srinivas, 2023 Amendments to Indian Competition Law: Implications for M&A (Part 1), (Cyril Amarchand Mangaldas), April 18, 2023, available at:https://competitionlawblog.kluwercompetitionlaw.com/2023/04/18/2023-amendments-to-indian-competition-law-implications-for-ma-part-1/ (last visited on August 2, 2023)

[3] The Competition Act, 2002, Explanation(a) to Section 5.

[4] The Competition (Amendment) Bill, 2022, Explanation (a) to Section 5.

III. Procedural Amendments

Settlement and commitment framework[5]

Thirdly, a major change was made regarding the Settlement and commitment framework. Any enterprise that has been the subject of an investigation into abuse of dominance or anti-competitive agreements is eligible to employ a settlement or commitment procedure.[6]

An organisation that has been the subject of an investigation for abuse of a dominating position or anti-competitive agreements may decide to file a settlement application to the CCI along with the required costs. After the company obtained the Director General's report pursuant to Section 26(3) but before a CCI order is issued under the Act, the application for settlement must be filed.

Regulations must outline the precise timetable and requirements. The CCI will next evaluate the type, seriousness, and consequences of the violations before deciding whether to accept the settlement plan, subject to the terms, conditions, and procedures for implementing the settlement, as well as for monitoring or paying the sums due by the applicant in accordance with applicable legislation. On the other hand, if the CCI believes a settlement with respect to this particular circumstance is not appropriate, or if the CCI as well as the party in question are unable to agree on a solution, the CCI might deny the application for settlement. In such a scenario, the CCI would continue its investigation.

In accordance with a similar procedure, businesses may submit commitments to the CCI in connection with an investigation into abuse of a dominant position or vertical anti-competitive agreements whenever the CCI has asked the Director General to investigate the situation with respect to a preliminary finding although before the Director General has communicated its conclusions to the parties in issue. Before accepting or rejecting the proposed commitments, the CCI may take into account the efficacy of the commitments in addition to the type, seriousness, and impact of the claimed contraventions.

Regulations shall lay forth the specific process for the commitment and settlement procedures. The CCI's judgements on the aforementioned settlement or commitment are final and cannot be appealed. In any scenario, the CCI's order shall be reversed and withdrawn if [7] (i) Inaccurate or incomplete disclosures are made by the applicant; (ii) There has been an important modification in the

[5] *Supra note.* 2
[6] The Competition (Amendment) Bill, 2022, Sections 48A and 48B.
[7] The Competition (Amendment) Bill, 2022, Section 48C.

circumstances; or (iii) The applicant disregards the CCI's directives concerning settlement or liabilities. The investigation into misuse of a dominant position or an anti-competitive agreement may be started or restored, and the petitioner may be required to pay legal expenses up to INR 1 crore. The settlement and commitment structure should contribute to lessening litigation and more quickly and flexibly settling disputes. The Amendment Act, however, makes it clear that reimbursement may also be given in settlement proceedings, which increases the possible responsibility of companies wanting to use the settlement process.

The proposed legislation includes a "settlement" and "commitment" mechanism that would allow parties under investigation (for violations of vertical agreements and/or abuse of dominance) to provide pledges in regard to the claimed infringement or reach a resolution with the CCI. Prior to the Director General's Office (DG) delivering the CCI its findings following its investigation, parties may make undertakings. Settlements may be reached after the DG has submitted his inquiry report to the CCI but before the CCI issues its final ruling. The plan of commitment and settlement are subject to objections and suggestions from the DG, impacted parties, and third parties in order for the Bill to be implemented.

The Standing Committee on Finance (SCF) has advised to include cartels in settlement suggestions. It has also been recommended that parties should be permitted to submit an appeal before the appellate tribunal in cases when the CCI rejects a settlement plan and that in situations where the party accepts the commitment agreement, no appeal should be permitted. The SCF has suggested that third parties refrain from interfering with commitment and settlement proposals since doing so might undermine the case's confidentiality and be allowed to participate in the process at the CCI's discretion rather than being required to do so at the moment.

IV. Decriminalisation of certain offences

The Amendment Act decriminalised several actions, such as violating CCI instructions or specific Director General directives, by replacing various fines with civil penalties. The Government of India is now working to decriminalise misdemeanours in order to make conducting business effortless. Decriminalisation of transgressions under a variety of other legislation is also a proposal in the Jan Vishwas (Amendment of Provisions) Bill, 2022. Therefore, the switch from fines to civil penalties is

a desirable one since financial sanctions may serve as strong deterrents without carrying the severe consequences of criminal responsibility.[8]

The Amendment Act also gives CCI the authority to make any regulations, including ones that specify the proper level of fines to be assessed for Act violations. According to the Amendment Act, a person must pay a deposit equal to 25% (twenty-five per cent) of the fine assessed by the CCI in order to initiate an appeal with the National Company Law Appellate Tribunal. The National Company Law Appellate Tribunal is additionally authorised to compound certain penalties according to the Amendment Act.[9]

V. Abuse of Domiance

The "Meeting of Competition " Defence for Abuse of Dominance"[10]

The Act tackles a long-standing issue involving dominating firms' "meeting of competition" defence, which previously only applied to unfair terms or pricing, not discriminating ones. The Act broadens this defence to cover unreasonable terms or charges made to compete. This adjustment could be advantageous to established businesses that have suffered from the cautious tactics of smaller rivals. There isn't much CCI precedence, so it requires to be applied cautiously. In these circumstances, the CCI typically investigates procedures in other countries. According to the 2023 Amendments, any unjust rates or conditions implemented to satisfy competition would not be regarded as a dominant abuse. Prior to this, only unfair pricing and terms were protected under the "meeting competition" defence.[11]

The Act gives the CCI the authority to fine violating businesses based on their worldwide turnover rather than their relevant turnover, which could subject businesses with global operations to harsher fines. The CCI must, however, issue guidance on the appropriate severity of sanctions for violating the Competition Act. It is currently unknown if the amendment conflicts with the Excel Corp Case[12] judgement or whether it will be read in accordance with the Supreme Court's decision to base fines

[8] Aniruddha Majumdar, Khyati Dalal, Aparna Gaur, Ratnadeep Roychowdhury and Gowree Gokhale, The Competition (Amendment) Act, 2023, avaiable at:https://www.nishithdesai.com/NewsDetails/9599 (last visited on August 3, 2023)
[9] *Ibid*.
[10] Abhay, Exploring the Implications of the Competition Amendment Act, 2023, available at: https://jindaldigest.weebly.com/blog/exploring-the-implications-of-the-competition-amendment-act-2023-part-2 (last visited on August 3, 2023)
[11] *Ibid*.
[12] Available at: https://indiacorplaw.in/wp-content/uploads/2017/05/excel-crop-v-cci.pdf (last visited on August 3, 2023)

on the pertinent "global" turnover of the infringing goods. When making a decision in this instance, the CCI is anticipated to use the nexus and proportionality criteria. The 2023 Amendment is a significant and positive adjustment overall.[13]

VI. Market Studies

The market research has been publicized by CCI which is related to the "Taxi and Cab-Aggregator Industry" (Report) in September 2022, focusing on the main taxi aggregators Ola and Uber (Cab Aggregators) that operate in India. In order to comprehend the dynamic price of the Cab Aggregators, an unbiased study was carried out. The report discovered that the increase in pricing was determined by supply and demand as well as perhaps unique rider characteristics. To address the information asymmetry amongst Cab Aggregators and their drivers, According to the Report, the Cab Aggregators' techniques and forms of data handling should be more transparent.[14]

The Market Research on the e-commerce platforms, Amazon and Flipkart, was inspired by the "Market study on e-commerce in India" carried out in 2020.[15] The CCI is anticipated to provide its market analysis on private equity funds' shared ownership of shares in various portfolio firms. The results of the CCI are awaited and are anticipated to shed light on the problems caused by shared ownership in portfolio firms that operate in the same industry. India happens to be one of the few countries where minority acquisitions, including the purchase of control over the target, must be reported.

Although the Act was designed for physical enterprises, and the CCI grew intrigued when "taxi aggregator cab services" presented certain difficulties.[16] As a result, numerous other digital environments were targeted globally.[17]

[13] *Supra* note 10
[14] Competition Commission of India, Market Study on Competition and Regulatory Issues Related to the Taxi and Cab Aggregator Industry: With Special Reference to Surge Pricing in the Indian Context, September 09, 2022
[15] Competition Commission of India, Market study on e-commerce in India, August 30, 2019
[16] Delhi Vyapar Mahasangh v Flipkart Internet & Anr, avaiable at: https://indiankanoon.org/doc/25157856/. XYZ v Alphabet Inc & Ors, available at: https://indiankanoon.org/doc/143363699/. National Restaurant Association of India v Zomato & Anr, available at: https://indiankanoon.org/doc/28278621/. Together We Fight Society v Apple Inc, available at: https://indiankanoon.org/doc/28278621/(last visited on August 4, 2023)
[17] Prashanth Shivadass,The future of India's Competition Law, Sep 2, 2022, available at: https://www.barandbench.com/law-firms/view-point/future-of-indias-competition-law (last visited on August 4, 2023)

The SCF also presented a report on how competition legislation needs to change for the digital market in the first week of September to address unfair and predatory practises in the digital market area.[18] The participants also brought up Amazon's "exclusionary" search engine, which favours national manufacturers over brands that may be partially owned by the parent corporation of Amazon. It has been said that "market domination by several of these globally renowned companies is destroying Indian enterprises, it is a truth. Our goal is a market-oriented framework that takes into account the rapid changes in the digital domain; but, to achieve that, the enterprises must cooperate, something that they didn't appear to accomplish today".

VII. Digital Payments

With respect to the digital payments, the CCI observed that in relation to its intended acquisition of IndiaIdeas.com Limited (a digital payment platform that operates within India that goes by the name "BillDesk"), PayU India, an indirect subsidiary of the worldwide consumer internet corporation "Naspers," was given a SCN by the CCI.[19] According to PayU India's definition of the broad relevant market, all in-store payments that are made through an app or website fall into the identical classification, was rejected by the CCI. The CCI identified two key markets, firstly, the the market for recurring/standalone online payment aggregation services; and secondly the market for "Bharat Bill Payment Services," a digital bill payment ecosystem that also includes a network of agents and bank branches.

The CCI ultimately came to the conclusion that the combination didn't cause any competition issues in any of the pertinent markets, didn't warrant a Phase II inquiry, and didn't call for any corrective action. However, the transaction was abandoned since several prerequisite requirements were not met. The CCI's ruling is noteworthy since it was the first time following the issuing of a SCN that the CCI did not deem behavioural or structural remedies necessary.

VIII. No to Wide Platform Parity clauses

[18] Sobhna K. Nair, Technology companies wary of law on digital competition, available at: https://www.thehindu.com/news/national/technology-companies-wary-of-law-on-digital-competition/article65802474.ece (last visited on August 4, 2023)
[19] Case No. C-2022/04/920, available at: https://www.cci.gov.in/images/caseorders/en/order1666353453.pdf (last visited on August 4, 2023)

Making allegations of abuse of dominance against MakeMyTrip India Private Limited and Go-Ibibo (commonly known as MMT-Go), the CCI established its investigation.[20] and the two of India's top online travel agencies, in 2020. According to the claims, Under the terms of a covert exclusivity deal, MMT-Go agreed to provide Oravel Stays Private Limited (OYO), an Indian multinational hospitality firm with leased and franchised hotels, homes, and living spaces, preferential treatment on its platform. It was also asserted that MMT-Go had contracts with hotel partners that forbade them from charging less for rooms on different websites, mandating price parity. The Federation of Hotel & Restaurant Associations of India and Treebo, a low-cost hotel chain, both filed complaints that led to the investigations.

According to the CCI, MMT-Go's extensive parity duties and exclusivity requirements were abuses of dominance since they were unfair and discriminatory.[21] Due to worries about free riding, it was noted that tight parity would be justifiable. After all, MMT-Go and other online travel agents would suffer if hotels were allowed to profit from the investments made by online platforms. MMT-Go was subject to a 2.23 billion INR fine. The CCI also issued directives, among them the elimination of exclusivity requirements, the elimination of price parity requirements, and the granting of nondiscriminatory access to the MMT-Go platforms for hotels. Separately, the CCI discovered that the elimination of FabHotels, Treebo, and various other independent hotels was caused by the contractual agreement between MMT-Go and OYO, which was in the form of a "refusal to deal." In addition, OYO was fined INR 1.68 billion for MMT-Go and OYO's exclusivity agreements.

In 2022, a similar inquiry was also launched against the online ticketing service BookMyShow to look into claims of abuse of power, exclusivity, and a reluctance to address agreements between BookMyShow and certain theatres and multiplexes.[22]

IX. CCI penalised Google

In 2022, news was published of the monetary fines and directives the CCI placed on Google following two significant decisions. for purportedly misusing its dominant position in relation to its Play Store regulations, GPay UPI service, and billing system, the CCI levied a preliminary penalty of INR 9.36 billion on Google.[23] This is the very first official ruling regarding Google's exclusive imposition of

[20] Case No. 14 of 2019, available at: https://www.cci.gov.in/images/antitrustorder/en/odrer1666182873.pdf (last visited on August 4, 2023)
[21] Cases No.01 of 2020, available at: https://www.cci.gov.in/images/antitrustorder/en/142019-and-0120201652511256.pdf (last visited on August 4, 2023)
[22] Case No.46 of 2021, available at: https://www.cci.gov.in/antitrust/orders/details/1038/0 (last visited on August 5, 2023)
[23] Case No. 14 of 2021, available at: https://www.cci.gov.in/search-filter-details/4643 (last visited on August 5, 2023)

its billing system and service price that has been issued by an antitrust authority. It was determined that the service cost was not unfair. By issuing broad ex-ante directives, the CCI looks to have gone beyond its authority. In a separate probe into Google's Android ecosystem, the CCI fined the company a preliminary INR 13.37 billion for abusing its position of dominance in a number of related markets.[24] It's interesting to note that the CCI has pinpointed problems that the European Commission (EC) also noted in its 2018 Google Android ruling. The EC's ruling on Google Android is less invasive than the CCI's directives, nevertheless.

X. More Developments in the Digital Sector

A new inquiry into Google's suspected use of unfair and ambiguous income generation arrangements in online digital advertising intermediary services is ongoing.[25] The CCI is looking into claims of pricing parity agreements, data masking, and platform neutrality against the two largest food delivery services, Zomato Limited and Bundl Technologies Private Limited (also known as Swiggy).[26] In order to look into exclusive vertical deals with certain vendors operating on their platforms, the CCI raided the locations of many retailers on Amazon and Flipkart.

1. European Union Laws

The European Union's report on digital services brings to light the brilliance of their incredible path of integrating laws and foresight.[27] The Digital Service Act (DSA) requirements largely apply to online intermediaries and platforms, such as social networks, marketplaces, platforms for sharing information, app stores, and websites for booking travel and lodging. The Digital Market Act (DMA) contains regulations governing gatekeeper online platforms, Those comprise digital platforms having a systemic role in the internal market that disrupt the movement of vital digital services amongst businesses and customers. "Gatekeeper platforms" are digital platforms that have a profound effect on the internal market and act as bottlenecks between businesses and clients for essential digital services.

[24] Case No. 39 of 2018, available at: https://www.cci.gov.in/search-filter-details/1207 (last visited on August 5, 2023)
[25] Cases No. 41 of 2021, available at: https://www.cci.gov.in/antitrust/orders/details/11/0 and Case No. 10 of 2022, available at: https://www.cci.gov.in/search-filter-details/4576, https://www.cci.gov.in/search-filter-details/4575 (last visited on August 5, 2023)
[26] Case No. 16 of 2021, https://www.cci.gov.in/search-filter-details/574 (last visited on August 5, 2023)
[27] *Supra* note 17.

Cases have been witnessed when some organisations unilaterally adjusted their rules to be "law compliant" under the guise of privacy. The CCI has frequently examined the monopoly possessed by major international internet players that gives them advantages over competitors and affects consumer choice. However, neither specific legislation on digital services or marketplaces nor even on data protection has been passed. To guarantee that the local market is sustained and prospers, competitive market norms and practises are observed across the board, including in the digital and data sectors in these situations, the government must turn to competition law.

Although the DSA and DMA also connect with other legal fields, from the standpoint of competition law, the DMA's main function is to provide an even playing field for all digital businesses, regardless of size. Therefore, the legislation outlines specific guidelines for large platforms as well as a set of rules to follow to help them avoid putting excessive demands on customers and businesses.

2. Platforms

Identifying gatekeepers must be done in light of pre-established criteria and adhere to a number of rules, including refraining from favouring their own services; guaranteeing platform compatibility; and Responsibility to share. In actuality, the DMA has distinct guidelines for users and companies. The rules for users are set up so that there is a ban on unfair practises, allowing business users to provide consumers more options for cutting-edge services; elevated compatibility alongside services that compete with gatekeepers' offerings; simpler options for users to transfer platforms assuming they choose to do so; and improved amenities and lower prices for customers. And for businesses [28] are such that Consumers will be able to view the finest alternatives not restricted to what the gatekeepers prefer people to observe; Businesses will be able to develop and compete against gatekeepers' own services on an equal footing; Businesses will have access to additional data about the performance of their products or services on other platforms; not unfair comparison between the services and goods provided by gatekeepers' own firm and those provided by other companies using the same platform; Gatekeeper systems won't be able to lock in customers anymore, allowing businesses to expand.

It's interesting to note that the EC has also stepped in to impose fines of up to 10% of the company's annual global turnover, or up to 20% in cases of egregious infractions, in order to control this sector.

[28] Available at: https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/europe-fit-digital-age/digital-services-act-ensuring-safe-and-accountable-online-environment/europe-fit-digital-age-new-online-rules-businesses_en (last visited on August, 6, 2023)

There are also recurring fines that can be up to 5% of the daily average turnover. In the event of recurrent violations, further sanctions, such as behavioural and structural ones, may also be applied.

XI. Features of DIA

A recent report issued on March 9, 2023, highlights some of the DIA's most important characteristics. Another set of revisions to the Competition Act of 2002, taking the DIA into account, is one significant factor that is being taken into consideration.[29] The DIA envisions an "open internet" with, among other things, choice, competition, and equitable access to the market. In particular, fair trade behaviours limit market power consolidation, gatekeeping, as well as disruption by regulating top Ad-Tech platforms, App stores, and interoperable platforms.

More instances were also stated by the bulletin on how antitrust agencies from throughout the world have targeted big tech, such as the CCI's rulings in the two Google cases. The Google rulings, on the date December 22, 2022, The March 9, 2023, bulletin and the Standing Committee Report on "Anti-Competitive Practises by Big Tech Companies" Furthermore worth mentioning is that the Central Government created a Committee on Digital Competition Law pursuant to the Report to determine whether or not the Act's present provisions are adequate to handle the problems carried on by the digital economy. Also, the Committee look at whether it is necessary to enact new legislation to provide an ex-ante regulatory framework for online markets.

XII. Aftermath of CCI's Google decisions

Both supporters and opponents of Google's two CCI decisions have been vocal. Actually, the National Company Law Appellate Tribunal (NCLAT) declined to order the CCI's decision to be suspended, therefore Google was forced to comply with the directives by making the necessary adjustments. As of March 29, 2023, the NCLAT affirmed the CCI's judgement, which reversed prior CCI orders but awarded $1,337.76 billion in damages for misuse of a dominant position, involving:

A) It is not illegal to distribute apps made by any app developer through the Google Play Store. There were no rationale for directing Google to distribute the App Store of outside app developers without their consenting to the Google terms of service considering that the CCI personally were not of belief

[29] Prashanth Shivadass and Nandini Nair, The Future of Competition Law – II: Digital Markets, May 31, 2023, available at: https://www.barandbench.com/law-firms/view-point/the-future-of-competition-law-ii-digital-markets (last visited on August 6, 2023)

that Google was abusing its dominant position in the Play Store market by implementing unfair and discriminatory terms and conditions on App developers;

B) Google just provides users with the necessary risk warnings and does not forbid or limit anyone from sideloading the programme. Thus, instructions addressing limitations on sideloading programmes were unnecessary.

C) App developers, OEMs, and Google's current and prospective rivals cannot be granted unrestricted access to Google's proprietary APIs and Google Play Services. Additionally, Google should benefit from proprietary software like APIs generated via scientific and technological innovation, which should serve as motivation for a technology firm to continue with such research and monetise through revenue-generating usage;

D) The OEMs decide which applications to preinstall, and they are not required to preinstall the whole app library. Preinstalled apps may all be turned off at the user's discretion, deactivating every program.

Interestingly, these actions support the findings from Report 1 regarding, among other things, self-preferencing, third-party apps, bundling, and tying. A new committee has been formed to assess whether the Act's current provisions are enough to accommodate the rapidly expanding digital economy. This includes creating a specialised digital markets section inside the Central Government will receive recommendations from CCI about the designation of Systemically Important Digital Intermediaries, and CCI will also adjudicate matters involving digital markets. CCI will monitor established and emergent Systemically Important Digital Intermediaries.

The report also indicates that the Act has to be improved in order to match the rapidly changing digital market, and as a result, it advises passing a new Digital Competition Act. None of these Report suggestions are included in the Bill, which is now law.[30] Therefore, it is reasonable to predict that the Act will go through another round of revisions to reflect "new age" technological advancements and the emergence of digital marketplaces.

[30] Shivi Gupta and Mansi Raghav, Digital competition law committee to finalise report by August 2023, available at: https://www.lexology.com/library/detail.aspx?g=70b95f94-1ee2-4b11-bfc2-96155a8c333d (last visited on August 6, 2023)

XIII. Need for Digital Competition Act

The treatment of digital markets, data protection, and competition legislation in the EU, taking into account DSA and DMA, intersects with each other. The report provides important information on "Regulating Digital Markets," which calls for ex-ante rules since digital markets have a propensity for a small number of companies to quickly gain dominance due to the growing returns to scale. The study also suggested that important "Digital Gatekeepers" be named by the Central each of these intermediaries submit an annual report to the CCI describing the actions they have made to comply with the government with different legal requirements.

Although the Report recommends changes to the CCI, most of the changes made by the Bill are ex-post, allowing for M&A and combinations more of a focus. This raises the question of whether a Digital Competition Act is actually necessary, or whether the current legislation can be altered and organised to embrace digital competition. There have been opinions on both extremes. However, given CCI's accomplishments in recent years and its exceptional capacity to conceivable the present rules will alter to take into consideration the diverse spectrum of digital transactions. Even if a separate Digital Markets Act exists, CCI can learn from the EU in order to maintain its position in the field of competition.

The Committee, which has since been established following the Report, is entrusted with researching international practises across the world with regard to digital marketplaces. The issue, however, emerges if the CCI itself limits or hinders innovation or fails to uphold consumer interests under the guise of ex-ante restrictions. However, one of the most important factors is that the CCI's infrastructure must drastically improve. This includes opening offices across India, filling open positions, and, to a certain extent, giving the CCI additional authority under its statutory mission.

XIV. Conclusion

It is not possible that the Digital Competition Act applies to all situations in the same way. Any prospective proposals or adjustments might be overwhelmed by the digital economy, which would quickly make them obsolete. The Act might be changed to bring about major adjustments for the digital economy, and it's conceivable that best practises and self-regulation may be published to help businesses determine where they fit in the market. Considering that India remains when it comes to its digital economy, it would appear smart to consolidate the aforementioned several laws into fewer, maybe more focused laws. And it was already said, one approach to carry out the same thing would

be to change the current Competition Act. This would then lead to reporting for the digital economy, which would solve the ongoing problems coming from the transactions, including those involving the Big Techs.

Discussions in the past have indicated that the Act and the CCI should follow the EU's lead in creating standards for vertical agreements that make it simpler for businesses to evaluate their vertical agreements on their own. Numerous adjustments have been made to India's merger control and regulatory framework, but nothing has been done to address the core issues of abuse of dominant position as well as anti-competitive agreements. It will be intriguing to see whether the Standing Committee's recommendations take the form of guidelines or offences and penalties as well as how they are incorporated into the current legal framework.[31]

Significant modifications to the Act were made by the Amendment Act, some of which were well-received by the parties involved. Examples include the transaction judgement on the face of it, quicker resolution, the settlement and commitment method, and an earlier completion date for the processes. On the other side, requirements like those regarding the inclusion of worldwide turnover are inconsistent with existing law and may place an unfair burden on stakeholders. While maintaining a facilitative approach to merger approval (while balancing it with heightened inspection of transaction documentation and merger enforcement), the CCI is dedicated to aggressively taming anti-competitive behaviour. Its rulings have detailed unique jurisprudence, notably in the technology and digital sectors, which is anticipated to develop in the coming years.

[31] Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2022.248.01.0001.01.ENG (last visited on August 6, 2023)