

## Big Tech and the Need in India for ex-ante Regulation

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(Indian Economy)

❖ Competition is welcome, but only under a new ex-ante-based framework that ensures a level-playing field for the big, the small, the old and the new.

The Indian anti-trust body, the Competition Commission of India (CCI)'s move, in October, to impose a penalty of ₹1,337.76 crore on Google for abusing its dominant position in the android mobile device ecosystem, has forced us, once again, to rethink the market power of Big Tech companies. When India established the CCI under the Indian Competition Act 2002, it was to protect and promote competition in markets, and prevent practices that hinder competition. However, it did not account for the network effect of Big Tech companies as a force to reckon with.

As their market dominance increased rather exponentially, the European Union, the United States, and even Australia realised their market-distorting abilities and moved to transform their competition law. The EU's Digital Market Act and "gatekeepers" who will enforce rules and regulations ex-ante to foresee anti-competitive practices is an example. As for India, the Competition (Amendment) Bill, and its proposed amendments, partially address these issues. India should have used this as a chance

### Competition Commission of India (CCI)

- ➔ The Competition Commission of India (CCI) is a statutory body of the Government of India responsible for the enforcement of the Competition Act, of 2002. It was amended by the Competition (Amendment) Act, of 2007.
- ➔ Monopoly and restrictive trade practices on the recommendation of the Raghavan Committee.
- ➔ Act, 1969 (Monopolies and Restrictive Trade Practices Act- MRTP Act) was repealed and replaced by the Competition Act, 2002.
- ➔ The commission consists of a chairman and six members who are appointed by the central government. The functions of the Commission are to eliminate practices having an adverse effect on competition, to promote and sustain competition, to protect the interests of consumers, and to ensure freedom of trade in the Indian markets.

to overhaul its competition law, especially when the Bill is due to be passed in Parliament's winter session.

### Market Dominance Issue

In any free economy, market dominance is natural. But things get hazy when it is abused to prevent competition. As the CCI says, the intent of Google's business was to make users on its platforms abide by its revenue-earning service, i.e., an online search to directly affect the sale of their online advertising services. Thus, network effects, along with a status quo bias, created significant entry barriers for competitors to enter or operate in the markets concerned. While the competition laws address that anomaly, they are too slow to respond in complex technical sectors. By the time an order is passed, the dominant player has gained an edge — as in the case of Google. Thus, in this context, there is an urgent need for ex-ante legislation to prevent market failures and mitigate possible anti-competitive conduct.

Predatory pricing entails the lowering of prices that forces other firms to be out-competed. Amazon and Flipkart were accused of deep discounting and creating inhouse brands to compete with local sellers. Only recently, the CCI raided their offices in an anticompetition probe, leading to Amazon being forced to cut its ties with Cloudtail. Thus pricing plays a fundamental role in defining the position of any digital platform in the marketplace. It is essential to establish an exante framework to ensure a level playing field for local sellers. The Government's Open The network for Digital Commerce (ONDC) platform is a reliable option for these small players.

### Big Tech

→ Big Tech is a term that refers to the most prominent and largest technology companies in their respective fields. Their products and services are used globally and are heavily relied upon by businesses and individuals alike, leading to privacy, security, and anti-trust concerns regarding their influence and operations.

### How do tech giants affect India?

- Use of targeting algorithms: The tech giant uses user search data to show ads to users. Ads are specifically targeted to users based on their recent Internet searches.
- Lack of transparency and privacy concerns: The way technology companies process user data is not transparent enough. It raised serious privacy concerns and also prompted antitrust investigations by various governments. One such example is the Facebook Cambridge Analytica scandal. WhatsApp's recent privacy policy has also raised widespread concerns.
- Monopolistic Business Practices: Tech giants engaged in predatory pricing and monopolistic business practices. They usually drive out competitors through anti-competitive behavior. Take, for example, the allegation on Amazon that it favors its own branded products over third-party products.
- Social Impact: Big Tech is the main medium for Fake News, Hate Speech, etc. Countries consider these as undemocratic activities.
- Impact on Legislative Actions: The combined market capitalization of Big Tech is greater than the GDP of most countries except China and the US. Their purely economic presence and market presence (as Google handles over 90% of online searches) force them to create aggressive clauses in their terms of service, and contractual agreements.

A crucial aspect of selfpreferencing beyond the search algorithm is the bundling of services, especially with preinstalled apps, where the manufacturers eliminate competition without the consumer's consent. Apple is facing heat in the U.S. and Europe over preinstalled apps after Russia forced Apple to provide thirdparty apps at the time of installation. So, Indian competition laws need to be vigilant through an exante framework.

### **Use Of Data, Issue Of Consumer Protection**

While the data economy has evolved, we have not dealt with its regulation as effectively. There is sensitive data stored on these platforms (financial records, phone location, and medical history). Big corporations have asserted ownership of the right to use or transfer this data without restriction. While one might attribute it to efficiency barriers and the greed for data is a motivation. Further, the storage and collection of women's and children's data need to be dealt with more cautiously to build a safe digital place.

Finally, market distortion can also lead to poorer quality of services, data monopoly, and stifle innovation. For a consumer, there is a need to establish harmony of the Competition law with the new Consumer Protection Act 2020 and ecommerce rules. The new law should include a mechanism to ensure fair compensation for consumers who face the brunt of the anti-competitive practices of the Big Techs. This should ensure that the penalties and restrictions being imposed on companies also ensure proportionate compensation for consumer losses.

### **In The Digital Age**

With India now on the cusp of a digital transformation, it is essential that the country has a levelplaying field to ensure a fair opportunity for newage startups and Micro, Small and Medium Enterprises. The Competition Act of 2000, was largely constituted to deal with the physical marketplace. There is an urgent need to contextualize the law to the digital marketplace and devise new provisions with adequate exante legislation. The EU has already noted this need through the Digital Markets Act. It is time that similar legislation is adopted in India.

### **How are Big Tech companies regulated in India?**

- ➔ CCI was established to eliminate practices having an adverse effect on competition. The commission also promotes and maintains competition, and protects the interests of consumers. CCI will intervene if any tech giant engages in anti-competitive practices. For example, the CCI crackdown on Google in 2018.
- ➔ Second, the Information Technology Act, of 2000 regulates all activities related to the use of computer resources in India. Some important provisions of the Act are Section 69 of the Act gives the government the power to issue directions to "intercept, intercept or monitor any information generated, transmitted, received or stored" in any digital device.
- ➔ Section 69A of the Act gives the government the power to block access to any information generated, transmitted, received or stored, or hosted in the digital space.
- ➔ Intermediaries (providers of network services, telecommunication services, internet services, and web hosting) are required to store and maintain specified information. They will also have to follow the instructions issued by the government from time to time.

It is equally important to contextualize India's reality. Kirana stores competing with etailers such as Big Basket is an example of unfair competition between legacy businesses and their digital counterparts. In such a setting, bulldozing through a EUbased approach to competition might not be the best way for Indian marketplace interests in protecting the local digital economy. Thus, India needs a new exantebased framework that promotes competition by ensuring a level-playing field for the big, the small, the old and the new.

### Expected Question

**Que. Consider the following statements-**

1. The Competition Commission of India (CCI) is a statutory body.
2. Monopoly and restrictive trade practices on the recommendation of the Raghavan Committee. Act, 1969 (Monopolies and Restrictive Trade Practices Act- MRTP Act) was repealed and replaced by the Competition Act, 2002.

Which of the above statements is/are true?

- (a) Only 1                      (b) Only 2  
(c) Both 1 and 2            (d) Neither 1 nor 2

**Answer : C**

### Mains Expected Question & Format

**Que.:** Explain with examples that Big Tech companies need to be regulated to ensure an open and free trade system. How can this problem be solved by changing the competition law?

**Answer Format :**

- ❖ What is Big Tech Company?
- ❖ Keeping in mind the recent fine imposed on Google by CCI, how to regulate to maintain open and free trade regime.
- ❖ Explain how this problem can be solved by making changes in the competition law.

**Note:** - The question of the main examination given for practice is designed keeping in mind the upcoming UPSC mains examination. Therefore, to get an answer to this question, you can take the help of this source as well as other sources related to this topic.