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ROLE OF COMPETITIVE LAW TOWARDS PROTECTING PUBLIC INTEREST IN DIGITAL ECONOMY IN INDIA

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Abstract:

Competition law also known as "Antitrust Law" in some jurisdictions, is a legal framework that aims to promote fair competition and prevent anti-competitive practices in the marketplace. It's designed to ensure that businesses operate in a way that benefits consumers, promotes innovation, and prevents monopolistic behavior that could harm competition and consumers. In India, competition law is regulated by the Competition Act, 2002, and is enforced by the Competition Commission of India (CCI). The primary objective of the Competition Act is to promote fair competition in the Indian market, prevent anti-competitive practices and protect consumer interests.

Keywords: Antitrust Law, Legal framework, Anti-competitive practices, Marketplace, Benefits consumers, Innovation, Monopolistic behaviour, Competition Commission of India (CCI).

Introduction:

A 'digital economy' is popular with various synonyms such as digitalized economy, internet economy and online economy. It is defined as an economy based on digital technologies, communication, and data processing for the conduct business. The rapid growth in mobile penetration led to wide accessibility of the internet from mobile devices, consequently more and more people are engaged in this digital economy which is major growth driver of the sector. In the current scenario, no sector in the economy is out of concept of digitalization particularly certain sectors more popular which include the internet search engine, social networks as well as E-commerce.

The word technology evolved as popular in the economy over a time by becoming part of our daily live activities. The technology defined as use of science in the economy, industry, engineering etc. to solve problems and "a machine, piece of equipment, method etc that created by technology. (Merriam-webster Learners Dictionary). The passing of time and drastic reforms and development in the technology its uses extended from industry to individual daily activities. The digital economy is recent form of technology that forced the individual towards use of technology in daily economic activities. However, the usage of technology further momentum during post COVID period with wide spread of fintech companies, social networks, and digital commerce platforms. As per the World Economic Forum in next 10 years 70 percent of the global economy will be made up of digital technology since 2020. This is a trend most accelerated by the COVID-19 pandemic and the tendency to go online. The future of work, especially since the COVID-19 pandemic, is also contributing to the digital economy.

The digital economy in India refers to the economic activities that are driven by digital technologies, the internet and data. India has been undergoing a digital transformation that is reshaping industries, businesses, and various aspects of daily life. There are some important facets of digital economy

1. **Internet Penetration:** India has witnessed a remarkable increase in internet penetration, largely driven by the widespread availability of affordable smart phones and data plans. This has connected millions of people across urban and rural areas, enabling them to access information, services and entertainment online.
2. **E-Commerce:** The E-commerce sector in India has experienced substantial growth. Online market places like Flipkart, Amazon and others have revolutionized the way consumers shop, offering a wide range of products and services online.



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3. **Digital Payments:** The Indian government's push towards a cashless economy, accelerated by the demonetization move in 2016 has led to a surge in digital payment adoption. Mobile wallets, UPI (Unified Payments Interface) and other digital payment methods have gained popularity for transactions.
4. **Fintech Innovation:** The fintech sector in India is thriving, offering innovative financial services and solutions. This includes digital lending, insurance technology, investment platforms, and more, all of which are transforming traditional financial services.
5. **Startups and Tech Innovation:** India has emerged as a hub for technology startups across various sectors, including E-commerce, health tech, ed tech, agri tech and more. These startups are leveraging digital technologies to create new business models and disrupt traditional industries.
6. **Digital Services and Outsourcing:** India has a strong presence in the global information technology (IT) services and business process outsourcing (BPO) industry. The country provides services such as software development, IT consulting, customer support and back-office operations.
7. **Digital Education:** Online learning platforms have gained traction, especially during the COVID-19 pandemic, as educational institutions shifted to online modes of teaching and learning.
8. **Data Privacy and Security:** As the digital economy expands, concerns about data privacy, cyber security, and protection of personal information have become more prominent. India has introduced the Personal Data Protection Bill to address these issues.

The digital economy's growth in India has the potential to drive economic development, create jobs, and enhance efficiency across industries. However, it requires addressing challenges, fostering digital inclusion, and ensuring that the benefits of the digital transformation are accessible to all segments of society.

Competition law and the digital economy intersect in significant ways, particularly in the context of India's evolving economic landscape. As the digital economy expands, competition regulators face new challenges and opportunities in ensuring fair competition and preventing anti-competitive practices.

Research Problem:

The recent developments in technology brought tremendous changes in Indian economy and forced to move from physical to digital. Consequently, majority of economic activities shaped in digital form which increases convenience and reduces cost and ultimate promote economic growth. The present digital economy is in the forms of online marketing, social network sites, online payments, search engines, online banking, IT solutions etc. On the other side of the coin, Digitalization of the economy poses variety of challenges from suppliers and users' point of view to the government and regulatory bodies in preventing unhealthy economy activities. These technological innovations made competition law functionality more complicated and demand more supervisory functions supported by strong legislation. Present study enumerates the role of competition law and commission towards protection of interest of consumers through prevention of unhealthy competitive practices by the corporate sector.

Objectives of the Study:

Present papers examine the role of competition Act in protecting interest of consumers through prevention of unhealthy competition and promoting sustainable competition in digital economy of India.

Research Methodology:

The present research study is descriptive in nature. It throws light on the functionality of competition commission and role of competition law with powerful sections towards prevention of unhealthy competition practices of corporate sector and provision in the law for protection of consumer's interest in the context of digital economy or virtual economy. The study provides practical cases filed and judgments under the law in the country.

Inferences of the Study:

- The findings of the study help to know the role of present competition law and competition commission in protecting the consumer's interest through prevention of unhealthy and promotion of healthy competition practices of corporate people.
- The findings of the study provide required amendments to the law and required power to the competition commission



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- The findings of the study provide the legislative designers to include more effective provisions in the law and make wide application.
- This paper provides difficulties facing in effective implementation of the act and in providing of more justice to the consumers

In India digital economy is concerned with economic activities that driven by digital technologies, internet, and data. The technology India has been undergoing a digital transformation that is reshaping industries, businesses, and many dimensions daily life. There are some important facets of digital economy. Some of them are discussed in the present study such as

Growth Drivers of Digital Economy:

- Rapid growth in internet penetration driven by the widespread availability of affordable smart phones and data plans which connected millions of people across nation irrespective of geographical constraints such as urban and rural areas. This enabling them to access information, services, and entertainment online.
- The second important factor is growth in E-commerce sector which has experienced substantial growth such as Flipkart, Amazon and others that revolutionized the way consumers shop, wide range of products, economical prices, easy accessibility etc.
- The third growth driver of digital economy is Digital Payments in India government's push towards a cashless economy. In this direction government of India accelerated Demonetization in 2016 which is great move towards digital payment adoption.
- The fourth growth driver is fintech Innovation. In India, fintech sector is fast growing by offering innovative financial services and solutions to wide financial needs and problems. This includes digital lending, insurance technology, investment platforms, and more, all of which are transforming traditional financial services.
- The fifth growth driver is startups and tech Innovation, for which, now India emerged as a hub for technology startups across various sectors, including e-commerce, health tech, ed tech, agro tech and more.
- The sixth growth driver of digital economy is outsourcing and digital services where India has a strong presence in the global Information Technology (IT) services and Business Process Outsourcing (BPO) industry.
- The seventh growth driver is Digital Education such as online learning platforms which gained traction, especially during the COVID-19 pandemic whereas majority of educational institutions shifted to online modes of teaching and learning.
- The final factor is data privacy and security whereas growth in digital economy rise concerns about data privacy, cyber security, and protection of personal information have become more prominent. Consequently, to overcome this issue India introduced the Personal Data Protection Bill (PDPB) to address these issues.

In India, digital economy's growth has strong potential to drive economic development, create jobs, and enhance efficiency in the industries. It is possible only when it addresses the challenges such as fostering digital inclusion and ensuring that the benefits of the digital transformation are accessible to all segments of society.

Digital Economy and Competition Law:

In general, the ability of the technology companies admirable due to bring about modernization and advancement in the digital economy. In contrast, these businesses are vulnerable to acquisition and abuse of market power which caused various issues arises from numerous unfair practices in the market. This scenario witnessed rapid transformation of competition in India. This is supported by acquire the smaller firms by large firms to eliminate competition. The CCI (Competition Commission of India) review such agreements entered under section 4 of the Competition Act dealing with abuse of dominant position. In this way it will regulate the malpractices of the dominant entities which had abusing their position.

The Act defines combinations as the acquisition, merger, or amalgamation of one or more enterprises meet certain criteria based on their assets or turnover. Consequently, such combinations meeting the set criteria should get prior approval from the Competition Commission of India (CCI). Besides, some deals required no clearance form CCI which are based on low asset, these transactions have significant effect on the competition and CCI currently lacks the legal framework to evaluate deals that do not cover within the ambit of the specified criteria based on assets or turnover.



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Competition laws are based on the principal absence of free competition in free market leads to monopoly breeds. The aim of the competition laws is for prevention of unhealthy practices which are harmful to the consumers' welfare and economic right. This principle is quite different to the principle of MRTP (Monopolies and Restrictive Trade Practices) Act which primary focus was only to curb monopolies in the market. But the primary objective of CCI is to promote and sustain competition in the market along with protecting the interests of the consumers. Similarly, another character of Competition Act is that carrying various businesses operations in the market in a manner against any anti-competitive agreements, practices or control. This in turn will ensure the level playing field in the market.

Competition law also known as "Antitrust Law" in some jurisdictions is a legal framework that aims to promote fair competition and prevent anti-competitive practices in the market place. It's designed to ensure that businesses operate in a way that benefits consumers, promotes innovation and prevents monopolistic behavior that could harm competition and consumers. In India, competition law is regulated by the Competition Act, 2002 and is enforced by the Competition Commission of India (CCI). The primary objective of the Competition Act is to promote fair competition in the Indian market, prevent anti-competitive practices and protect consumer interests.

Role of Competitive Law and other Legal Framework in Digital Economy

Protection of public interest and with Personal Data Usage:

- **One of the key competitive advantages of companies in digital economy is possession of large personal data of customers for the purpose of offering wide range of products and services, advertisements. The utilization of personal data has both positive and negative effects on the consumers. Therefore, from personal perspective possession of large personal data of customers rise the data misuse problems. Under data protection law the collection and utilization of personal data for commercial purposes is limited and subject to the fundamental rights of individuals.**
- **In this regard, competition law and policy should co-ordinate with data protection law toward harmonization of personal data using standards at national level and avoid misuse of personal data. In this regard some advice is also given such as getting consumers consent for collection and usage of personal data, introduction of portability rights and collective lawsuits. Due to the significance of data for the commercial success of companies it should be considered in competition proceedings. This is particularly important in merger control proceedings – frequently relatively new internet service providers, featured by low turnover, but potentially highly valuable data inventories are acquisition targets. In contrast, aspects entirely related to data protection should be addressed outside competition law proceedings.**
- India had seen a marked shift of consumers to online space from brick-and-mortar industry and the peculiarities in how competition happens in the digital world challenged and unsettled traditional producers and manufacturers in framing their competitive strategies. This caused them to express concerns relating the ways online players compete in the market. The tremendous growth of such players should not escape from the eye of the antitrust regulator either.
- The CCI chairperson expressed worry on digital players abusing their market power in digital economy. The Department for Promotion of Industry and Internal Trade (DPII), in designing the draft of E-commerce policy bill remarked upon the efficiencies attached to the use of data and algorithms maintain.
- The CCI is possessed mindful of potential anticompetitive conduct in E-commerce markets and the digital economy in India. Similarly, CCI's 2020 E-commerce market study posed concerns on potentially problematic conduct such as platform neutrality and exclusivity agreements, among other things. The CCI assessed competitive concerns in multiple E-commerce markets, including online marketplaces, online travel agencies, etc.
- The CCI noticed the value of time in the digital economy. Pending the DG's investigation report, the CCI admired that such delisting and the passage of time during enquiry reduces the value of the hotel franchise's business. The granting an interim relief to MakeMyTrip was directed to relist the hotel chains on its website. This is first interim reliefs granted by the CCI in the digital space and witnessed that the rapidly emerging digital economy and the elevation of players to market leaders is being rising identified by the Commission.
- Independently, despite of growing concerns of leveraging in associated markets over E-commerce players, the CCI has been careful in utilising its jurisdiction. Notably, the CCI revealed no merit in allegations against WhatsApp for



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mandatory of pre-installation of WhatsApp Pay services which is dismissed by regulatory against the an unfair term must be intrinsically linked to injury or harm caused to consumer. Consequently, WhatsApp pay programme was remained as optional feature.

Challenges Facing by Competition Commission of India in Digital Economy:

- The primary challenge exposed by the competition policy or commission in digital economy is definition of market and assessment of dominance due to emergence of new markets in new approaches. This is particularly difficult in the aspects of two types of two-sided markets, non-transaction markets and multiple relevant markets.
- The second challenge comes in the form of defining market with zero priced services like social networks and free ware. In general, if there is no price, there is no market. In practical it is failed in defining these price free markets. This is attributable to that consumers get free price services by paying money to other services.
- A third challenge deal with tools of market definition which tends to generate a rather static perspective on the relevant market. This may hinder competition authorities incorporating the dynamic ever-changing nature of digital markets that results from companies continuously creating new markets by competing on developing new business models.
- The fourth challenge arises in dynamic context of digital markets which challenging identification of distinguish anticompetitive behaviour from normal business strategies and models.
- A fifth issue is that the dynamics of competition needed competition authorities to emphasize on the obstruction of entry of future competitors. A strategy useful to prevent future entry is to acquire future competitors while they are still small, or to obtain control over exclusive content.
- A sixth challenge deals with the distinguish leveraging of innovative qualities into adjacent markets (which is good) from leveraging of market power (which is bad).
- The CCI failed in finding right solution to the issue of algorithmic collusion where collusion is defined as price fixing of sellers which is harmful to the customers. The CCI failed to bring the price fixation under CCI purview.

Proposal for Regulation and Improvement of Role of CCI:

The present study observed that rapid growing digital economy poses variety of challenges to the CCI, where some of them are out of purview. In this regard, to address these challenges present study made few proposals for tight regulation and improving the role of CCI towards protecting the interest of public in this digital economy. They are given as follow:

- The present study proposes to establish an independent Digital Marketing Wing (DMW) working under CCI to deals with issue of competition in digital marketing, improve public awareness and provide necessary advice etc.
- The study also proposes to establish an observatory to monitor and analyse the emerging trends in data and online platform economy, produce insights to CCI in policy framing for digital economy.
- The CCI should adopt periodical review system to watch all functions of DMW and observatory to taking necessary actions and needful policies etc.
- The CCI should adopt an effective institutional mechanism for settlement, commitment, and negotiation in digital economic events in the county.

The Competition (Amendment) Bill, 2022:

Indian markets have been experienced significant growth along with the structural changes in business operations due to rapid emergence of digital internet-based companies. In 2018, the Ministry of Corporate Affairs constituted a Competition Law Review Committee (CLRC) to ensure that the Competition Act is in line with emerging changes in the fundamental changes in the Indian economy. The Committee observed specific market practices which were out of the coverage of present regulatory framework. Consequently, in the present report, the Committee made several amendments dealing with matters of market competition. The Competition (Amendment) Bill, 2022, was proposed with new modification



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proposed by the CLRC. The Bill widens the scope of anti-competitive agreements, evaluates combinations based on the value of transactions, and introduces a settlement and commitment framework to reduce litigation.

Proposed key features in Digital Competition Bill:

- Instead of prohibition on combinations, new bill expands the definition of combination based on the transaction value of above Rs 2000 Cr. In this way, it proposes to introduce 'value of transaction' as criteria for identifying the combinations in certain cases like those of digital markets provided that the parties to transactions have 'substantial business operations in India'.
- It reduced the time limit for the CCI to approve a combination to 150 days from 210 days.
- The new bill permitted CCI to initiate and close the proceedings against enterprises on grounds of entering into anti-competitive agreements or abuse of dominant position if the enterprise offers settlements which may involve payment and commitments which are structural or behavioural in nature.
- The bill proposes to replace the word of fine/imprisonment under the Act by the National Company Law Appellate Tribunal (NCLAT) with the punishment for contempt in accordance with the provisions of the Contempt of Courts Act, 1971 and the word 'fine' is replaced with 'penalty'.
- As per the bill commission entrusted the power appoint the Director-General instead of Central Government

The Bill is a significant step towards developing India's anti-competitive regime which effectively responds to the changing nature of modern markets. The Bill further suggests logical approach for gate keeping of anti-competitive practices already prevailing in the market thereby bringing digital markets within the purview of competition law and vis-à-vis provide speedy approvals to transactions that meet the set criteria.

Conclusion

The role of competition law is very significant in digital economy, particularly in the context of India's evolving economic landscape. As the digital economy expands, competition regulators face new challenges and opportunities in ensuring fair competition and preventing anti-competitive practices. Present study is descriptive in nature which focuses on the digital economy nature, competitive law role, features, role, challenges and strategies, competitive bill 2022 and recommendations and made toward strengthen the competition law towards protecting public interest in digital economy.

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