

UNRAVELLING THE CONUNDRUM OF DATA DOMINANCE: CHARTING A COURSE THROUGH THE DIGITAL MARKETPLACE

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Abstract

Data has become a very important asset for digital age at the same time posing various regulatory challenges. The current digital transition is greatly influenced by data domination, which has emerged as a dominant factor affecting the dynamics of digital markets and the larger socio-economic landscape. This paper explores the complex relationship between data control, market rivalry, and regulatory obstacles, with the goal of understanding the hurdles involved in navigating the digital economy. The paper examines the mechanisms and factors that contribute to data dominance and highlights its impact on competition, consumer welfare, and societal well-being. Utilizing theoretical frameworks, empirical evidence, and case studies, this study examines the various aspects of data dominance and provides insights into viable strategies for tackling the issues it presents. The study examines the involvement of the Competition and Consumer challenges (CCI), the European Commission, and other governing bodies in addressing these problems. It also highlights the significant rulings made by these authorities on monopolies in the data-driven market, which reflect their stance on addressing market challenges. The study argues for a well-rounded approach that includes legislative interventions, industry practices, and consumer empowerment programs to promote a digital economy that is more competitive, inventive, and inclusive. Through the involvement of stakeholders from various industries, this initiative aims to establish a path towards a future where the control and influence of data act as a driving force for advancement, rather than a hindrance to equal opportunities and fairness in the digital era.

Keywords: Data, Digital Markets, E-platforms, Network Effect, Abuse of Dominance, Competition.

Introduction

Data has become essential to the global economy in the digital age, serving as a vital resource that fuels innovation, influences market behavior, and transforms corporate operations. The rapid and widespread adoption of digital technologies has enabled the creation, accumulation, and examination of immense quantities of data, presenting novel prospects and difficulties for businesses, consumers, and policymakers alike. The digital revolution is centered around the concept of data dominance, where specific companies have substantial control over important data assets. This power allows them to influence market outcomes and shape the competitive landscape of digital markets.

In order to fully grasp the ramifications of data domination, it is crucial to initially know its fundamental mechanics and catalysts. Data dominance is frequently driven by network effects, economies of scale, and data-driven initiatives implemented by dominant companies to solidify their market position. To get a competitive advantage in this industry that relies on data, the

player must entice consumers by utilizing technological breakthroughs, hence establishing "network effects". Network effects occur when the effectiveness of a user's experience with a product or service increases as more people purchase and use it. Facebook's utility as a platform is contingent upon the presence of other users; in the absence of such users, the network holds no value. These companies utilize their access to extensive datasets to obtain valuable information about consumer behavior, enhance their products and services, and focus their marketing strategies with exceptional accuracy. Moreover, the gradual build-up of data over a period of time establishes obstacles that deter future competitors from entering the market, therefore strengthening the position of existing companies.

The ramifications of data domination go well beyond simple market share or profitability; they have significant repercussions for competition, customer well-being, and the wider socio-economic structure. The advancements in internet technology have undeniably facilitated the lives of individuals worldwide. Search engines and social networking sites offer multiple free services to users. Although users do not make any financial payments, they offer their data as a form of value in exchange for accessing these services. These platforms vend the data to advertising organizations, who subsequently employ this data to scrutinize consumer behavior and purchasing trends and entice consumers with customized and pertinent commercials.

In digital markets where data dominance is prevalent, smaller competitors may face difficulties in competing with the resources and capabilities of dominant firms, which can hinder competition. This can lead to decreased innovation, restricted options for consumers, and potentially elevated costs for goods and services. Furthermore, in a scenario where a small number of entities have control over extensive collections of personal information, issues related to data privacy, security, and the ethical handling of data become of utmost importance. Another tactic utilized by the supplier of products or services is to provide subsidies to users as a means of motivating them to utilize their product or service. This strategy is employed by companies that have robust financial resources. In 2016, Reliance Jio entered the wireless mobile network service business, providing free phone calls and internet access to its customers for a period of one year. Airtel responded to Jio's aggressive entry into the market by filing a lawsuit, accusing Jio of engaging in exploitative pricing in the telecoms business. Based on the market analysis of telecom service providers, Reliance Jio held a modest market share of 7%, suggesting that it did not have a significant presence in the industry. The Commission noted that in a market with established competitors, it would not be deemed anti-competitive for a new operator to recruit users to its services through attractive incentives and schemes. The utilization of a concise business plan by a fledgling company to penetrate the market and establish its presence should not be perceived as anti-competitive. After reviewing the preceding debate, the Commission has determined that there is insufficient evidence to prove that Jio has violated Section 4(2) (a)(ii) of the Act. Several online platform providers have adopted the strategy of providing substantial discounts and cashback incentives in order to attract new users and create a network effect. In 2015/16, companies like as Ola, Uber, and Paytm incurred substantial financial losses as a result of their approach of subsidizing rates and providing cashbacks to boost demand for their services. Nevertheless, in the following years, they successfully generated billions of dollars in earnings. The FDI standards specifically deal with the pricing practices used by internet businesses.

The author has utilized a doctrinal methodology to formulate this research. Their initial approach involves employing primary sources of knowledge, such as statutes and case laws, to scrutinize and evaluate present circumstances. In addition, they collect and examine secondary sources such as government reports, reports from competition law review bodies, OECD reports, EU competition law reports, articles, and papers authored by respected individuals in India and other legal jurisdictions.

THE ROLE OF "DATA" IN THE INTERNET ECONOMY

Consumer data holds significant value for all types of organizations, whether they operate online or have physical stores. However, internet firms particularly rely on gathering and capitalizing on personal data as a fundamental aspect of their business models. However, when it comes to the extent and excellence of collected data, there is no parallel between internet businesses and physical stores. Data has become the new oil.¹ Data plays a crucial role in the "Two-sided/ Multi-sided Business Models," where different digital platforms operate.

It is an undeniable truth that the firm that has authority over data will have a significant influence on the economy in the future, regardless of whether the data is personal or non-personal. The 2020 draft e-commerce policy has sparked worries regarding the possibility of a small number of corporations attaining dominance and exercising control over a substantial amount of the information repository. This could lead to the development of monopolistic tendencies and the weakening of fair competition, which poses a risk to the entire competitive environment. The Indian government enacted the Digital Personal Data Protection Act, 2023, taking inspiration from the European Union General Data Protection Regulation of 2016.²

The DPDP Act was enacted on August 11, 2023³. The DPDP Act is applicable to the handling of digital personal data in India, whether it is collected in digital form or in non-digital form and then digitized. It also applies to processing outside of India if it is related to offering goods or services to individuals in India. Personal data that is processed by an individual for personal or domestic purposes or made publicly available is not included in its scope. The DPDP Act emphasizes the significance of individuals' right to safeguard their personal data, as well as the necessity of processing such data for authorized purposes.⁴

The rapid growth of, and value of 'data' in, digital markets has brought the fields of data protection and competition law closer.⁵ Large digital enterprises are characterised by their access to vast stores of user data which are used to improve products and services. This creates barriers to the entry of new players in digital markets which do not have access to these

¹ <https://comsocsrcc.com/data-is-the-new-oil/#> (Last accessed on 10th May 2024)

² Article 4. According to Article 4(1) of the EU General Data Protection Regulation 2016/679 (GDPR), "personal data' refers to any information that pertains to an identified or identifiable individual (referred to as a 'data subject'). An identifiable individual is someone who can be directly or indirectly identified, especially through an identifier like a name, identification number, location data, online identifier, or specific factors related to their physical, physiological, genetic, mental, economic, cultural, or social identity".

³ DPDP Act

⁴ <https://www.meity.gov.in/writereaddata/files/Digital%20Personal%20Data%20Protection%20Act%202023.pdf> accessed 18 January 2024.

⁵ DPDP Act, Preamble.

enormous repositories of data, thus reducing contestability in the market. Further, personal data collected by large digital enterprises may be used for profiling of consumers and may also be sold to advertisers seeking to curate targeted online services and products, leading to concerns surrounding data privacy.⁶

Although it is possible that data protection under the DPDP Act and competition enforcement in digital markets under the Competition Act may have an ostensible overlap, the objectives sought to be achieved by both statutes are entirely different. While both statutes ultimately try to maximise the welfare of data principals and consumers, the manner in which they seek to achieve the same is distinct. While the DPDP Act is concerned with ensuring that a data principal's personal data is protected, the Competition Act seeks to ensure fairness and contestability in the market.⁷

UTILIZING DATA AS A COMPETITIVE ADVANTAGE

Digital platforms function on business models and algorithms that design and collect data, hence, data is the most important aspect of digital markets. Data is key because it can provide real time information about consumer behaviour across internet. The digital platforms have captured significant control of people's data, which gives them market power and raises privacy, consumer protection and competition law concerns. A very popular case on point is German Anti-Trust authority's (Federal Cartel Office) action on Facebook for sharing data of consumers with 3rd parties⁸.

In January 2021, CCI issued a report on Telecom Sector in India⁹ and noted the intersection of Data Privacy and Competition Law. It held that data is being used as non-price competition to gather market and restrict new players from entering, data used to gain undue advantage and creates dominance in the market thereby resulting in abusive conduct.

Another interesting and recent case on the same is *In Re: Updated Terms of Service and Privacy Policy for Whatsapp Users Case*¹⁰. Recently in January 2021, CCI passed a suo moto order directing investigation into Whatsapp for abusing its dominant position with respect to its latest updated Privacy Policy 2021. Whatsapp through its new policy made it binding for the users to accept their terms and conditions without giving them the chance to opt-out of data sharing with Facebook and its subsidiaries (this option existed in 2016 policy), but with new policy, to retain their whatsapp accounts, the users have to accept these unfair and unreasonable condition of personalized data sharing to continue using whatsapp. The Competition Commission of

⁶ Standing Committee Report (2022), p. 7.

⁷ Para 3.13, Report of the Committee on Digital Competition Law, Ministry of Corporate Affairs, Government of India, March 2024. Available at: <https://www.mca.gov.in/bin/dms/getdocument?mids=gzGtvSkE3zIVhAuBe2pbow%253D%253D&type=open> (Last accessed on 10th April 2024)

⁸Wolters Kluwer, "*The German Facebook Antitrust Case- A Legal Opera*", Thomas Thiede, February 11, 2021.

⁹Competition Commission of India, "*Market Study on Telecom Sector in India-Key Findings and Observations*", January 22, 2021.

https://www.cci.gov.in/sites/default/files/whats_newdocument/Market-Study-on-the-Telecom-Sector-In-India.pdf (Last visited on May 19, 2022)

¹⁰CCI Suo Motu Case no. 01 of 2021, available at: <https://www.cci.gov.in/images/antitrustorder/en/0120211652258503.pdf>

India (CCI) determined that WhatsApp has violated Section 4(2)(a)(i), Section 4(2)(c), and Section 4(2)(e) by engaging in unfair practices and imposing unjust terms and conditions on its users, thereby abusing its dominant market position. The CCI based its decision on its previous ruling in the case of *Harshita Chawla v. WhatsApp Inc.*¹¹, in which it declared that "WhatsApp is a dominant player in the market for over-the-top (OTT) messaging apps." This verdict aligns with the action taken by the German Federal Court, which found that Facebook was using its dominating position by compelling users to disclose their data with firms owned by Facebook."¹²

Several online platforms have the capability to acquire relevant information and data for a little expense for the purposes of collection, storage, and analysis. The data employed by search engines, social networks, and e-commerce platforms is unique and not readily obtainable. Platform firms allocate substantial financial resources to provide free services for users with the primary objective of acquiring data that is not easily accessible. The concept of "economies of scale" has a significant influence on the impact of having exclusive access to data and the process of gathering data, ultimately resulting in a competitive advantage. The existence of economies of scale and network effects presents barriers to entry, which protect the market position of established companies and present difficulties for new entrants in establishing their own place in the market. To get a competitive advantage in the market, a platform must obtain and evaluate both up-to-date data and past user information. Platforms like Facebook collect and analyze real-time data based on the choices made by the user. Consequently, the platform's content adjusts to individual user preferences, and this data is examined for all users. Google is often regarded as the leading search engine because of its large and diverse user base, enabling it to quickly adapt to changing user preferences and provide information immediately. Hence, the velocity at which a company obtains and enhances personal data is the key determinant that enables it to attain significant market influence and a competitive advantage in the market. The Economist has emphasized the dominant influence wielded by Facebook, Google, Amazon, and Apple in terms of their extensive ownership of data. They have introduced the acronym "BAADD (too big, anti-competitive, addictive, and destructive to democracy) to Worse" to characterize the emergence of data monopolies¹³. In order to effectively run an internet platform, it is often acknowledged that a corporation requires both up-to-date and pertinent data, as well as a well operating algorithm.

The Injeti Srinivasan Report of the Competition Law Review Committee¹⁴ extensively addressed the topics of relevant market and market dominance issues in relation to technology and new-age markets. The report emphasized the significance of several aspects of expanding digital marketplaces. The Competition Amendment Act, 2023 as well as the Report on Digital

¹¹CCI Case` No. 15 of 2020, available at:<https://www.cci.gov.in/images/antitrustorder/en/1520201652262847.pdf> available at: <https://www.cci.gov.in/images/antitrustorder/en/1520201652262847.pdf>

¹² "*Bundeskartellamt Prohibits Facebook from Combining User Data from Different Sources*", Press release, Federal Cartel Office, Germany, 7-2-2019.

¹³ <https://www.economist.com/leaders/2018/01/18/how-to-tame-the-tech-titans> (Last accessed on 10th May 2024)

¹⁴ The Committee was created by the Ministry of Corporate Affairs, Government of India, with the purpose of addressing legal difficulties and suggesting modifications to the 2002 Act, [http://www.mca.gov.in/Ministry/pdf/ ReportCLRC_14082019.pdf](http://www.mca.gov.in/Ministry/pdf/ReportCLRC_14082019.pdf)

Competition Law¹⁵ which proposes to introduce ‘Digital Competition Act’ is the ray of hope to address digital market concerns, hoping it to make a positive development. This would be in line with the international best practices on the issue.

Relevant Market and Market Dominance Issues

As previously stated, digital markets consist of platforms that facilitate interactions between several parties, such as Facebook and Amazon. The interactions between these platforms, both among themselves and with customers, raise concerns for regulators. Market definition refers to the process of defining commodities or services that create competitive pressure among different enterprises in the market. It is also used to analyze market power. As a result, the task of determining the market becomes extremely significant.

The digital markets being very different from traditional markets, its very important to define them properly. Until 2016, while defining “relevant market” for e-commerce and online platforms, CCI viewed online and offline segments as different channels of distribution and not as different relevant markets.¹⁶ In *Ashish Ahuja v Snapdeal*¹⁷, CCI noted that “consumers weigh available options in both offline and online markets before taking any decision and are likely to shift to either online or offline markets if price of any one increases”. In *Mohit Manglani v Flipkart India (Pvt.) Ltd.*,¹⁸ CCI considered the distinct features of E-commerce sector, however did not consider it “necessary to delineate relevant market as an ‘e-commerce’ market, due to the parties not being dominant in both the online and offline markets individually”.

However, in 2018, in *All India Online Vendors Association v Flipkart India Private Ltd.*¹⁹, CCI diverted from its initial position, while examining information against e-commerce players alleging “abuse of dominant position by way of predatory pricing and preferential treatment to sellers”, and CCI recognised the possibility of distinction between online and offline segments. “It defined the relevant market as ‘services provided by online marketplace platforms for selling goods in India’ and dismissed the complaint saying that E-commerce market was still emerging and hence no one player can be dominant”.

In October 2019 in the case of *Federation of Hotels and Restaurant Associations of India v MakeMyTrip India Pvt. Ltd.*²⁰, it observed that “delineation of relevant market is based on market realities as they exist at the time of assessment. In rapidly changing markets in particular, market assessment cannot have a static approach.” This case is currently under

¹⁵ The Indian government has created the Committee on Digital Competition Law (CDCL) to assess and evaluate the existing provisions in the Competition Act and the need for ex-ante regulation for digital marketplaces through dedicated legislation. Official report of the Committee on Digital Competition Law, under the Ministry of Corporate Affairs, Government of India, released in March 2024.

Available at:

<https://www.mca.gov.in/bin/dms/getdocument?mids=gzGtvSkE3zIVhAuBe2pbow%253D%253D&type=open>
(Last accessed on 10th April 2024)

¹⁶Deepak Verma v. Clues Network Pvt. Ltd. & Ors., (Case No. 34 of 2016) and Ashish Ahuja v. Snapdeal.com & Anr., (Case No. 17 of 2014).

¹⁷Case No 17 of 2014

¹⁸2015 SCC OnLine CCI 61. [11] [SEP]

¹⁹Case No 20 of 2018

²⁰Case No 14 of 2019

consideration but since this case, CCI considers ‘relevant markets’ of certain online-only players in several cases related to digital markets.

Examining the case of *Vinod Kumar Gupta v WhatsApp Inc.*²¹ the Commission characterized the relevant market as “the market for instant messaging services that use consumer communication applications on smartphones”. The market definition employed by the CCI in the referenced instance was analogous to that utilized by the European Commission in its determination of the Facebook/WhatsApp merger²². The market research conducted by the EC encompassed specific sectors such as consumer communication services, social networking services, and online advertising services. However, the CCI's ruling did not take into account these particular markets.

In the context of online platforms, the relevant market is presently delineated based on the specific goods or services offered to users and advertisers. This is because the majority of platforms do not share data with third parties or utilize it for enhancing user experience. Consequently, there is no exchange of goods or services, and therefore, no identifiable market can be established. In the Facebook and WhatsApp merger case²³, the European Commission clarified that it did not examine the market for data or data analytics services because neither of the companies was involved in those markets²⁴. According to current competition law, a proper market definition considers the availability of data supply and demand for goods or services. In 2017, after data trading occurred between WhatsApp and Facebook and WhatsApp modified its policy, the Commission imposed a fine of 110 million euros on Facebook for supplying deceptive information during their 2014 investigation.²⁵

In the context of traditional markets, the authorities primarily depend on market share as a means of evaluating market power. Consequently, it becomes imperative to establish a clear and accurate market definition. However, this approach cannot be applied when defining the appropriate market in digital multi-sided markets. Defining the market in such cases, which are influenced by network effects, positive feedback loops, and similar factors, becomes a complex and time-consuming task. Determining market shares can be challenging due to the inherent characteristics of the market. Therefore, it is not sufficient to depend exclusively on market share as a means of determining market dominance. When defining the market becomes difficult using traditional methods, authorities may include network effects and positive feedback loops as barriers to entrance and indicators of increased market power. Another obstacle would arise from vertically integrated corporations, such as a virtual marketplace operator (like Amazon), which also serves as an online shop. Accessing strategic information from competitor retailers and understanding consumer behavior in such instances can potentially influence competition. In such marketplaces, a vertically integrated corporation has the advantage of being able to modify its product selection and pricing based on the availability of crucial information, unlike its non-integrated competitors. Consequently, a corporation that

²¹ Competition Commission of India, Case No. 99 of 2016

²² Case No. Comp/M7217, decision dated 3.10.2014

²³ *ibid*

²⁴ Case No COMP/M.7217 – Facebook/WhatsApp, October 3 2014, para. 72

²⁵ European Commission, Mergers: Commission fines Facebook €110 million for providing misleading information about WhatsApp takeover. Retrieved from https://ec.europa.eu/commission/presscorner/detail/en/IP_17_1369

is vertically integrated would benefit from having exclusive access to information that is discriminating.

Competition Concerns related to Market Dominance in the Digital Age

While dominance itself is not inherently bad, its abuse is. A dominant company should not exploit its position²⁶ to engage in anti-competitive activities in order to maintain its market dominance²⁷. The Competition Commission of India (CCI) has defined instances of abuse by dominant firms through various cases since its establishment. In accordance with the Act, the Commission utilizes a two-step evaluation to ascertain if the enterprise in question holds a dominant position in the relevant market, based on the criteria outlined in the Act.²⁸ If it is determined that the enterprise is dominant, the Commission then examines whether it is engaging in abusive practices. India faces a significant challenge in dealing with competition issues related to dominance, particularly in the emergence of platform markets that have established a strong presence in the Indian markets. The increasing digitalization of the market has led to an increase in competition, presenting a new problem for authorities to consider. The Commission has issued significant rulings on the issue of abuse of dominance in the digital era.

In the Google Online Search Bias case²⁹, the CCI acknowledged the significance of a search engine's ability to "crawl" the web and index data³⁰. Google has already accomplished this task by gathering vast and unparalleled amounts of data through its servers and technology. This creates a significant barrier for new competitors in the search engine market. CCI determined that Google was engaging in anticompetitive behavior by presenting irrelevant adverts, which violated Section 4(2)(a)(i) of the Act. Furthermore, the users of flight search choices were subjected to an unjust imposition through the display and positioning of Commercial Flight Units, which included a link to Google's specialized search option. Furthermore, the partners who were seeking permission to advertise on Google were under a foreclosure agreement and were explicitly instructed not to utilize search services offered by other search engines. This action contravened multiple provisions outlined in Section 4 of the Act.

The Competition Commission of India (Commission) **imposed a fine of Rs. 1,337.76 Crore on Google for engaging in anti-competitive practices and exploiting its dominant market position in several aspects of the Android Mobile device ecosystem**³¹. The Commission also issued a cease and desist order to Google. The CCI also imposed a deadline on Google to modify its behavior. The CCI investigated the licensing of the Android mobile operating system by Google, as well as other exclusive mobile applications (such as Play Store, Google Search, Google Chrome, YouTube, and others) in relation to this issue.

²⁶ Section 4, explanation (a): "dominant position" means a position of strength, enjoyed by an enterprise, in the relevant market, in India, which enables it to — (i) operate independently of competitive forces prevailing in the relevant market; or (ii) affect its competitors or consumers or the relevant market in its favor".

²⁷ Section 4 of Competition Act, 2002.

²⁸ Section 19 (4) of Competition Act, 2002.

²⁹ Competition Commission of India, Case No. 7 of 2012, Para 122

³⁰ Section 4(2)(a)(i), 4(2)(c), and 4(2)(e)

³¹ Umar Javeed v. Google LLC, Case no. 39 of 2018 available at:

<https://www.cci.gov.in/images/antitrustorder/en/3920181652264686.pdf>

The CCI identified the following five markets as being significant in this scenario:

- a. Market in India for licensable operating systems for intelligent mobile devices"
- b. Indian market for Android app stores for smart mobile operating systems"
- c. The Indian market for ordinary web search services.
- d. India's market for mobile web browsers that are not exclusive to a certain operating system
- e. The Indian market for online video hosting platforms (OVHPs) is significant.

The CCI conducted an investigation into Google's licensing of the Android mobile operating system and other exclusive mobile applications, such as Play Store, Google Search, Google Chrome, YouTube, and others. Google oversees the operation of the Android operating system and grants licenses for its other exclusive software. Original Equipment Manufacturers (OEMs) incorporate Android into their smart mobile devices. To effectively handle their rights and responsibilities, they engage in several contractual agreements, including as the Mobile Application Distribution Agreement (MADA), the Anti-fragmentation Agreement (AFA), the Android Compatibility Commitment Agreement (ACC), the Revenue Sharing Agreement (RSA), and additional agreements. MADA affirmed that Google's search services possessed a significant competitive edge over their competitors due to their pre-installation on Android devices, which includes the most widely used search entry points such as the search app, widget, and Chrome browser. Competitors of Google face significant obstacles when attempting to enter or operate in the relevant industries, mostly due to the presence of network effects and the tendency for users to stick with the current market leader. AFA/ACC effectively eliminated distribution channels for other search providers by prohibiting OEMs from producing devices that utilize modified versions of the Android operating system. It ensured that original equipment manufacturers (OEMs) would be prohibited from developing and/or selling products derived from branches that were not under the direct oversight of Google. These agreements ultimately led to the market becoming closed off to competitors and limited customer choice by preventing them from effectively competing with Google.

The CCI determined that the mandatory pre-installation of the complete Google Mobile Suite (GMS) under MADA, without the option to uninstall it, and its prominent placement, constitute the imposition of unfair conditions on device manufacturers. This action is in violation of Section 4(2)(a)(i) of the Act. Google imposes certain requirements on OEMs, which are deemed supplementary obligations and are in breach of Section 4(2)(d) of the Act. Google has consistently held its dominating position in the internet search industry, refusing market entry to competing search applications in contravention of Section 4(2)(c) of the Act. Google has utilized its dominant position in the Android OS app store business to protect its position in online general search, which is a breach of Section 4(2)(e) of the Act. Consequently, the CCI imposed a monetary penalty on Google and issued a cease-and-desist order under Section 27 of the Act for participating in anti-competitive practices that violated Section 4 of the Act.

The Competition Commission of India (CCI) imposed a penalty of Rs. 936.44 crore on Google for engaging in anti-competitive behavior by abusing its dominant position in the

Play Store rules³². This penalty was in addition to the cease-and-desist order issued by the CCI. An examination of the market dynamics for licensable mobile operating systems in India reveals that Google's Android OS has effectively capitalized on the advantages of indirect network effects. Google's Play Store serves as the primary software distribution mechanism for the Android mobile ecosystem, allowing owners to generate revenue from newly released applications. It was found that Google has a dominant position in the Indian market for smart mobile devices that have operating systems and app marketplaces that are friendly to licensors and are specifically designed for Android. In order to deliver in-app digital goods to customers who make purchases, developers need to configure their applications so that all digital goods transactions are processed through Google's payment system. As per the policies of Google Play Store, app developers are required to utilize the Google Play's Billing System (GPBS) for receiving payments for apps and other digital goods such as audio, video, and games that are distributed or sold through the Play Store. Additionally, this system must also be used for certain in-app purchases or payments made by app users after they have downloaded or purchased the app from the Play Store. In addition, app developers are not allowed to employ persuasive language that entices users to make purchases of digital goods outside of the app or to directly redirect users to a webpage that provides an alternative payment option within the app (anti-steering legislation). The CCI has also investigated allegations that competing UPI apps were excluded from the Play Store as valid payment options.

According to its conclusions, the CCI determined that requiring app developers to use GPBS for premium apps and in-app purchases in order to reach the Play Store is an unfair requirement imposed on them. Therefore, it has been determined that “Google has breached the regulations outlined in Section 4(2)(a)(i) of the Act. Google's decision to not utilize GPBS for its own services, including YouTube, is considered to be engaging in discriminatory practices. Furthermore, as YouTube is exempt from the service price that other apps under GPBS laws are required to pay, this might be seen as the implementation of discriminatory terms and pricing. Google was found to have breached Sections 4(2)(a)(i) and 4(2)(a)(ii) of the Act. The compulsory use of GPBS hinders the motivation for creativity and the ability of payment processors and app developers to create and introduce new technologies, therefore impeding the progress of technology in the market for in-app payment processing services. in violation of the Act's responsibilities. Google has been found to have violated Section 4(2)(b)(ii) of the Act. Google's actions involve using its dominant position in the market for licensable mobile operating systems and app stores for Android OS to gain an advantage, which goes against the rules stated in Section 4(2)(e) of the Act. Additionally, Google's requirement of using GPBS limits the ability of payment aggregators and app developers to enter the market, which is a violation of Section 4(2)(c) of the Act. Google's integration methods for combining their UPI app with the Play Store, as opposed to other UPI apps, are in breach of Sections 4(2)(a)(ii), 4(2)(c), and 4(2)(e) of the Act. Considering this information, and in accordance with Section 27 of the Act, the CCI directed Google to cease and refrain from engaging in anti-competitive practices that have been found to be in breach of Section 4 of the Act”.

³² XYZ v. Alphabet Inc. and Others, CCI Case No. 07 of 2020, available at: <https://www.cci.gov.in/images/antitrustorder/en/order1666696935.pdf>

The Supreme Court of India has also given the decision on a case involving the **abuse of dominant market position by cab aggregators**. The sequence of events began with Meru initiating legal proceedings against Uber by filing a complaint with the Competition Commission of India (CCI). Data-driven platforms offer services at a price that entices users, leading to an increase in network effects. The more clients there are, the higher the profit. Regarding the case of *Meru Travel Solutions Private Limited (MTSPL) v Uber India Systems Pvt. Ltd*³³, Meru accused Uber of engaging in predatory pricing by offering significant discounts on top of already subsidized costs. Additionally, Uber was providing substantial incentives to drivers in order to maintain their loyalty to the platform. The Commission's assessment focused on the "market for radio taxi services in Delhi". The informant additionally produced a report to assert Uber's supremacy. However, the Commission rejected it due to its lack of reliability and similarity. In addition, the Commission noted that a conflicting report was also presented in a separate instance. Regarding the matter, if Uber has a dominating position, the Competition Commission of India (CCI) believes that Uber has a competitor in Ola in the relevant market. Their variable market share demonstrated their competitiveness in the market, leading to the dismissal of the case. Meru subsequently lodged an appeal with the Competition Appellate Tribunal (COMPAT). During the analysis of the case, COMPAT³⁴ modified the relevant geographic market from Delhi to Delhi-NCR due to the significant movement of these cabs in this region. COMPAT also relied on the premise that CCI possesses the authority to form an initial opinion based on the available evidence, and it should have done so when the factual information was supplied. Moreover, in the event of conflicting accounts, there would have been a valid justification to initiate an inquiry. COMPAT was requested by the DG to conduct an investigation based on the substantial discounts and incentives offered by Uber. It was believed that these measures were taken to enhance the company's network and expand its business.

In response to the COMPAT order, Uber lodged an appeal with the Hon'ble Supreme Court of India. The court ruled that there was no justification for intervening in the COMPAT investigative order, and it is challenging to argue that there is no clear evidence of an abuse of dominant position. Uber's significant price reductions and financial losses per ride indicate a deliberate strategy to eliminate competitors from the market. While the Hon'ble Court did not address the pricing in platform markets, it is an important matter that should be examined by authorities in the future.

The Supreme Court dismissed the appeal and instructed the Director General to conclude the investigation. On July 14, 2021, the CCI reviewed the accusations against Uber based on the investigation conducted by the DG. The investigation focused on the market for radio-taxi services in Delhi-NCR, which aligns with the Commission's previous findings regarding the relevant market. Regarding the accusation of abusing its dominant position, the Competition Commission of India (CCI) supported the investigation conducted by the Director General (DG) and concluded that Uber, despite offering lower prices, cannot be considered dominant in the market due to the strong competition from Ola. Therefore, the lower prices offered by Uber do not qualify as an abuse of dominance unless Uber's dominant position is clearly

³³ Competition Commission of India, Case No. 96 of 2015

³⁴ Meru Travels Solutions Private Limited v Competition Commission of India, Appeal No. 31 of 2016.

established. Justifying the validity of lower pricing, the Competition Commission of India (CCI) supported its argument by referring to *Fast Track Call Cab Private Limited and ANI Technologies Private Limited*³⁵. These companies demonstrated that the lower prices offered by radio-taxi services are just tactics to enhance network effects. The ability to attract consumers does not make a company anti-competitive. This reaffirms prior rulings by the CCI regarding alleged abuse of dominance, which need a clear establishment of such abuse before it can be addressed.

CONCLUSION AND SUGGESTIONS

The intricacies posed by the digital economy and data-driven marketplaces are anticipated to increase in the future. The Commission should give higher priority to scrutinizing such problems, especially concerning digital monopolies that are being regarded as reference points for competition assessments in other jurisdictions. Google, Amazon, Uber, and Apple, together with other digital firms, are gradually becoming dominant players in the data market, establishing monopolies. This will provide a substantial peril to smaller rivals or beginners in the business, leading to adverse repercussions for the broader market. The primary goal of these datapolies is to eliminate competition within the business and create barriers for new entrants, ultimately gaining complete control over the market. The Competition Commission of India (CCI) plays a crucial role in regulating and monitoring startups, especially in the Indian market where the government is aggressively promoting their growth. We have already assessed the economic dynamics of these developing economies, which present barriers to entry and raise worries about the potential abuse of market dominance. Esteemed researchers in reputable jurisdictions suggest that authorities should regard "data" as a decisive criterion for market dominance. The significance of data in platform marketplaces necessitates careful consideration, and the report from the Competition Law Review Committee has played a pivotal role in arguing for the evaluation of mergers based on their network and data resources, rather than solely their physical assets. This indicates that data should be classified as either a parameter or an asset in order to evaluate the market domination of the company. The CLRC presented its report in 2019 encapsulating its recommendations for introducing regulatory best practices in the competition law framework in India. The CLRC also discussed issues relating to new-age digital markets and 'big data'. By implementing it, the Commission would ensure that in the future, mergers involving data giants like Facebook and WhatsApp will not escape examination due to the absence of threshold constraints. Data is becoming a rivalrous good, and all market participants are already analyzing data in real-time to obtain a competitive edge in the digital realm. Data should be regarded as a crucial factor and given the same level of importance as price.

The Commission should approach the question of determining the relevant market in dominance cases in multi-sided markets from an alternative standpoint. When evaluating the market for these platforms, it is important to take into account network effects, positive feedback loops, multi-homing, and other relevant factors. This is because the conventional methods of analysis might be cumbersome to implement. In the present system, it is necessary to acquire a position of control in a certain market that deals with products and services.

³⁵ Competition Commission of India, Case No. 06 and 74 of 2015

However, in order to classify an organization as a "data dominant enterprise," it is necessary to define a "data market" that corresponds to each product or service. Furthermore, undertaking such a monumental endeavour would become intricate when the data pertains to numerous commodities and services or when the data's value is limited. Therefore, it is imperative for policymakers to establish clear standards regarding these matters in order to maintain procedural uniformity in CCI's approach to such cases. The establishment of obstacles to entrance in the market or the presence of excessive market control resulting from data would mostly rely on the "specific type or form of data" and its intrinsic attributes, which would directly influence its worth in a given transaction or situation. For instance, in a market where third-party data is sold, the major companies who sell this data may use methods like tying, exclusive contracts, discriminatory pricing, and so on. These strategies can create barriers that make it difficult for new companies to enter the market. The expenses associated with acquiring, upkeeping, and handling data can be a motivating factor for using such solutions. Hence, it is imperative to make appropriate revisions to the Competition Act 2002, enabling the Competition Commission of India to properly address such occurrences.

In order to have a deeper understanding of modern markets, the Commission should include IT specialists and data scientists in the process of giving orders. Effective competition enforcement is a crucial element, as it is necessary to regulate the economic dominance of expanding giants in platform economies. If a specific category or set of data is classified as a "essential facility," the refusal of a dominating organization to grant access to it may be considered as Monopolistic behavior. Nevertheless, there are no legal provisions or regulations that can compel a dominating company to disclose "essential" data to its competitors in the same relevant market. In this situation, the rival organization would need to meet a rigorous and ambiguous criterion of "indispensability" for acquiring such distinct data.

When properly regulated, the digital market possesses characteristics that can enhance competitiveness in comparison to the conventional market. The Competition Commission of India (CCI) is equipped with the necessary resources and capabilities to effectively address instances of market dominance in the current digital economy.

In light of this situation, solving the problem of data control requires a comprehensive strategy that includes government regulations, industry standards, and public knowledge. Regulatory frameworks are essential for ensuring competition and defending consumer interests in digital markets. Antitrust enforcement, data protection rules, and competition policy can alleviate the risks linked to data dominance by fostering equitable competition, thwarting anti-competitive behaviours, and safeguarding consumer privacy rights.

Moreover, cultivating a culture that promotes responsible data governance and ethical utilization of data is crucial for establishing trust and confidence in digital markets. Businesses ought to implement transparent data policies, grant consumers more autonomy over their personal data, and prioritize data security and privacy in their operations. In addition, the promotion of data interoperability and portability can increase competition by lowering obstacles to market entry and enabling consumers to have more options and flexibility in choosing and switching between service providers.

Simultaneously, it is crucial to provide consumers with information and resources to navigate the digital environment in order to reduce the negative impacts of data control. Education campaigns, consumer advocacy activities, and user-friendly privacy tools have the potential to

empower consumers by providing them with the knowledge and resources necessary to make well-informed decisions regarding their data. Additionally, these measures can also ensure that businesses are held responsible for their data practices.

To summarize, solving the puzzle of data control necessitates collaborative endeavors from all parties involved, including legislators, corporations, and consumers. By promoting a digital economy that encourages competition and inclusivity, while responsibly utilizing data and ensuring fair distribution of benefits, we can pave the way for a future where innovation thrives, consumer protection is ensured, and the full societal advantages of digitalization are achieved. Only by working together can we successfully negotiate the intricacies of the digital marketplace and ensure that the control of data promotes advancement rather than contributing to inequality and unfairness.